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COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

OFFICIAL REPORT

SECOND SERIES

VOLUME XXXVII

1950

SECOND SESSION

9th to 25th May, 1950

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List of Members of the Legislative Council

President:

HIS EXCELLENCY THE ACTING GOVERNOR, MR. J. D. RANKINE, C.M.G.

Vice-President and Speaker:

HON. W. K. HORNE

Ex Officio Members:

ACTING CHIEF SECRETARY AND MEMBER FOR DEVELOPMENT (HON. C. H. THORNLEY). (1)

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

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

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

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

ACTING DEPUTY CHIEF SECRETARY AND MEMBER FOR EDUCATION (HON. C. H. HARTWELL). (2)

MEMBER FOR HEALTH AND LOCAL GOVERNMENT (HON. E. A. VASEY, C.M.G.). (3)

Nominated Official Members:

HON. A. HOPE-JONES (Member for Commerce and Industry).

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

HON. R. PATRICK, E.D. (Director of Education).

HON. E. M. HYDE-CLARKE, M.B.E. (Labour Commissioner).

HON. P. E. H. PIKE (Acting Solicitor General).

HON. S. GILLET (Director of Agriculture).

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

HON. D. O'HAGAN, (Acting Administrative Secretary). (4)

HON. SIR CHARLES MORTIMER, C.B.E. (5)

European Elected Members:

HON. M. BLUNDELL, Rift Valley.

HON. S. V. COOKE, Coast.

HON. D. Q. ERSKINE, Nairobi South.

HON. W. b. HAVELOCK, Kiambu.

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

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

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

HON. LADY SHAW, Ukamba.

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

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

HON. S. G. GHERSIE, Nairobi North.

Asian Elected Members:

HON. C. B. MADAN (Central Area).

HON. I. E. NATHOO (Central Area).

HON. A. B. PATEL, C.M.G. (Eastern Area).

DR. THE HON. M. A. RANA, M.B.E. (Eastern Area).

HON. A. PRITAM (Western Area).

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

Arab Elected Member:

HON. SHARIF MOHAMED SHATRY

Nominated Unofficial Members:

Representing the Interests of the African Community:

HON. J. J. K. ARAP CHEMALLAN.

HON. J. JEREMIAH.

HON. E. W. MATHU.

HON. B. A. OHANGA.

Representing the Interests of the Arab Community

HON. SHEIKH SAID SEIF BIN SALIM.

Acting Clerk to Council

T. V. N. FORTESCUE, Esq.

Reporters:

Miss R. Seeley

Mrs. J. M. Savage

- (1) Vice Mr. J. D. Rankine, C.M.G.
- (2) Vice Mr. C. H. Thornley.
- (3) Vice Sir Charles Mortimer, C.B.E.
- (4) Vice Mr. C. M. Deverell, O.B.E.
- (5) Nominated Official Member.

ABSENTEES FROM LEGISLATIVE COUNCIL SITTINGS

16th May—

Hon. Member for Agriculture and Natural Resources.
Hon. Member for Commerce and Industry.
Hon. Member for Central Area (Mr. C. B. Madan).

17th May—

Hon. Member for Central Area (Mr. Madan).

18th May—

Hon. Member for Central Area (Mr. C. B. Madan).

23rd May—

Hon. Attorney General and Member for Law and Order.
Hon. Member for Usain Gishu.
Hon. Member for Central Area (Mr. Madan).
Hon. Arab Elected Member.
Hon. Member for Arab Interests.
Hon. Member for African Interests (Mr. J. J. K. arap Chemallan).

25th May—

Hon. Attorney General and Member for Law and Order.
Hon. Member for Aberdara.
Hon. Member for Central Area (Mr. C. B. Madan).
Hon. Member for Western Area.
Hon. Arab Elected Member.
Hon. Member for African Interests (Mr. J. J. K. arap Chemallan).



COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

SECOND SESSION, 1950

Tuesday, 9th May, 1950

Council assembled in the Memorial Hall, Nairobi, on Tuesday, 9th May, 1950.

His Honour the Speaker took the Chair at 10 a.m.

The proceedings were opened with prayer.

ADMINISTRATION OF OATH

The Oath of Allegiance was taken by: Lt.-Col. S. G. Gherrie, Member for Nairobi North; C. H. Hartwell, Esq., Acting Deputy Chief Secretary; D. O'Hagan, Esq., Acting Administrative Secretary; E. A. Vasey, Esq., Member for Health and Local Government.

MINUTES

The minutes of the meeting of 24th February, 1950, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

BY THE ACTING CHIEF SECRETARY:

The Report of the Committee of Inquiry appointed to review the Registration of Persons Ordinance, 1947, and to make Recommendations.

BY THE ATTORNEY GENERAL:

Proposals for the reorganization of the East Africa Court of Appeal.

BY THE FINANCIAL SECRETARY:

The Report of the Standing Finance Committee on Schedule of Additional Provision No. 5 of 1947; Schedules of Additional Provision Nos. 6 of 1948, 2 of 1949, 3 of 1949

and 4 of 1949; Report of the Director of Audit on the East Africa High Commission Non-Self-contained Services, 1948.

BY THE ACTING SOLICITOR GENERAL:

The Report of the Select Committee on the Electric Power (Amendment) Bill, 1950.

BY THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT:

Report of the Inquiry into the Information Services; the Annual Report, 1949—Government Chemist's Department.

NOTICE OF MOTION

Mr. MACONOCHE-WELWOOD (Usain Gishu) gave notice of the following motion:

It is the opinion of this House that the Employment of Persons (Medical Treatment) Rules, 1949, should be suspended and referred back for reconsideration to the Labour Advisory Board.

ORAL ANSWERS TO QUESTIONS

NO. 21—KENYA AND HIGH COMMISSION LOANS—LOCAL SUBSCRIPTION
Mr. ERSKINE (Nairobi South):

When Government or High Commission loans are floated in the future, will Government ensure, in the case of that portion of any loan which is reserved for local subscription, that more time shall be allowed between the opening of the subscription list and the closing of same, to enable up-country investors, persons controlling trust funds and others to take advantage of these opportunities for investment, bearing in mind that there is

(Mr. Erskine)

a very definite demand for this type of investment throughout East Africa?

THE FINANCIAL SECRETARY: I assume that the hon. member is referring to the period between the publication of notices and the opening of the subscription list. It is a matter of some delicacy to decide the precise period as the matter depends on conditions existing and potential which may affect the market. Nevertheless this matter will be borne in mind if and when any flotation is effected. High Commission loans are not within the jurisdiction of this Government but I will bring this matter to the notice of the Finance Member of the High Commission.

MR. ERSKINE (Nairobi South): Arising out of that answer, is Government aware that in the case of the East Africa High Commission Loan the prospectus was issued on the 24th March and the subscription list closed three days later, whereas in the case of the City of Nairobi Loan in 1949 I think a clear eight days was given, which was reasonable time.

THE FINANCIAL SECRETARY: Government is naturally so aware, sir. As I have said in my reply, the actual period is fixed in the light of the circumstances which might affect the market. The longer period the greater the risk for the underwriters. It is a very difficult question, whether to give a longer period with the increased risk to the underwriters, or whether to have a shorter period with less convenience to potential subscribers. It might be noted, of course, that when a Bill is introduced into any legislature which provides for the flotation of a loan, that introduction might be construed as at least a preliminary notice. Potential subscribers at least have some indication on that point of view.

No. 23—EXEMPTION FROM INCOME TAX
MR. HAVELOCK (Kiambu):

In order to encourage general development and private investment in the Colony, will Government consider completely exempting from income tax all moneys spent by individuals or companies on certified capital works which can be said to benefit the whole community, such as dams to store flood water, roads through private

land open to public use, hygienic and good standard labour quarters, private dispensaries and recreation rooms, etc.?

THE FINANCIAL SECRETARY: Provision already exists under the Second Schedule to the Income Tax Ordinance, 1947, for allowances in respect of a wide range of capital expenditure covering agriculture, mining and productive industry generally. Such expenditure may be deducted from total income for the purpose of assessing liability to tax, and approved deductions are calculated in annual instalments based on the estimated life of the asset.

MR. HAVELOCK: Arising from that answer, will the hon. Member answer the original question which reads, "... will Government consider completely exempting from income tax, etc.?"

THE FINANCIAL SECRETARY: I am afraid I do not quite follow the difference between the answer I have given and the answer required. Provision exists for a complete write-off—that seems to provide complete exemption. If the hon. member makes his point clear maybe I will be able to answer it.

MR. HAVELOCK: Mr. Speaker, will the hon. Member tell me whether he is able completely to exempt in one year from income tax all expenditure, as in the original question.

THE FINANCIAL SECRETARY: Mr. Speaker, I now realize what the hon. member means. His point I think was discussed in this Council once before and it was explained at that time that the balance of advantage to the person concerned of writing off the assets or expenditure completely in one year was a very dubious matter, inasmuch as if the whole amount was written off in one year his income in succeeding years might come into a higher grade of taxation than under the present system. That statement was made in a very complete form by myself during the Budget debate, and I was under the impression that I had satisfied Council that the balance of advantage to the assessee lay in a more gradual write-off. As a matter of fact, this matter is under consideration again in the United Kingdom, by a Commission known as the Tucker Commission, and I think it would be as well to await the results of that inquiry which deals

(The Financial Secretary)

with the very principle which the hon. member has raised. In addition, I think this matter was also considered by our own Revenue Advisory Committee, and that Committee was unable to come to any particular conclusion on the matter. I therefore suggest that we await the result of the Tucker inquiry before we proceed further in this matter.

MR. ERSKINE (Nairobi South): Arising out of that answer, on a question of principle, am I to understand it is Government's intention not to create a privileged class of taxpayers?

THE FINANCIAL SECRETARY: I do not think an answer to that is called for.

MOTION DEFERRED

THE SPEAKER: There is a motion in the name of the hon. Member for Rift Valley.

MR. BLUNDELL (Rift Valley): Mr. Speaker, as I understand that hon. members opposite would like to postpone this motion till to-morrow, may I, sir, with your permission and leave of the House, ask that it be carried forward till to-morrow.

THE ACTING CHIEF SECRETARY: That is accepted.

BILLS

FIRST READING

On the motion of the Attorney General, seconded by the Acting Solicitor General, the following Bills were read a first time and notice given to take the subsequent stages during the present session: The 1948 Supplementary Appropriation Bill; the Tea Bill, the Factories Bill; and the Development Bill.

THE GENERAL LOAN AND STOCK BILL

FIRST READING

On the motion of the Attorney General, seconded by the Acting Solicitor General, the General Loan and Stock Bill was read a first time.

STANDING RULES AND ORDERS SUSPENDED

The Attorney General moved: That Standing Rules and Orders be suspended to enable the subsequent stages of this Bill to be taken forthwith.

The Acting Solicitor General seconded.

The question was put and carried.

GENERAL LOAN AND STOCK BILL

SECOND READING

THE FINANCIAL SECRETARY: Mr. Speaker, I beg to move: That the General Loan and Stock Bill be read a second time.

It is not my intention to inflict upon the Council a long discourse upon loan technicalities. This Bill, as its title indicates, seeks to set out the terms and conditions on which, if we are to raise loans, those loans may in fact be raised. It is in no sense a specific loan Ordinance. It does not in any way give any authority to this Government to raise a loan. Now the Bill before the Council replaces in very large measure the existing General Loan and Inscribed Stock Ordinance, 1921, and the replacement has become necessary in virtue of the fact that the original Ordinance is now out of date in some respects. We might, of course, have moved a series of amendments to the original Ordinance, but that might have proved very confusing and it has been decided to clear the whole matter up by one Bill of this kind.

The main reason for the change is the fact that the original Ordinance made provision only for the issue of inscribed stock. Inscribed stock is a rather inconvenient form of stock for the holder, and during the war His Majesty's Government found it necessary to change their own powers and own statutes to provide that registered stock only should be issued, and that in fact the stock should be transferable only by instrument in writing and not by the very cumbersome method applicable to inscribed stock. The change has proved extremely useful, and it is now suggested that the Colonies should follow the lead of the United Kingdom.

Now it will be seen from clause 2, under the definitions, that the word "stock" will now cover both inscribed and registered stock. Previously, as I say, provision existed only for inscribed stock. The intention therefore is in due course to utilize the powers conveyed by clause 39 of the new Ordinance to convert existing inscribed stock into registered stock, and to ensure that future loans when those powers have been taken that future loans will be issued only as registered stock. The position in this behalf is that we are not quite ready for

[The Financial Secretary] This step. I have discussed this matter in London with the Crown Agents and the Crown Agents are anxious that all the Colonies concerned should first get their appropriate legislation through and then action will be taken to convert all existing inscribed stock into registered stock, and all future loans after that time will be issued as registered stock and not as inscribed stock.

Now the clauses mainly affected are clause 2, which I have mentioned, which now enlarges the definition of stock to include registered stock, clause 32 and clause 37. Clause 39 conveys the new power which enables the Government to issue regulations to declare that stock can be transferred by an instrument in writing and by no other method. Inasmuch as that power is new, quite naturally clause 39 represents a new feature of the Bill. Other changes relate to clauses 14, 26, 28 and 29. Perhaps the most important of those relates to clause 26, whereunder the new power is conveyed to redeem stock at some date prior to the date of maturity specified. At the present time, if there is a date included, the redemption can take place only on that date and at no other time. As matters will stand after the passing of this Bill an option will be retained, declared at the time of issue, that the Government retains the right to declare that the redemption can take place at any time prior to the date fixed on the stock. Hon. members do not need me to explain that that is a very useful option, which might at some time prove most helpful in enabling the liquidation of debt at an opportune time.

The rest of the changes are not so important. They have been very clearly set out in the statement of objects and reasons, and I do not think that hon. members will want me to reiterate what is actually stated there so clearly. The Bill is, as I say, mainly a repeat of an existing Ordinance and it provides for the issue of loans, the securing of the loans on the revenue, the issue of loans in the form of debentures, the issue of loans in the form of stock both inscribed and registered. It also provides for the payment of interest—that is the mechanics of payment. It indicates when interest shall cease to run. It also provides for a sinking fund to be established,

and also for the mechanics of redemption. As I say, all these features appeared in the existing Ordinance, and I do not propose to go into the details of those processes.

I am afraid, Mr. Speaker, it will be necessary for me to move a number of small amendments in the committee stage. They are minor ones and will not affect the principle of the Bill in any respect whatsoever. For instance, the word "London" wherever it occurs except in one clause will have to be changed to "the United Kingdom" and so on. As I say, these amendments are not of great significance and I do not think hon. members will have any difficulty in accepting them.

With these words, sir, I beg to move.

THE ACTING SOLICITOR GENERAL
seconded.

MR. HAVELOCK: There are two doubts I have about this Bill. The first one is that the Crown Agents seem to be given considerable power—in fact they are, as I can see it, the only agents that the Governor may use when wishing to float a loan for the benefit of this country. I believe, sir, that the Governor should be given wider discretion as to whom he should ask for advice on this very important matter, and, sir, with your permission, I would ask to back this statement of mine by describing what I have heard has been the result of the East African Railways Loan which was floated on the same system as envisaged in this Bill.

The East African Railways Loan was floated, I understand, at 97½, and I am told that before it was made known at what price it was to be floated, experienced stockbrokers in London had given their opinion that 97½ was very much too low, and of course their opinion was borne out, because within 48 hours the stock appreciated by 1½ per cent, and now, a few months afterwards, the stock is standing at 100. In fact, sir, within 48 hours the East African Railways and Harbours lost £43,750 into the pockets of the speculators who bought at 97½ and sold a few hours later at 98½. For that reason, sir, I believe that the Governor should have complete power to take the advice where he wishes, as to on what terms Kenya

[Mr. Havelock] The Financial Secretary: Mr. Speaker, the hon. Member for Kiambu has based his doubts upon the efficiency of the Crown Agents in the matter of fixation of terms of issue on the experience of the High Commission Transport Loan, which was issued at 97½ at 3½ per cent. Now, sir, I happened to be in London just after that quotation was effected and quite naturally I discussed this at length with very many people, and I may say that the opinion that the hon. member has expressed that the loan was in fact too cheap was not held by every person that I spoke to, and it was definitely held by experts equally able to speak of these things that in fact, at that stage of the market, 97½ at 3½ per cent was in fact the right figure, and the success of the loan thereafter was in fact a very good thing. However, be that as it may, it is always very easy to be wise after the event, and of course many people who held the view that 97½ at 3½ per cent was just the right figure before the loan was issued immediately changed their tune when it was a success and rose a point and a quarter, and said it should have been issued at 98½. Be that as it may, let me tell this Council that the Crown Agents have at their disposal the most expert advice possible. They not only have the Bank of England and the Treasury, but they have the advice of first-class brokers whose finger is always delicately poised upon the pulse of the market, and it is only after the most anxious inquiries and most anxious seeking after advice that the terms are fixed. Naturally when the terms are fixed, the views of the Colony concerned, through the mouthpiece of their Member for Finance, are naturally heard. The position of the Crown Agents in this particular Ordinance is a matter of constitutional requirement. It will be appreciated that this Colony cannot go to the United Kingdom for loan moneys without the consent of His Majesty's Government expressed through the Treasury, and the Treasury is only prepared to give that consent provided it is quite sure that in due course it (the Treasury) will not be required to make subventions to the Colony in order to meet its public debt. If so, notwithstanding that the Treasury's view is most definitely that the best possible agency for a Colonial Government to float loans

shall be floated. It is a very important subject and £43,000 would go a long way to help our development projects. I understand that the Crown Agents will probably seek advice from other stockbrokers and commercial houses in London, but as I understand it from this Bill, the Governor has to take the advice of the Crown Agents on this particular matter, and I would like to see it enabling the Governor to take advice from other quarters as well as the Crown Agents, and indeed to exert his pressure on the Crown Agents to alter the terms on the lines of advice which he has received from other experienced quarters.

There is one other point which is not quite as important—that is a matter of registration. I understand from clause 11 of this Bill that all debentures have to be registered in London (which may have to be altered now at the committee stage to "in the United Kingdom"), in the office of the Crown Agents. On the other hand, clause 37 states, "The Crown Agents may from time to time, at the request of the Governor, make arrangements for all or any of the following things—(1) for inscribing and registering stock in their books". I would like to know whether this clause 37 means that registration of East African or Kenya loans has to be done in London or in the United Kingdom, because I am told that it is a great disadvantage to local investors to have the registration in London, and to have to await all the delays of getting their stock transactions registered in London. The Nairobi Municipality Loan, I believe, can be registered either in Nairobi or in London, and it is a very much easier method for our local investors. I would like, therefore, sir, the hon. mover to give me an assurance that under this Bill and under clause 37 it will enable the Kenya Government or Governor to have a register in Nairobi for the stock of any Kenya loan.

Sir, my doubts are very great on this matter, and I would reserve whether "I beg to support" or "beg to oppose" until I have heard the hon. Member's reply.

THE SPEAKER: If no other member wishes to continue the debate I will ask the hon. mover to reply.

[The Financial Secretary] in the London market is the Crown Agents, I think we may accept that the advice, which is a very considered opinion, is sound enough.

Now, sir, the hon. member then went on to talk of the inconvenience to subscribers, local holders of stock, in that so far only one register has been maintained and that in London. Now in this matter I do fully appreciate the point made by the hon. member. It must be very inconvenient for holders of stock who wish to transfer to have to refer each time to London. That position, which has so far existed, has arisen because so far we have only issued inscribed stock, and that stock can only be transferred by the cumbersome method of signing the Register, which of course is always maintained in London, or one or two other specified places in the United Kingdom. If and when we do issue a loan which is in the form of registered stock I do undertake that I will take steps to see that a local register is maintained either with the Accountant General or Government's bank agents, the National Bank of India.

I do not think there were any other points raised by the hon. member. If there were I shall be only too pleased to answer them.

The question was put and carried.

IN COMMITTEE

THE ATTORNEY GENERAL moved: That Council do resolve itself into committee of the whole Council to consider the Bill clause by clause.

THE ACTING SOLICITOR GENERAL seconded.

The question was put and carried.

COUNCIL IN COMMITTEE

The General Loan and Stock Bill

Clause 4: The Financial Secretary moved: That the clause be amended by substituting the word "debentures" for "debenture" in line 9.

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

Clause 5: The Financial Secretary moved: That the clause be amended by substituting the words "the United Kingdom" for "London" in line 14.

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

Clause 16: The Financial Secretary moved: That the clause be amended by substituting the word "debentures" for "debenture" in line 55.

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

Clause 25: The Financial Secretary moved: That the clause be amended by the deletion of the word "registered" in line 51 and the substitution of the words "the United Kingdom" for "England" in line 52.

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

Clause 38: The Financial Secretary moved: That the clause be amended by the substitution of the words "The United Kingdom" for the word "England" in line 25.

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

Title and Preamble: The Financial Secretary moved: That the Title and Preamble be amended by the substitution of the word "Kenya" for "registered" wherever it appeared and the substitution of the word "Stock" for "Stocks" in the penultimate line of the Preamble.

The questions of the amendments were put and carried. The question of the Title and Preamble as amended was put and carried.

THE ATTORNEY GENERAL moved: That the General Loan and Stock Bill be reported back to Council with amendment.

The question was put and carried.

Council resumed and the report was adopted.

THE ATTORNEY GENERAL moved: That the Bill be read a third time and passed.

THE ACTING SOLICITOR GENERAL seconded.

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

THE SPEAKER: That, hon. members, concludes the business on the Order Paper. I understand, the hon. Acting

[The Speaker]

Chief Secretary wishes to make a statement.

THE ACTING CHIEF SECRETARY: Mr. Speaker, with your permission and by leave of the House, I should like to take this opportunity of informing hon. members that in order to fill one of the vacancies on the Official side of the Council, caused by the departure of two nominated Official Members on leave, the Acting Governor has appointed Sir Charles Mortimer to be a temporary nominated Official Member. (Applause.) Sir Charles has undertaken to do certain work for the Government and in particular has agreed to be Chairman of the Committee which is being set up to conduct a general examination of our legislation on the subject of the acquisition of land, in accordance with the terms of a motion moved at the last session of Council by my hon. friend the Member for Rift Valley and accepted by the Government. The appointment, which I knew would meet with the approval of members on both sides of this Council, has been made having two most desirable objectives in mind. Firstly it will enable Council to continue to have the benefit of Sir Charles' experienced guidance in the conduct of its business; and secondly it frees the Government from the necessity of appointing one of its senior officers to fill this particular vacancy, who already has more than enough to do outside the precincts of this Chamber. Sir Charles will take his seat when Council reassembles to-morrow morning.

ADJOURNMENT

Council rose at 10.45 a.m. and adjourned till 9.30 a.m. on Wednesday, 10th May, 1950.

Wednesday, 10th May, 1950

Council reassembled in the Memorial Hall, Nairobi, on Wednesday, 10th May, 1950.

His Honour the Speaker took the Chair at 9.30 a.m.

The proceedings were opened with prayer.

ADMINISTRATION OF OATH

The Oath of Allegiance was taken by Sir Charles Mortimer, C.B.E.

MINUTES

The minutes of the meeting of 9th May, 1950, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

BY THE ACTING CHIEF SECRETARY:

Annual Report of the Development and Reconstruction Authority for 1949; Quarterly Report of the Development and Reconstruction Authority for the period January-March, 1950.

BY THE ACTING DEPUTY CHIEF SECRETARY:

The Employment of Persons (Medical Treatment) Rules, 1949; The Annual Report of the Meteorological Department for 1949.

BY THE MEMBER FOR COMMERCE AND INDUSTRY:

The Annual Report of the Transport Licensing Board for 1949.

BY THE DIRECTOR OF AGRICULTURE:

The Report for the First Quarter of 1950 for the Commissioner for African Land Utilization and Settlement; The Report of the East African Tsetse and Trypanosomiasis Research and Reclamation Organization.

LOANS FOR HIGHER EDUCATION

MR. BLUNDELL (Rift Valley): Mr. Speaker, I beg to move as follows:

"In the firm belief that it is necessary to provide greater facilities for Higher Education for the youth of Kenya this Council makes the following recommendation to Government:

[MR. BLINDELL] : 1907

That a self-reimbursing fund be created and that Government arrange payment thereto by instalments to a total not exceeding £100,000 and from which parents can borrow against security for the provision of fees and maintenance for their children while undergoing higher education where suitable facilities are available from the year 1950 onwards."

In explanation I would say the motion I have moved is slightly different from that on the Order Paper, in order to make the amount of the sum and the method of maintaining the fund more apparent, but the essence of the matter is exactly the same.

In speaking to my motion I would like to stress the need in this country which I shall name later. It is extremely difficult for the sons and daughters of the parents in the higher income groups to attain any educational facilities which will enable them to get higher qualifications or professional attainments. This applies especially to Europeans and Asians. A young man born in this Colony from either of these two races, whose parents cannot afford to send him overseas under their own steam, has very little chance at the moment of attaining anything else in life but one of the more simple jobs, and I think at this stage in the growth of our Colony we should attempt at least to open the door for these people to enable them to advance to a higher educational standard. Although it does not apply quite so much to Africans who are able to go to Makerere, nevertheless for some more brilliant Africans we could afford to put a polish on them after they have finished their training at Makerere, and I do suggest, as we are now so concerned in building the arch of education, we should consider placing in the centre of it the keystone of these higher facilities, to bring back to this Colony citizens of the right capacity.

I think, therefore, there is no need for me to amplify the need for this motion.

I should next like to turn to the finance, hon. members must not imagine that the total of £100,000 which I have suggested will indeed meet the need—it will not. It is impossible to say what might be the need because of course that is governed by the number of children

coming forward, the number of people of the necessary educational standard to benefit from the education, and lastly, by the amount which the parents themselves can put forward. But I have chosen the figure of £100,000 because, I think, it is a sum which it is within our capacity to afford on the basis of annual payments to the fund and not on the basis of a large capital grant which might well lie idle until the total has been taken up over a period of years.

I have also, as hon. members will see, said that the loans must be against security. I think that is essential, because in putting this motion before Council and in asking the hon. Member opposite to agree with it, I think it is necessary to prove that the money will not be lightly dispensed—will not be wasted, and the use of it will be based on the best canons of finance. The details of the repayment and the details of the interest, while I hope those will be as flexible and as sympathetic as possible to the poor parent, should, I think, be matters which might well be dealt with by a Board, which I shall suggest will be set up later.

I would like to say a few words on the loans against security. I want them to be as flexible as possible, and I envisage parents will be able to borrow against such items as a small plot of land, a house—into which many people have put their savings—a life insurance policy, and also I hope we will investigate and pursue the possibility of advancing money against a legal obligation, to refund it from salary rather in the way of the Carnegie scholarships in Scotland.

Lastly, on the question of finance, owing to the small amount available against the possible needs, it will be necessary for anyone receiving these bursaries to be selected with a certain amount of severity. I think that is all to the good. If the State, as is the case here, is going to advance money on, I hope, easy terms, in order to help people to help themselves, it is also necessary to see the money is not wasted by being put into candidates who have not the capacity to benefit from the education. I would like to stress that actually, to which ever race it refers the utmost selection will be necessary, so that only the best possible brains, if I may so phrase it, go forward for this final polishing.

[MR. BLINDELL] :

As to the method I have in mind, that we might well form a body such as an overseas scholarship, or overseas training board, before whom the candidates would go and who would make their recommendations as to the grants of money. I would like to stress that from my investigations it looks as if sums of about £150 to £200 will be necessary per year for the tuition period; because from the various bodies such as the War Memorial Fund which grants bursaries, it rather looks as if that is the sum which parents generally want to borrow. I have in mind that when a boy has finished his education at a secondary school, the parents might be able to borrow the difference between the fees which they were paying at the secondary school and the additional cost of the university training until the university training is finished. Subsequently they would repay the loan from the money which would then be freed and which originally began as payment for secondary education. If I have made that clear to hon. members I think that this overseas training or scholarship board might well have concentrated within it the purview of all overseas bursaries, especially the present bursaries, and I would like just to say here now that I do not intend that this motion of mine should interfere in any way with the present allotment made for the grant of free bursaries, because those would cover up to a point those people who have not been so fortunate in life as to have any security. Nevertheless, I think if we are going to administer this scheme successfully, the overseas training board should have the whole compass of scholarships overseas within its outlook, so that it can apportion the money to the best advantage.

In this particular matter I would also like to refer to a matter not generally known, and where I think this board could be of the greatest assistance. There are in this country at the present time facilities for boys to qualify as civil engineers, incorporated accountants, and to gain certain qualifications in survey, and indeed, so far as incorporated accountants are concerned the present Commissioner of Income Tax qualified in that way, and I think that is not only a tribute to him but is also a tribute to the facilities available. I

have in mind that the overseas training board would thus be able to help Africans in pursuance of this objective, that is higher education, by informing Africans of existing facilities which are not in my belief generally known. I also think in the question of selection it might be well for boys who wanted to enter some professions to be directed and have interviews with local professional bodies such as the local branch of the B.M.A.

That, sir, I think outlines what I have in mind fairly clearly and I do not think I need delay the Council any longer except to say this—that in commending my motion to the Council I would like to draw attention to the fact that for many years we in this country have had inflicted upon us the products of universities overseas in the persons of hon. members opposite—(laughter)—and as we now live in a world which believes in a general levelling down I believe it is right and proper that we should give the children of this country the opportunity to take their places with hon. members opposite. (Applause.)

MAJOR KEYSER (Trans Nzoia): I beg to second and reserve the right to speak later.

MR. NATHOO (Central Area): I think I must congratulate the hon. Member for Rift Valley in putting this motion before the Council, and I have not the slightest doubt that it will receive the fullest support on this side of the Council and sympathetic consideration from the Government. There will be quite a few details. It will require the most careful consideration, if the Government accepts this motion and does something about it, to ensure that the fullest benefit is obtained from the money. There will be also quite strict measures to see that the money, once advanced, is not wasted or lost, but these are matters, as the hon. mover has said, which can be discussed after the principle has been accepted, and speaking for the Asian members I am quite sure, Mr. Speaker, that the motion has our fullest support. (Applause.)

THE FINANCIAL SECRETARY: Mr. Speaker, as this motion involves money perhaps a word from the finance side would not be amiss. Now, sir, I am amongst those people who look forward

[The Financial Secretary] to the great University of Kenya with its Delamere chair of natural sciences, its Mitchell chair of philosophy, its Cavendish-Bentinck chair of applied agriculture and, who knows, its Blundell chair of fine arts. That day will come, but until it does come it is quite obvious that we must make some provision for the bright young people who are the future citizens of this country. (Hear, hear.) I have consulted my hon. friend the Member for Education, and I understand that there is indeed a great need for some interim facility of this kind, pending the great day when we do in fact have our own university. In these circumstances I have found it possible to advise the Government to accept the principle of this motion—(applause)—and therefore, it is so accepted from this side of the Council.

I would suggest, however, that apart from the principle there are a great number of details to be considered, while the mechanics of the matter need careful thought—how the money is to be found, at what rate it should be subscribed to the fund, and so forth and so on. I suggest therefore that I should be authorized to appoint a Committee which should go into the details of this matter, and report to me, so that I can in turn report back to this Council. The Committee naturally will contain a representative of the Member for Finance, the hon. Mr. Blundell would be a member of it, and such other members as necessary—for instance, the Director of Education. The Committee would be fully representative and able to discuss these details with the assistance of expert advice. If this small addition to the debate is accepted, Government will accept the motion *in toto*. In these circumstances I beg to support. (Applause.)

Mr. MATHU (African Interests): Mr. Speaker, we have the fullest sympathy with the intentions of this motion and it is actually very difficult to see how anybody could oppose it, but when we come to the details which are being left over, either to be dealt with by the Committee now suggested by the hon. Member for Finance or by the proposed Overseas Training Board, it is very difficult to see how Africans initially will benefit directly from this loan. The security mentioned by the hon. Member, the mover, is a plot

of land. The African definitely cannot offer, that because legally he owns no plot of land in this country. The house he cannot produce. On the whole very few have life insurances and it is difficult to know whether a legal undertaking by an applicant to pay half the payment down by the reduction of his salary will meet the case. Therefore the difficulty of the African members of this Council is the question of security. That is really our difficulty and if the Committee which is now proposed by the Member for Finance would go into this to make sure that the deserving African students of the highest calibre—we must not support any second rate brains in this matter—we are agreed they must be men of very high intelligence so that these men will be able to avail themselves of the opportunities provided by this loan—that is the assurance we would like to ask both from the Government and from the hon. the mover, that details of security will be gone into to ensure that Africans can take their place and avail themselves of the opportunities of this loan.

If these assurances are given I think we will be prepared to vote for this motion. In the meantime I think we had better reserve our decision.

THE ACTING CHIEF SECRETARY: Mr. Speaker, it is only, I think, necessary for me to make a very brief intervention in this debate. In reply to my hon. friend Mr. Mathu, certainly the Committee which will be set up to advise my hon. friend the Member for Finance on the details of this scheme, will go into the question which he has raised as to how arrangements can be made for those selected Africans to whom a general reference has already been made by the mover to provide the security which quite obviously, as mentioned by the hon. mover himself, will be an essential element in this scheme. I hope, as did the hon. mover, that in such cases it will be possible for arrangements to be made which will prove satisfactory to my hon. friend the Member for Finance.

The only other point, sir, which I would like to make—and I am not suggesting that there was any intentional overlooking of it by the hon. mover—is that when he made it clear that one of his principal objects in bringing this motion before Council was gradually to

[The Financial Secretary] effect the disappearance of myself and my hon. friends on this side of the Council and to our replacement by those of our sons who will be able to benefit from this scheme, it did occur to me, as we have not as yet on this side of the Council had the honour to be accompanied by an hon. lady, that he might possibly, when he winds up, make it clear that, as I am sure is the case, this scheme would of course be equally open for application by girls—(hear, hear)—as for applications from men. Sir, as already said, I beg to support the motion.

Mr. SHARPY (Arab Elected Member): Mr. Speaker, in endorsing the remarks made by the hon. Mr. Mathu, I think the same case applies to the Arab community. In referring the matter to a committee I would request the mover to put in an amendment to this motion:—

Where the parent is poor but the candidate promising academically, an agreement should be made between the candidate himself and the Government to ensure refund after the successful completion of the course on an instalment basis.

I think, sir, by putting this amendment it will help both the African and the Arab community in this issue. Sir, I beg to move.

Mr. COOKE (Coast) seconded.

Mr. BLUNDELL: I am not sure that I could accept it to be incorporated in the motion. I had already considered the possibility of this but the difficulty is, in so far as the candidates are concerned, they are minors and I have been told that it would be impossible to have a legal agreement with them. I would ask the hon. mover of the amendment if he would withdraw it if I give an undertaking that we would examine this by a Committee proposed by the hon. Member for Finance. It is a matter which I originally considered and thought might be workable, but I doubt whether it is workable, but we may be able to evolve eventually some such set-up as is envisaged in the amendment.

THE MEMBER FOR COMMERCE AND INDUSTRY: On one point of fact, I believe that up to 1939 a great many students at the British universities did, in fact, sign an agreement that they would,

at the end of their course, accept a teaching job if it were offered to them or refund the sums of money expended on their education by the Board of Education. I think those people were normally minors in the sense that my hon. friend meant.

THE ACTING CHIEF SECRETARY: After a brief consultation with my hon. friend the Member for Finance, I think I ought to make it clear that the Government will be unable to support this amendment, not because we are afraid of what would happen—some adequate arrangement will, I hope, be able to be made for such cases as my hon. friend has in mind—but because I think it would be wrong in principle for decisions to be taken now on questions of detail which would curtail the freedom of the Committee to make whatever recommendations seem to it to be most desirable on such questions. We should, therefore, sir, on this side of the Council feel compelled to vote against this amendment, not because we are out of sympathy with the principle behind it at all, but for the simple reason which I have given.

DR. RANA (Eastern Area): Mr. Speaker, I rise with great sympathy with the amendment moved by the hon. Arab Member, and I would request that the main object be served if the thing is left to the Board which the Government of Kenya has agreed to set up to investigate the position. There is one point about the formation of the Board. I may mention, sir, that where the students of the parents who cannot afford to send them to England and cannot give security, the best way would be that under the present position there is a clause that the Government does not give bursaries unless the parents are in a financial position to be able to help them. Well, sir, those bursaries should be given to those students who are brilliant enough and who are unfortunate enough not to have parents who can either help them financially or give them security, the Board should give the bursaries scholarship to those students, and people who cannot afford them will have a chance out of this motion which has been moved by the hon. Member for Rift Valley, who I must congratulate for bringing this motion. It is purely a suggestion, sir; I hope that the Board, when it is appointed, will consider the position. The initial question

[Dr. Rana] has been the question of security. I think some readjustment will have to be made to give more liberal bursaries to Africans Europeans or Asians whose parents are unfortunate and really poverty stricken.

With these words, sir, I request the hon. mover of this amendment to withdraw it so that the whole matter can be discussed, and I am sure that the Board will take it into consideration.

Mr. COOKE (Coast): Mr. Speaker, I think I must join issue with my hon. friend the Acting Chief Secretary. Whether I agree with him or not, this is a matter of principle. I know full well there are Boards in this country who definitely are advancing money which has been advanced merely on a verbal promise. I think the motion says "if it can be arranged". Surely that is the dominant expression, and because we leave it open it does not mean that every Arab or African who comes up and pleads for these bursaries will get them. It leaves it open for an arrangement to be made. The Council would take the responsibility to an extent but it is shared on this side of the Council also.

LADY SHAW (Ukamba): I oppose the amendment. Again, not because I am out of sympathy with the point made but because of something that was said at the beginning of this debate by the hon. Financial Secretary. He said he would appoint a Committee to go into this matter, who would report to him and he would then report to this Council. Now it does seem to me that all these points have been brought to his attention and are adequately covered in so far as this matter will once again come to the Council when the information which is available to the Financial Secretary will then become available to us. We are going to make a big mistake if we make a great number of provisos and additions to this motion of the hon. Member for Rift Valley. I hope the hon. Mr. Shatry will withdraw his motion, always bearing in mind that he has called the attention of this Council very adequately and very fully, and he has received a great amount of sympathy from this Council on the matter. I beg to oppose.

Mr. OHANGA (African Interests): Although I agree that the substance of the

amendment that has already been put before Council could be included when working out details, I feel that it is important enough to warrant raising at this stage. If it were not raised at this stage the Committee might not find it possible to deal with it, to give it the fullest support. I thought the important point made in the original motion was the burden that would fall upon the lower income groups. Now considering the general economic position of the country, the lower income groups I think will include the whole of the African population, and only a few people here and there among the non-African population, and it made me feel that this in effect is really a measure for the Africans, and any non-Africans who would fall in that particular group. In moving the motion it was said that it was particularly the Europeans and the Asians who would desire such a measure, but it seems to me that should not be the case because they would be in the higher income groups. It is the Africans and those people who are considered to be lower economically that should be taken into account, and I should like to say that it be fully considered by the Board that it is to be set up.

That is why I support the motion.

THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT: I feel that we are getting just a little mixed in our assessment of the objects of the original motion. (Hear, hear.) It is not a question of a grant to contribute towards education. That is dealt with, sir, in a different manner and in a different way. This is, sir, as the motion states, the setting up of a self-reimbursing fund. Now, sir, if a self-reimbursing fund takes too many chances in the level of security it requires, it will not be long before it ceases to operate as a self-reimbursing fund. I think, sir, we should realize that the sentimental side and the correct side of the assistance of education by grant is not visualized in this particular motion. But, sir, if it is felt that the type of security now suggested in the amendment is a type of security that should be dealt with by the fund, I would suggest, sir, that it be dealt with under the terms of the original motion. (Hear, hear.) Anybody can borrow against security. Now, sir, whatever might be the opinion expressed by the hon. members of this Council it must be bound by the terms of the motion. I suggest, sir, that we should be very wrong

[Member for Health and Local Government]

to accept anything in the nature of a binding in detail of the Committee which my colleague, the hon. Member for Finance, intends to set up. I would respectfully suggest to the hon. Arab Member, Mr. Shatry, that to withdraw the motion now, that he has expressed his view and had a reasonable amount of sympathetic support for it, is the wisest step, rather than to compel us to vote against a motion of that kind, merely because we do not want to bind the committee in detail, and perhaps in that way bring about a wrong expression of opinion on a very important matter. (Applause.)

MR. MATHU: Mr. Speaker, although I entirely agree with the principle behind the amendment and I agree with the hon. Member for Education and the hon. Lady Member for Ukamba, that this is a detail that should be gone into by the committee, there is one point, sir, I should like to make, and that is that if I sum up the views so far expressed on the amendment I would say that the speakers have always given an assurance to the hon. Arab Member that this is a detail that should definitely be dealt with by a committee. If it amounts to that, and I think I see nods all over, I would advise the hon. Member for the Arab Area to withdraw the motion with that understanding.

MR. SHATRY: Mr. Speaker, with the assurance given by the hon. mover and the Government that sympathetic consideration will be given by the proposed board, I beg to withdraw the amendment.

The amendment was, by leave of Council, withdrawn.

THE SPEAKER: If no other member wishes to continue the debate on the substantive motion I will ask the hon. mover to reply.

MR. BLUNDELL: Mr. Speaker, there is not much I need say. I should like to thank hon. members opposite for accepting this motion in principle, and the hon. Member for Finance for suggesting we should set up a committee. I should like to stress that I hope that committee will be as representative as possible so we can get every angle on the particular mechanics of the finance. I was also delighted to see that my motion enabled hon. members on this side of Council

to see the front of the hon. Member for Health and Local Government: when speaking, rather than has been our habit to see the side and back of him.

Sir, I should like to correct one misapprehension under which the hon. Mr. Ohanga appeared to labour. When I was moving the motion I took care to say that this was an entirely non-racial motion, that I envisaged that its application would be available for all races, and when I mentioned Europeans and Asians I did so only in the one regard—that they have not at the moment any facilities in this country for higher education. That was the reason I mentioned Europeans and Asians. I did, if you will remember, stress that there may well be Africans from Makerere who will be able to benefit from this suggestion.

One final word, sir. The hon. Acting Chief Secretary made a reference to the hon. and gracious lady, and the possibility of daughters coming under this scheme. I did, when I was speaking, if he had listened, refer to the sons and daughters of this country, and in so far as our daughters might eventually sit on the other side of Council I feel that is a matter that concerns higher governmental policy, and I should not like to comment on it now. With these words, sir, I beg to move. (Applause.)

The question was put and carried.

PUBLIC ACCOUNTS COMMITTEE

THE ACTING CHIEF SECRETARY: Mr. Speaker, I beg to move as follows: "Be it resolved that the Public Accounts Committee be re-constituted as follows: Hon. M. Blundell, Chairman; Hon. Member for Health and Local Government; Hon. Solicitor General; Hon. Financial Secretary; Hon. D. Q. Erskine; Hon. C. G. Usher; Hon. A. Pritam; Hon. B. A. Ohanga."

Sir, this motion comes forward as a result of consideration which has been given in the Sessional Committee, to the alterations in the constitution of this Committee necessitated by the resignation from the Committee of my hon. friend, the new Member for Health and Local Government, who was a member when representing Nairobi North, and was also Chairman of the Committee. This resolution has the unanimous support of the Sessional Committee, and I beg to move.

THE ACTING SOLICITOR GENERAL seconded.

The question was put and carried.

STANDING COMMITTEE ON LAW AND ORDER

THE ACTING CHIEF SECRETARY: Mr. Speaker, I beg to move as follows: "Be it resolved that the Hon. D. Q. Erskine be appointed a member of the Standing Committee on Law and Order in the place of the Hon. E. A. Vasey."

Sir, this alteration is again necessitated by the arrival of my hon. friend the new Member for Health and Local Government on this side of the Council and has the unanimous support of the Sessional Committee.

I beg to move.

THE ACTING SOLICITOR GENERAL seconded.

The question was put and carried.

SCHEDULE OF ADDITIONAL PROVISION

No. 5 of 1947

THE FINANCIAL SECRETARY: Mr. Speaker, I beg to move: That the Standing Finance Committee Report on the Schedule of Additional Provision, No. 5 of 1947, be adopted.

Sir, the moving of these motions is almost the quintessence of formality and I will not detain the Council by going into details.

I beg to move.

THE ACTING SOLICITOR GENERAL seconded.

The question was put and carried.

POWERS OF WRITE-OFF

THE FINANCIAL SECRETARY: Mr. Speaker, I beg to move as follows: "Be it resolved that this Council authorizes the Member for Finance to exercise powers of write-off up to an amount of £250 in any individual case, provided that no general cancellation of claims prior to a given date is involved."

Now sir, Council is aware that following the general system of financial devolution which the Secretary of State instituted in 1948, considerable financial

powers which were previously exercised only by that authority—that is to say, the Secretary of State—have now been devolved upon the legislature of this Colony. Now it seems to me, and it seems to Government generally, that it is improper and wrong that the business of this Council should be cluttered up with a large number of motions authorizing the writing off of petty amounts, and the object of this motion is to convey a reasonable power to the Member for Finance to act on behalf of the Council in writing off sums up to the amount specified in the motion. The present powers which are exercised by the Governor, in other words, by the Member for Finance on behalf of the Governor, are as follows:—

(1) Claims to revenue can, where justified, be abandoned in individual cases, provided that—

(a) no question of importance or novel principle is involved;

(b) the amount is not large;

(c) the decision to waive the claim can be challenged by the Director of Audit;

(d) no general cancellation of claims prior to a given date is made without the authority of the Secretary of State.

(2) Allocated stores can be written off, without financial limitation, provided that there is no question of negligence or fraud by a Government officer.

(3) Where losses of cash or stores arise and negligence of a Government officer is involved, reference to the Secretary of State is necessary only where the loss exceeds £25 (in the case of cash or stamps) or £50 (in the case of stores).

(4) Where an amount has appeared in a previous financial account as an asset, reference to the Secretary of State to write it off is necessary where the sum exceeds £100.

Now sir, these are the powers at present exercised and it is proposed to raise those limits with the consent of this Council to £250. The limit of £250 has been suggested by the Secretary of State, and the same proposal has been put before the Standing Finance Committee. I would like to read the recommendation of the Standing Finance Committee in this behalf.

(The Financial Secretary)

"The Committee recommended that the Legislative Council should be invited to agree that the Member for Finance should exercise powers of write-off in any individual case up to a maximum of £250, but that where the amount exceeds £250 in any one case or where it is proposed to effect a general cancellation of claims to revenue prior to a certain date, the matter should be referred through the Standing Finance Committee to the Legislative Council."

Sir, on all fours with that recommendation is the motion now before this Council.

I beg to move.

THE ACTING SOLICITOR GENERAL seconded.

MR. BLUNDELL: Mr. Speaker, I rise to support the motion, and I wish to ask the hon. Member for Finance whether he envisages a further delegation within this £250 to Provincial Commissioners for write-offs, as was suggested in the Budget Session, and upon which he gave an assurance that he would investigate the matter.

THE SPEAKER: If no other member wishes to speak I will ask the hon. mover to reply.

THE FINANCIAL SECRETARY: Sir, I firmly believe that in the matter of Government administration, over-centralization is a bad thing. (Hear, hear.) I have already undertaken to investigate whether further decentralization of financial powers can be given, and I can assure the hon. member that where such powers can safely be given without any jeopardy to public funds, such delegation will be effected.

The question was put and carried.

SCHEDULES OF ADDITIONAL PROVISION

No. 6 of 1948, No. 2 of 1949, No. 3 of 1949 and No. 4 of 1949

THE FINANCIAL SECRETARY: Mr. Speaker, I beg to move: That the Schedules of Additional Provision, No. 6 of 1948, No. 2 of 1949, No. 3 of 1949 and No. 4 of 1949 be referred to the Standing Finance Committee.

Again sir, this reference is a formality. On a previous occasion I think I have

said it is a formality which is rather overdone, and I hope one day we will be able to amend the Standing Rules and Orders in such a way as to shorten this rather cumbersome procedure.

THE DIRECTOR OF EDUCATION seconded.

The question was put and carried.

AGRICULTURAL ADVANCES

THE FINANCIAL SECRETARY: Mr. Speaker, I beg to move as follows: "Be it resolved that this Council approves recovery being waived of the sum of £2,066-13-12 advanced under the provisions of the Agricultural Advances Ordinance, 1930.

Now sir, unfortunately this is by no means the first time that a motion of this kind has been put before this Council. It will be remembered that at the time the Ordinance, that is to say, the Agricultural Advances Ordinance, 1930, was passed, the farming community was in a very bad way and in great need of financial assistance. Many farmers had indeed exhausted all other means of finance and this Ordinance was passed to empower the Government to lend money even though there was not proper security for that money. In some cases, indeed in a good many cases, the advances enabled the farmer to pull through, and many of them are still on the land, I am very glad to say. In other cases, however, the force of circumstances was too great, the farms were abandoned and the people concerned were unable to pay back the money. It has become necessary, therefore, from time to time to write off the amounts which have proved irrecoverable in these circumstances. This motion sir, embodies several such cases.

I beg to move.

THE DIRECTOR OF AGRICULTURE seconded.

The question was put and carried.

CONTROL OF HOTELS ORDINANCE 1948

THE MEMBER FOR COMMERCE AND INDUSTRY: Mr. Speaker, I beg to move: "Be it resolved that the Council approves of the Control of Hotels Ordinance, 1948, being continued in force until the 30th day of June, 1952."

[Member for Commerce and Industry]

Now sir, this Ordinance has nothing to do with the control of hotels under the Defence Regulations. I do wish to make that point clear. The control of hotels under the Defence Regulations has of course to do with the prices charged by hoteliers for their accommodation, and as hon. members know, very large relaxations in that respect have been made always consistent with the necessity to protect those for whose needs the provisions of the law have in fact been invoked. The title of this Ordinance is, as the hon. Member for Health and Local Government, when he was Member for Nairobi North, pointed out, "The Control of Hotels Ordinance", a misnomer. It is, in fact, an Ordinance to provide for better hotels through the registration of the hotel managers and through the control of hotel services from the professional hoteliers' point of view.

Now sir, I myself am at fault. Last year when this resolution was put to Council I did undertake to do my best to get the Ordinance revised and brought up to date, and amongst other things to submit a descriptive title of its purpose rather than the present misleading one, namely, the Control of Hotels Ordinance. Sir, I can only say that I have not had time to do what I wished to do. I do undertake to look into the question in the light of what is now nearly two years' experience of its operation and try to bring the Ordinance up to date. I have suggested that this resolution should refer to the continuation of the Ordinance for a period of two years. Before that time has elapsed I have every reason to believe that my advisers in this matter, the hotel proprietors themselves and those who have had experience in these matters, will have made suggestions with a view to amending the Ordinance. When those suggestions have been considered, then I expect that an amending Bill will be introduced into this Council.

Mr. Speaker, I beg to move.

THE ACTING SOLICITOR GENERAL seconded.

MR. HAVELOCK (Kiambu): I would remind the hon. Member for Commerce and Industry that during the debate on this matter last year the main point that was made was that this Ordinance should become a licensing Ordinance only, and

although the hon. member did mention this—I think he used the words "registration of hotel managers"—there are other aspects of the Ordinance to which I personally took objection last year and asked for their removal. The assurance was given then by the hon. member that he would go into the matter as soon as he possibly could. I can understand, with the great beneficial activities to this country which the hon. Member has undertaken in this last year that he has not had the time to go in detail into a matter of this sort. On the other hand, sir, I believe that to ask for the continuation of this Ordinance for two years is perhaps asking too much, and surely one year would be sufficient time in which the Member might be able to go into the whole matter and recommend amendments to this Council. Therefore, sir, I beg to move an amendment to the effect that the date "1952" at the end of this motion should be deleted and the date "1951" be place in its stead.

MR. COOKE: I beg to second, with the right to speak later.

THE MEMBER FOR COMMERCE AND INDUSTRY: Mr. Speaker, cutting the debate short on the amendment proposed by the hon. member, I have no objection, and I am sure that Government has no objection. What the hon. member said about what I undertook to do is of course absolutely correct. I can only apologize. Largely owing to the necessity for selling coffee, sisal and various other products grown in this country, I did not get round to doing it.

THE SPEAKER: We will record that the amendment has been carried, and I now put the motion in amended form.

The question of the motion, as amended, was put and carried.

1948. SUPPLEMENTARY APPROPRIATION BILL

SECOND READING

THE FINANCIAL SECRETARY: Mr. Speaker, I beg to move: That the 1948 Supplementary Appropriation Bill be read a second time.

It may strike members of the Council that the extra amount for which appropriation is sought to be legalized under this Ordinance is of a very considerable magnitude. That is so, sir, but having carefully gone into as much of the de-

[The Financial Secretary]

tails of this Bill as reasonably possible I have concluded that the case is attended by exceptional circumstances. Nearly £900,000 of the extra amount represents the sums payable in respect of salaries revision and similar large sums were voted into the Development and Reconstruction Authority from revenue. Having, as I say, carefully examined this position, I am also satisfied that all these expenditures have been authorized by proper authority be it this Council, be it the Standing Finance Committee or be it the Member for Finance. I therefore do not propose to go into any further details, but beg to move this motion.

THE ACTING SOLICITOR GENERAL seconded.

The question was put and carried.

THE TEA BILL

SECOND READING

THE DIRECTOR OF AGRICULTURE: I beg to move: That a Bill entitled "An Ordinance to Make Provision for Regulating and Controlling the Growing of Tea and for Matters Incidental Thereto and Connected Therewith" be read a second time.

When I moved during the Budget Session last year that the Ordinance should be prolonged to the 31st December, 1950, I stated that it was hoped before that date new legislation would be enacted through the three East African Territories to bring the Tea Industry on an interterritorial basis. The Bill before Council to-day is the outcome. Already similar legislation has been enacted in Uganda, and although difficulties have arisen in Tanganyika it is hoped that Government will shortly introduce a parallel Bill into the Legislative Council of that territory. As far as this Bill is concerned to-day, I would state that the Kenya Tea Growers' Association have been kept very closely consulted throughout its preparation, and I think I am correct in saying is in full agreement.

Turning now, sir, to the Bill itself, in the committee stage my hon. and learned friend, the Member for Law and Order will request one small amendment in the interpretation clause:—

Section 2, line 5: "Kenya Tea Association" should read "Kenya Tea Growers' Association".

In section 3, provision is made for the setting up of a statutory board. Under the existing Ordinance all the powers are delegated to the Director of Agriculture, but I am sure hon. members will agree that the time has now arrived when the Tea Industry is becoming of such importance that the powers should be vested in a statutory board having producer representation on it.

Section 6 is of very special importance in as much as it gives the board powers to nominate four members to sit on any interterritorial body which may be set up. I would say that an interterritorial body does, in fact, exist to-day, and is known as the Interim Central Tea Committee, and during the past 18 months it has done, I think, excellent work, and I am quite sure that if we are going to follow up the Tea Industry on an interterritorial basis that Committee is going to play a very important part in liaison between the three territorial boards.

Sections 7, 8 and 9 provide for planting licences, and section 10 gives the board power to refuse to give planting licences, but sub-section (2) gives any person aggrieved powers of appeal to the Governor in Council.

Section 13 may seem to give the board wide powers to uproot, but such powers can only be exercised in the case where a person has planted without obtaining a licence under section 7.

Section 14 provides for the necessity to obtain an export permit to export tea. This is merely a follow up on the existing Regulations and is deemed to be absolutely necessary in order to control the distribution of tea throughout the East African Territories. Again if an export permit is refused the person aggrieved, under section 15, can appeal to the Governor in Council.

Section 17 provides for a cess, and it will be noted it provides for a cess on manufactured tea and also on acreage planted tea. Whether or not the Board will wish to base a cess on acreage remains to be seen, but it might well be that a large acreage was being established and the welfare of the industry was having to be maintained by a small area actually in production, and therefore I think hon. members will agree that it is only right that there should be provision for the two types of cess.

[The Director of Agriculture]

Under section 19, proceeds of the cess, sub-section (d), I would like to make special reference to the fact that cess may be used towards financing the Tea Research Institute of East Africa. It is a new set-up which I am sure will meet with the full approval of my hon. friend the Member for Finance. In this case, the Tea Research Institute will be entirely run, supported and financed by the Tea Industry itself, with no call on Government funds, but the closest cooperation will exist between the Institute and the territorial Department of Agriculture.

Section 22 provides that no person may export any tea seed. The necessity for this is that in the Colony and in East Africa we are desperately short of tea seed owing to diseases outside. I am unable to allow tea seed to come in from many parts of the Empire, and as a result it is very necessary to safeguard the East African Tea Industry and have some control over all tea seed produced in this country.

Finally section 27 provides that nothing in the Ordinance applies to growing tea in the African land areas. This provision has been made, sir, because it is not considered that the African has the means at the moment to grow tea satisfactorily individually, but at the same time the department, with the full approval of the Kenya Tea Growers' Association, does wish to let Africans have pilot tea schemes in approved areas, on exactly the same lines as we are so successfully proceeding with our African coffee growing, and therefore instead of bringing African growers at this juncture under this Ordinance, rules have recently been promulgated under the Crop Production of Livestock Ordinance, which give similar powers, Africans growing coffee realize that such rules do give my department the opportunity of controlling the crop at the same time giving the Africans every possible assistance in the initial years. Later it may be found advisable to cancel these rules and bring Africans under the Bill before the House. Time alone will tell, and the decision will rest with the Africans.

Hon. members, I commend this Bill to the House for your consideration and approval, because by its enactment it will

bring the Tea Industry on the same footing as many other major agricultural industries of this Colony, and I think you will all agree that it has been proved that the basis on which they have worked has been fully justified.

Mr. Speaker, I beg to move.

THE ACTING SOLICITOR GENERAL
seconded.

The question was put and carried.

Council adjourned at 10.55 a.m. and resumed at 11.15 a.m.

THE FACTORIES BILL

SECOND READING

THE LABOUR COMMISSIONER: Mr. Speaker, I beg to move: That a Bill entitled "An Ordinance to make Provision for the Health, Safety and Welfare of Persons Employed in Factories and other Places, and for Matters Incidental Thereto and Connected Therewith" be read a second time.

Sir, this Bill is essentially a technical measure. It has wide application. I understand, sir, it is the wish of the Council that this should go to a select committee, and at the appropriate stage my hon. and learned friend the Attorney General will take the necessary action. On that basis, sir, I will deal with the Bill as briefly as I can. I will speak a little about the history of it, something about its necessity, something about its implications, and something about the manner in which we propose to enforce it.

Labour legislation has very long history. In fact it is the father of all labour legislation. Names such as Lord Shaftesbury and Robert Owen are well known in this connexion, but it is not generally known that the first Act was passed in 1802 as a result of a campaign by Dr. John Aiken, whose theme was that "the public has a right to see that its members are not wantonly injured or callously lost". Here in Kenya we have, in fact, for the last thirty-three years had an Ordinance on the Statute Book, Chapter 66 of the Laws of Kenya, but we have never brought it into force. It is quite inadequate to meet our present conditions. Just before the war we considered the introduction of a measure to regulate the factories, but obviously we had to drop consideration during the

[The Labour Commissioner]

war. We took the matter up again immediately afterwards because during the war industry developed extremely rapidly, and while a Bill of this nature might have been desirable before the war, certainly by the end of the war it had become imperative. One of the reasons I am quite certain why the Government did not attempt to enforce the original Ordinance was through lack of qualified officers who could put it into operation. Indeed, they are not at all easy to come by, and it was not until 1947 that we were able to secure the services of a factory inspector, attached to the Ministry of Labour, who came out here for six months and studied the problem and advised Government as to the best means by which we could proceed. He was in the country six months, sir, and he drafted a Bill with considerable rule-making powers. The Bill was widely circulated to industrialists, Chambers of Commerce, and others, and I must say it met with a good deal of criticism, not all of it destructive, some of it constructive. The main criticism lay in the wide powers proposed to be conferred upon the Executive, a criticism which has so often been made by hon. members opposite. Among the recommendations made by this expert was that the Colony should have its own adviser who should come out and inspect the position locally, and we were fortunate in 1949 in securing the services of the officer who now holds the appointment of Government Inspector of Factories, Mr. Keeler, who has had considerable experience in the Ministry of Labour on English factory inspection and practice, and who has had a good deal of practical experience in conditions in Palestine, a good combination. I think to have on difficult and technical legislation in new and developing territories.

At this stage, sir, I should like to make it clear that the Bill which is before you is not the same Bill as produced by the United Kingdom expert. Mr. Keeler has been a year in the country and he has gone right through the Bill and has produced a new one in much greater detail and with a great reduction in rule-making powers, and I want to make this point at this stage—it is a Bill based on the most recent and up-to-date United Kingdom practice on which there is, of course available a tremendous amount of

valuable experience and case law, which makes the administration of such a law easier. It has been drafted in consultation with his colleagues in Tanganyika and Uganda, an important point because we have for a long time endeavoured to pursue this course in all technical legislation, that is of having a common Ordinance which would be applicable in all three territories, so that if a firm knew what the standards were in one Colony it would know what to expect in the other two territories. It was drafted in consultation not only with Members of the Labour Advisory Board but with an *ad hoc* Board appointed by the Government, of those persons we thought most likely to be affected, as it were, the consumers. One the *ad hoc* Board, under the Chairmanship of the Solicitor General, were Mr. Billington, subsequently his place was taken by Mr. Pursell, I.C.I., Mr. Gibson, Chief Mechanical Engineer, East African Railways and Harbours, Mr. Harold Gill representing the Timber Industry, Colonel Bridger, Nairobi Municipality and representatives of the Local Government and of the Commerce and Industry Departments. I mention this particularly, sir, because I do want hon. members to appreciate that this Bill has taken considerable time to bring to this stage before the Council, and that it is only brought here after the most careful consideration, both by the Government expert and by persons who are likely to be affected by the matter. I hope that the select committee will bear this point in mind when they are dealing with the details and perhaps meet with some of these gentlemen. So much for the general background of the Bill, sir.

As regards the need I will say very little. The Bill does not do more than set up standards which are expected and known by industrialists in most parts of the world, standards which I do not for a moment expect we will be able to achieve quickly, but it does set up standards, and people who are building factories to-day will, at some time or other, have to meet up to these known requirements. It is at least one of our aims to protect the good employer against unfair competition on the part of those who save in production costs by a total disregard of the health, safety and welfare of their workers.

I thought hon. members would be interested to have some idea of the size

[The Labour Commissioner]

and nature of the problem and for some months the Labour Department has been engaged in producing, as it were, a shadow register. I am not including in the estimate the premises or factories in the Native Land Units. I am only going to give you figures at the moment of factories in the urban areas and rural districts, excluding the Native Lands. There are 3,500 premises which come within the definition of "factory" which employs 60,000 employees. One hundred and fifteen of these factories employ 100 or more workers and account for 51 per cent of the total number of workers in factories. I would make one further remark as a point of interest. In 1948 there were four fatal accidents in industry. In 1949 there were 25. Now these figures must be treated with a great deal of caution, because we have not, at the moment, a fully effective reporting system, and there may well have been more than four fatal accidents in 1948. I doubt if there were more than 25 in 1949. I do not want to indicate that there is a steep rise in fatal accidents nor could I say that every one of them could have been avoided if we had had an Ordinance enforcing safety measures, but I do say this with confidence some of these deaths would not have occurred had there been proper safety precautions, and a great many of the injuries which have occurred also could have been avoided, and that really is the crux of the matter and underlies the need for a measure of this sort.

The third point—I shall talk very briefly—is about some of the implications of this Bill. It is, in my view, the most up-to-date measure, which we could hope to get. It is not, as has been said in some places, a model from the Colonial Office, but I have every reason to believe it is going to be used as a model for other territories. The Bill, if I may say so, has been extremely carefully drawn up, and I would like to take this opportunity to pay tribute to my hon. and learned friend the Acting Solicitor-General. It is fully described in its objects and reasons, and I do not, therefore, intend to take hon. members through it clause by clause, or even part by part; but there are one or two important parts to which I should draw attention. The most important is at the beginning. We have always undertaken

that when a measure of this nature is passed it shall remain on the Statute Book for twelve months before we begin to operate it. That will give people considerable time to look through their own undertakings and bring them into line. Secondly the very first clause has a proviso which makes it possible to introduce the Bill gradually as and when it may be thought fit to do so, area by area or factory by factory, and at this point, sir, although it may not be strictly within the provisions of the terms of reference of the select committee, I trust it will not be out of order to ask the select committee to add a rider to their report for the advice of the Governor in Council as to the rate of application. Parts I and II need no further comment. Part III will require the registration of factories, and is one of the parts which will, of course, apply to existing factories. Occupiers will be required to apply for the registration of premises within one month of the Ordinance coming into operation, that is thirteen months from the time it is passed. Registration of such premises will be automatic, and there is no question of any existing factory being refused registration. It is an important point. We intend to administer this intelligently and carefully, not to put businesses out of production, but to try and educate them into what is required.

In the case of new factories which come into being after that date, thirteen months after it is passed, and factories changing hands, registration will be subject to a clearance certificate from the Chief Inspector of Factories. Provision for repeal will exist against refusal by him to a Factories Board. Part IV relates to health and cleanliness, and again suitable powers are vested in the Member to exempt classes or descriptions of factories. Not only that, but one of the clauses, 14, which relates to overcrowding, itself contains a provision that will delay its operation until four years after passing the Ordinance. Even then, if there is a factory now in being, otherwise well planned, made of concrete, three or four storeys high, which did not comply with the minimum height standards, obviously it would be necessary to exercise discretion and to exempt it from the provisions of this clause.

Part V—Safety (General Provisions). These are probably the most important

[The Labour Commissioner]

provisions of the Bill. The general principle is that "every dangerous part of machinery shall be securely fenced unless safe by position or construction". There again, the Government itself will recommend to the select committee the postponement of the application of certain sections, certain parts of clause 22, for instance. I am advised in connexion with clause 26 that a slight amendment will be suggested at the appropriate time, the main object of which is to bring the obligations of sellers of new machinery within the Colony into line with existing provisions in the United Kingdom. Clauses 30 to 40 deal with the examination of particular classes of plant. Examination is undertaken by persons approved of or authorized by the chief inspector. We believe in this country there is a considerable body of persons who are sufficiently qualified to undertake, in the course of private business, a certain amount of examination and inspection which is provided for under the Ordinance. There will be one specially appointed Government officer for whom provision already exists to deal principally with the examination of steam- and air-pressure vessels. For the interest of hon. members, there are 316 boilers in the country and 456 air-pressure vessels. Among these sections 30 to 40 there is another one which we will obviously have to postpone. This is the question of the periodical annealing of chains and lifting machinery. There is no one, I believe, in this Colony except the Railway who has the necessary machinery to undertake this particular operation at the moment.

Part VI of the Bill deals with welfare, and again we will have to use considerable discretion in applying its provisions. In Part VII I would draw attention to clause 55 which contains rule-making powers for health, safety and welfare in particularly dangerous or offensive trades. Those rule-making powers relate only to certain trades where the conditions are such that special provision is necessary.

Part VIII relates to special applications and extensions, and some amendment is proposed in clause 57 which will remove an anomaly in respect of the respective obligations of the occupier and owner. Clause 60 empowers the Governor in Council to extend the application of the provisions of the Ordinance, for example

to warehouses and building operations. It is not our intention to ask for this extension in the near future, but it must be clear to hon. members that certain safety regulations are becoming more and more necessary, for instance, in the building trade, when you consider the magnitude of some of the buildings which are going up in Kenya to-day, especially in Nairobi.

Part IX is important. Clause 65 places certain duties upon persons employed. Most of the Ordinance, necessarily so, places obligations upon the occupier, the owner or the employer, as the case may be, but this clause restores the balance somewhat because it does apply penal sanctions to the worker, if he himself does not make use of the safety devices which his employer has been obliged to provide.

Part X in fact brings me to the fourth point I want to make in this speech, and that is the question of administration. The acceptance of this Bill implies an increase of staff in the factory inspectorate. This year we have provision for a Government Inspector of Factories and a boiler inspector. I consider, and I am perfectly certain hon. members will agree that an Ordinance of this nature must be administered by people who know their business. (Hear, hear.) We shall ask next year for the appointment of the Chief Inspector of Factories, who has certain statutory power under the Ordinance. We believe that we can administer this Ordinance in the future by a total staff of one chief inspector, three inspectors and one boiler inspector, and there is no question of our attempting to get up to that full complement within the immediate future. All we are asking for next year if this Bill goes through is the appointment of a chief inspector and certain ancillary staff, a clerk and stenographer. The service, when fully operative, will cost between £6,000 and £7,000 a year and we shall not reach that in the immediate future. In any event it is extremely hard to get hold of qualified factory inspectors.

I admit the introduction of this measure is going to cost industry money. Some of the figures I have heard, however, I think are exaggerated. Most of the new and up-to-date factories which have been built fairly recently have been built by firms with a long background and

[The Labour Commissioner] experience of factory legislation in the United Kingdom, and who have constantly approached us and asked Mr. Keeler, the Government Inspector of Factories, what measures they were likely to have to comply with, and have in fact accepted his advice. A great many of the older factories will not find it very difficult to come into line in the manner in which we propose to administer this measure, but I must say this, that the additional cost to industry will be in inverse proportion to the effort already made by employers to secure the health, safety and welfare of their workers.

I think I should say one final word about the shape of this Bill. It has been suggested that we could have had a much more simple measure, attuned to the present state of development of the Colony, and as industry developed we could have had amendments to it every two or three years to keep up to date. I think that that would be quite a wrong approach, sir, because the industrialist who builds a factory to-day has the right to know what is going to be expected of him in the future, even if he does not have to comply to-day, and it is for that reason the Bill before Council has been cast in its present form.

As it is going to a select committee, sir, I do not propose to say any more at this stage. I do commend the Bill to hon. members for acceptance in principle and I do bring to their notice that this is the last but one of the substantive measures in labour which we have felt it necessary to bring into being in this Colony. The adoption of this Bill and one other will in my view produce a labour code for this Colony which will be second to none in the colonial empire, an achievement of which I think we can be properly proud, and I do say this—an achievement which has only been made possible by the understanding co-operation of hon. members on the other side of the House.

Sir, I beg to move. (Applause.)

THE ACTING ADMINISTRATIVE SECRETARY, seconded.

MR. ERSKINE (Nairobi South): Mr. Speaker, in discussions I have had with interested parties in regard to this measure I have been pleasantly surprised at the almost entire lack of alarm

and despondency in regard to the provisions in this Bill, and I get the impression that organized commerce in Nairobi, and indeed in Kenya, is anxious that employers in industry in this country should step off on the right foot and that there should be no retracing of steps. Sir, in this connexion we feel that this Bill probably incorporates a tremendous amount of experience gained in Great Britain and elsewhere during the last 200 years. It has been said that experience is a hard school and that fools will learn in no other. Sir, we do not intend to be fools in this matter—we intend to make full use of the experience gained elsewhere, and for that reason, in principle I can say that commerce and industry, in so far as I know its wishes, in Kenya thoroughly approves the introduction of this measure at this stage. (Applause.) Already industrialists and potential industrialists have had a say in the compilation of the provisions of this Bill, though I suppose that a lot of it derived from model Ordinances taken from elsewhere. I am very pleased, very pleased indeed, to hear that this Bill will go before a select committee, and another opportunity will be given to all who are likely to be affected by its provisions to suggest modifications before the Bill becomes law.

Sir, there is just one item on which I wish to comment. Under the memorandum of objects and reasons on the very last page in the last sentence it refers to the cost of this Bill to the country. If it becomes law and gives a figure of approximately £2,000 a year. Now, sir, quite obviously when this Bill becomes an Ordinance and when the Ordinance is operating it will cost considerably more than that sum. That, sir, is clear. We have heard from my hon. friend the Labour Commissioner that he does not intend to employ people who know nothing about their job. It will be a matter for experts to inspect these factories and see that industry is running properly in this country, and the provisions of this Ordinance are obeyed in so far as is possible from time to time. That, sir, will cost considerably more. Now again there appears to have been no alarm about this among the not inconsiderable bodies with whom I have discussed the measure. It has been suggested to me that perhaps it is time that more money, not less money, might be

[Mr. Erskine] spent on getting commerce and especially industry running smoothly and on better lines. It has been suggested to me that under the collections from traders' licences in this country there is a sum, or there will be a sum, of over £100,000 a year, and I feel that a small proportion of this sum might very well be directed to the implementation in a really efficient way of this Ordinance when it becomes law. Sir, it is quite obvious that to start with it is merely an enabling measure—that must be clear, but it has this great advantage—having this Bill as an Ordinance on the statute book—that when new industrialists come to this country they know exactly what they have got to do. They can start off on the right foot and make quite sure there will be no trouble in the future. For that reason I feel this is a most timely measure and, sir, speaking I hope with the full approval of organized commerce in this town, I would like to wish it well, and hope that it will be a real start towards the building up of the much needed secondary industries in this country. (Applause.)

MR. USHER (Mombasa): Mr. Speaker, may I first offer both thanks and congratulations to the hon. mover for his admirable, lucid exposition of the measure before us and, secondly, I would like to endorse what my hon. friend the Member for Nairobi South has said in regard to the welcome which is given to it by organized industry in Nairobi. I can say, I think, with safety that the same welcome is accorded to it in the constituency which I represent. (Applause.) There are, however, certain local problems which we have which do not affect Nairobi, and I think it appropriate that I should mention them now in order that the select committee may address its mind to them. I think perhaps hon. members will realize that remote as we are we have our difficulties, particularly over such matters as the inspection of machinery and equipment. Now actually at the moment machinery has to be sent up to Nairobi to be tested and that causes a delay of some months, and it is therefore necessary for me to ask that this matter be very seriously considered, and that arrangements be made for inspection locally and testing locally.

Now a second point is this. Long before there are qualified inspectors available their services will be needed, and it is therefore my second suggestion that arrangements be made for qualified engineers to undertake work of that nature; such engineers we have in Mombasa, and I suggest that their experience should be used and that they should be paid in accordance with scheduled fees.

I think I had better refer also at this stage to what the hon. mover said in regard to the exercise of discretion. Now I think that we people here and should have confidence in the undertaking of members opposite in regard to the administration of Ordinances, but I foresee that the administration of this Bill will require the use of very great discretion and, if I might suggest it, I should like to see wherever possible the exercise of discretion plainly indicated in the Bill as it is finally brought before this Council. I welcome this Bill on the understanding that it goes to a select committee and wish it very well. (Applause.)

MR. BLUNDELL: Mr. Speaker, there are three points of principle to which I wish to refer in the Bill. First of all I would like to say I welcome the statement of the hon. Commissioner for Labour to introduce the measure by areas, because otherwise it would appear that such innocuous affairs as boreholes and dairies might well come under the provisions of the Bill.

The three points to which I wish to refer are these. I would like to ask him in his reply to give us an assurance, as far as is possible, that the qualifications of the chief inspector will always be maintained at a high level. I ask this because considerable power in this Bill lies within the jurisdiction of the chief inspector. The second point to which I wish to refer is under clause 45. The right of appeal is limited to the Supreme Court, and I feel if we are going to allow the right of appeal then we should allow the right of appeal on the normal lines to the highest court, and should not allow it to stop on any rung of the ladder. The last point—in clause 81 there is what I believe is a dangerous principle, that the onus of proof that an individual in a factory was an employee should rest with the defence and not with the prosecution. I mention that because it is a considerable matter of principle on which I

[Mr. Blundell] should like the views of the hon. Member opposite and upon which I may feel called upon to move an amendment later.

Mr. HAVELOCK: Mr. Speaker, may I welcome in principle this Bill, but there are very many points of detail which can be adequately dealt with by a select committee, and I am very glad to hear that a select committee will probably be appointed. It does seem to me that the hon. mover has been in labour over a number of years and I hope that this last of his progeny will be a success. But there is one point, sir, of great importance to which I would like to call the attention of hon. members on the other side. If they would refer to clause 55, sub-clause (2), sub-paragraph (c), that reads: "Rules so made may, without prejudice to the generality of the powers conferred by sub-section (1) of this section modify or extend with respect to any class or description of factory any provisions of Part IV, Part V, Part VI or this Part of this Ordinance, being provisions imposing requirements as to health, safety or welfare". It does seem to me that if we pass this particular clause we would be putting into the hands of the Member the power to amend the Ordinance by rule, and as a principle I can only quote my hon. friend's famous description of these sort of things—my hon. friend on my left—"I think that it is simply monstrous". I quite realize that for the administration of a Bill of this sort wide discretionary powers must be given, but, sir, in principle I believe that we have got to be very careful as to the power of giving rules to members, and this of course goes, I believe, much further than any Ordinance that we have had before us before. I do hope, although I think it is a major principle, that the select committee will have power to amend this particular section. Is it such a major principle that they would not be entitled to do so? I hope they will be. I know that hon. members on this side, sir—some of them—will admit the necessity for the Member to be able to modify sections of this Ordinance, but I believe I am speaking for all of the European elected members when I say that they cannot accept the power given to the

Member to extend the principal Ordinance by rule. I personally do not particularly favour the power of modification, because, after all, if this Council lays down what they consider are proper precautions, safety precautions, health precautions, etc., then why should the Member have power to modify them by rule? In order to retain the principle of the power and the ultimate power of this Council I believe that any such modification should be done by amending the Ordinance. As I said, I repeat, other hon. members believe that can be let go, but the power for extension must always remain in the hands of this Council. I have gone into fairly great detail on this particular point because I do believe it is a matter of extreme importance, and I do hope the hon. mover will make some comment in his reply, and that we will have an assurance that this matter can be thoroughly investigated by the select committee and appended by it.

Sir, with those remarks I beg to support.

THE MEMBER FOR COMMERCE AND INDUSTRY: Mr. Speaker, I rise to support the second reading of this Bill, and in doing so I will confirm what my hon. friends the Member for Nairobi South and the Member for Mombasa have said about the support of the commercial and industrial community. As far as the Nairobi Chamber of Commerce is concerned, there was a completely unanimous vote in favour of the principle of this Bill provided it went to select committee. Support has been indicated from other quarters, noticeably from Mombasa and from other sections of organized commerce and industry. In every case, however, this support has been provisional on further consideration as to detail. I myself have, in a sense, with certain hon. members opposite a duty to represent in the proper place and at the proper time the views of organized commerce and industry. As I have said, their support in principle makes it quite clear that they are taking a most constructive attitude in the matter. For the benefit of certain hon. members who may perhaps wonder why organized commerce and industry is virtually in unanimous agreement as to the necessity of a measure of this kind I had perhaps better make two points, and two points only. The first is that the Bill is, as my hon. friend

[Member for Commerce and Industry] the Labour Commissioner said, a protection for the good employer. Now that, from the point of view of organized commerce and industry, is a very important thing indeed. There are many good employers in this country; there are some who are not so good, and it is very essential that the good employer who is trying to do a decent job should be given protection against the employer who, in trying to squeeze out the last bit of profit, is not doing all he should. (Hear, hear.) Now that is one of the reasons why commerce and industry want this Bill.

We have every month new factories opening in Kenya. The rate of progress is immense and it is an accelerated rate of progress. We have, I won't mention the names of the towns or firms involved, one or two very large factory projects indeed, some of which will employ not hundreds of workmen but thousands. Now it is very essential that when a man is going into business he should know what the requirements of the law are going to be for a considerable time ahead, not just for a few years, and that is why, generally speaking, commerce and industry is in favour of putting the whole thing down in black and white in the terms of an Ordinance which will be applied in the various factories concerned so that the total requirements of the good employer as regards the law should be known for a long time ahead. That is the main reason why commerce and industry is in favour of it.

I think, sir, before I sit down, I would like to pay a personal tribute to my friend the Commissioner for Labour—(applause)—and in doing so I am speaking for a great many of my friends in commerce and industry. There have been many occasions when members of the various chambers of commerce and organizations have criticized the hon. Commissioner for Labour. There have been many occasions when the exchanges between my hon. friend and myself have been, to say the least of it, extremely frank—(laughter)—but, sir, I know that my friends to whom I have just referred would wish me to pay a tribute to his sincerity, his courage and his determination and, if I may say so, his flexibility to working out this scheme

which represents a great contribution to our future. (Applause.)

Now, sir, having paid my tribute, I do wish to give one slight warning. There are certain things in this Bill as it stands that I do not like, and there are certain things in it that some of my enlightened friends in organized commerce and industry do not like, the operative word here is "enlightened". I sincerely trust that when it goes to select committee it will go with, as has already been indicated, full support in principle. That select committee will examine this Bill in terms of what enlightened commerce and industry feel is wrong, where additions are necessary, where delay is necessary, where immediate action is necessary, and possibly, sir, where certain provisions need strengthening. Organized commerce and industry feel that in certain respects the Bill's provisions are too weak, in others they are quite clear and in others not quite clear enough. I am sure we can rely on my hon. friend and the Member responsible to take a constructive view in these matters.

With these words, sir, I beg to support.

THE ATTORNEY GENERAL: Mr. Speaker, I should like, if I may, to join in congratulating the hon. mover on the admirable way in which he moved the second reading of this Bill. It was said by an hon. member on the other side that he had been in labour for some time. I should like to congratulate him on the regularity with which his progeny have appeared, and on the quality of his progeny. It was said that this was the last of them. I rejoice to hear from his own lips that he is still expecting another interesting event in the not too distant future. (Laughter.) In fact I am at the moment giving him some pre-natal advice. (Laughter.)

Sir, one point was made by the hon. Member for Nairobi South to which I ought, I think, refer to, and that was with regard to the sum of £2,000 which is mentioned in the last paragraph of the "Objects and Reasons" for this Bill. I am, of course, dependent for these estimates which are put in the "Objects and Reasons" upon the department concerned, but I would like to point out that it is estimated that an additional

[The Attorney General] The annual expenditure of £2,000 will be required. That is not intended to convey the impression that £2,000 per annum is all that will be required by this Bill.

One other point which I might perhaps touch upon was made by the hon. Member for Kiambu. He referred to clause 55 (I think it is) of the Bill, a provision which would allow rules to modify or expand with respect to any description of factory, the provisions of the Ordinance containing requirements as to health, safety or welfare. Now, I fully share, and I think it is probably shared by every member of this Council, his dislike of any provision which would allow a rule to expand an Ordinance, but I take it that that provision has been inserted because of the fact that the kinds of premises to which this Ordinance will have to be applied are very varied and because some flexibility is, therefore, necessary. It may be a solution—I offer it, for what it is worth, for consideration of the select committee—that the power to expand should be deleted and, with regard to the power to modify, that there should be a provision for rules to be laid on the table of this Council before they become operative. That would enable the legislature to keep control of what is being done.

There is only one other thing, sir, that I wish to mention, and that is that I hope the select committee, if it is the decision of the Council that this Bill should go to a select committee, will pay particular attention to the proviso to clause 1, which allows the different requirements of the Ordinance to be brought into effect at different times, and will give some guidance as to when they think the various provisions should be brought into operation, because that will be most valuable to the Governor in Council who has to apply that proviso.

Sir, I beg to support.

THE LABOUR COMMISSIONER: I am appreciative of the very kind way that such an infant has been received in this Council. My hon. and learned friend the Attorney General has dealt with the point raised by the hon. Member for Nairobi South, and I am, of course, responsible for presenting him with the figure of £2,000 mentioned in the "Objects and Reasons". We shall require

next year, if this Bill goes through, the present allocation of £1,500 or £1,800 and an additional £2,000. We shall require eventually, as I have already mentioned, a total provision of £6,000 to £7,000 when we have got our full staff as may be approved from time to time dependent upon the rate of application of the Ordinance. The hon. Member for Mombasa asked that there should be local inspection of machinery and equipment when possible. It is in order to be able to do so that we require no less than three factory inspectors, one at the coast, one additional in Nairobi and one up-country, and I can give the hon. member the assurance he asked for that as and when the application of the Ordinance is extended we shall undertake inspection in his own area.

On the question of arrangements to be made for the recognition of qualified engineers who may be available, I did touch upon that question in my opening remarks. The intention is to establish a panel of such persons as soon as possible, and to prescribe fees which they may impose for such inspections. By that means we shall get a good degree of assistance from qualified persons in addition to the Government-appointed inspectors.

The hon. Member for Rift Valley asked us for an assurance that the qualifications of the chief inspector should be maintained at the highest possible level. I am very happy to give such an assurance.

The second point he raised was under clause 45, right of appeal to the Supreme Court. I am advised that is a matter which can be properly left to the select committee. As regards clause 81, in which the onus of proof is placed upon the occupier, it is a point I have already discussed with the Government Inspector of Factories, and I personally can see no objection whatever to this onus being removed from the occupier and being placed upon the prosecution where it normally lies.

The comments of the hon. Member for Kiambu have also been dealt with by my hon. and learned friend the Attorney General, but I would add this in explanation—the Bill, as it stands at the moment, is of general application, and rules must also be made which are of general application, but there are particular processes,

[The Labour Commissioner]

For instance, cellulose spray painting, a highly inflammable and dangerous form of undertaking and which will certainly be desirable to take special measures to prevent fire. The room may have to be erected in a certain way, fire precautions may have to be taken which are not of general application and which would be difficult, I think, to put in specific form in an Ordinance. However, again I am advised that, although it is a matter of importance, this matter will be within the competence of the select committee when it makes its recommendations.

The question of laying such rules on the table of the House is, in fact, already provided for under clause 71. Under that clause they are to be laid on the table of the House and if not challenged within a certain period they remain operative. However, rules of this nature, of course, will have wide implications and be of extreme importance to industry, and I cannot think that it would ever be necessary, as it were, to bring in a rule overnight and operate it, and I have a suggestion to make: if the select committee would find itself able to accept a proposal that no such rules shall be brought into operation until a minimum period has elapsed after they have been laid on the table of the House, I hope this suggestion will meet that point of criticism. I am also extremely grateful for the very kind and encouraging remarks made by my hon. friend and colleague the Member for Commerce and Industry. Our passages have been frank and sometimes sharp, but in the end we sometimes seem to get the right answer between us.

Sir, I have nothing more to say.

The question was put and carried.

THE ATTORNEY GENERAL: Mr. Speaker, I beg to move: That this Bill be referred to a select committee.

THE ACTING SOLICITOR GENERAL seconded.

The question was put and carried.

THE DEVELOPMENT BILL

SECOND READING

THE FINANCIAL SECRETARY: Mr. Speaker, I beg to move: That the Bill entitled an Ordinance to make Provision for Raising of a Loan of Six Million

Pounds Sterling for the Construction of Certain Public Works and Other Purposes be read a second time.

Now, sir, I shall take the opportunity in this speech to give a brief account of the finances of the Development and Reconstruction Authority as they stand at present. It will therefore be necessary for me to quote a number of figures and I hope, sir, that I shall not anesthetize the Council and that hon. members will bear patiently with me.

Now, sir, it is well remembered that on 5th January, 1945, a committee was appointed with the following terms of reference: "To prepare development plans for the Colony, taking into account departmental and provincial plans prepared in response to Secretariat Circular Letter No. 44 of 1944". That committee, afterwards to be known as the Development Committee, subsequently reported setting out, *inter alia*, a plan of development and also indicating what finances ought to be earmarked for the implementation of that plan. I do not propose to give details of the finances which were recommended to be earmarked because a statement of those finances appears annually in the estimates of the Development and Reconstruction Authority. But the total of the Colony account alone was £15,586-million; now this total was to be made up of contributions from revenue, contributions from the Colonial Development and Welfare vote, certain funds that were in existence, certain loan balances and last but not least by fresh borrowing. Now the fresh borrowing which was envisaged at that time was a total of £5-million or, if we take into consideration the extra £2-million which was recommended to be borrowed for re-lending to local authorities, then £7-million. In referring to its suggestion of £5-million for fresh borrowing, the committee stated that it considered that the figure was on a very modest level, having regard to the consideration that the Development Plan envisaged would much increase the taxable capacity of the country and its wealth generally. Now, sir, it has long been clear that the total figure of £15,586-million envisaged for the plan is insufficient, if the amount of development undertaken is not to fall most regretfully short of the country's minimum needs. Indeed, sir, it is quite

[The Financial Secretary] clear that the borrowings suggested by the committee will have to be very substantially expanded if we are to have anything like that minimum.

Now, sir, I propose to give a few figures which indicate the money that has been spent by the Development and Reconstruction Authority since its inception. I will where possible give these figures in round numbers so as to avoid the overstraining of Council. In 1946 the amount spent by the Development and Reconstruction Authority was just under £1-million. In 1947 it was just over £1.1-million. In 1948 it was £2,655,000. In 1949 it was £4.1-million—£4,100,000. The last figure has not yet been verified as the books are not closed, but it will be of that order. The total spending in those four years, 1946 to 1949 inclusive, was £9,327,000. That figure for only four years compares with the total of £15,586-million recommended by the committee to be spent over a period of ten years. In four years the spending has been over £9-million. Now the figures I have given of annual expenditure are also interesting in that they indicate quite clearly the rapid acceleration of the rate of development which has taken place since the plan was put into operation. Hon. members are very well aware that in the early days of this plan the limiting factors were manpower and equipment. The problems presented by those shortages have been very largely overcome. The limiting factor now becomes more and more finance. The figure for expenditure in 1949, £4.1-million, is very high compared with our foreseeable resources. I must say here and now it will be impossible to maintain that rate of expenditure. This problem of the sustainable rate of expenditure confronted me in a most acute form immediately I took over the budget for 1950, and had it been a question then entirely within my control I would have insisted that the amount of spending in 1950 be below that of 1949. However, sir, it was necessary at that late stage for me to recognize that the Development and Reconstruction Authority had by then built up a very large machine, an expensive machine, and if I had in fact insisted that the amount of money to be spent this year be below that of 1949, then such spending would have been wholly uneconomic. I was

therefore constrained to accept the high figure of £4.5-million as the limit in 1950. It is, however, quite clear that in succeeding years, unless some quite unforeseen source of finance becomes available, our spending will have to be on a lower level than that.

I mentioned that the total spending by the Development and Reconstruction Authority up to the end of 1949 was £9,327-million. Now the total contribution from revenue—that is to say £300,000 a year, plus the special contributions which we have made from time to time plus the amount that has come from the Colonial Development and Welfare vote, comes, in that period, to £4,117-million. This figure falls short of the total amount spent by £5,209-million. Now that £5,209-million must therefore be made up of all those funds, loan balances, which were earmarked, plus such advances pending Joans as have been made from revenue under the authority of this Council. The loan balances and funds come to £4,059-million, so the difference between £5,209-million and £4,059-million represents the amount which has been advanced to the Development and Reconstruction Authority by the Colony. That figure is £1,150,000. In the upshot therefore, by the end of 1949, the Development and Reconstruction Authority had not only spent all those funds and loan balances which were earmarked for it, and, of course, the contributions which had been made from time to time by the revenue, by the Colonial Development and Welfare vote and by special contributions, but also had in addition borrowed £1,150,000 from the Colony account, that is from surplus balances. I do not want Council to get the impression that such borrowing is a wrong thing or that the Development and Reconstruction Authority's financial position is unsound. It is the normal method of financing such schemes. It is a simple exercise in ways and means.

Now, sir, from what I have said it must be quite clear to Council that if the Development and Reconstruction Authority has expended all those various loan balances and funds which were earmarked for it, then for 1950 the only amounts immediately available are £300,000 revenue contribution, which this Council voted during the budget session,

[The Financial Secretary] and the amount which we hope to get from the Colonial Development and Welfare vote this year, which, on a *pro rata* basis, would be £350,000. In other words, the total amount immediately available is £650,000. The question is how are we to finance development in this year? I mentioned a spending figure of £44-million, and yet there is available only £650,000. This brings me to the point of this Bill. It is quite obvious that the time envisaged by the Development Committee when loan-raising would be necessary has now come. That, sir, is the reason why this Bill is before the Council.

Now the Council does not need me to tell it that the question of fixing the date of raising money on the open market is not one entirely within our own control. We cannot say, for instance, the Development and Reconstruction Authority has now spent its last brass farthing, we must go straight to the market to-morrow and borrow *x* million pounds. We have to take our turn on the market. There are many other authorities wishing to borrow. Moreover, even if the sanction is given for us to go to the market, we still have to wait until such time as optimum conditions arise. The question therefore is, what are we going to do before we raise this money? We have only £650,000 and we need something like £44-million. The answer is this, sir: that to the extent that our ways and means position permits we shall go on financing the Development and Reconstruction Authority by borrowing from surplus balances. A general permission in this behalf has already been accorded by this Council under the Development and Reconstruction Authority budget for 1950, but to the extent that we cannot do that—in other words, that our ways and means position will not permit—it is proposed to borrow from the Joint Colonial Fund. I have already approached the Crown Agents on this point and that authority is very willing to accommodate us until such time as we do in fact raise the loan moneys. The intention is that when our loan moneys are raised from time to time we shall repay to surplus balances the amount borrowed for financing this Authority. Naturally we shall also have to pay and immediately after flotation

the sums we have taken from the Joint Colonial Fund.

Now, sir, I think that gives a brief and by no means detailed statement of the position of the Development and Reconstruction Authority as it stands to-day. It is important to note that all loan balances and funds have now been expended. These various accounts will therefore be closed forthwith, a circumstance which will enable me to produce for the forthcoming budget session a very much more simplified statement of the finances and estimates than has hitherto been possible. Now, sir, as for the Bill itself. It is of a standard form and very simple in its structure.

Clause 1 conveys the titles as Development Loan Ordinance, 1950. The word "Development" emphasizes the purpose for which we wish to raise this money.

Clause 2 authorizes the Governor to issue debentures or stock, or both, to the sum of six million pounds and such further sums as may be necessary to defray the expenses of issue.

Clause 3 sets out the purposes for which this money, when raised, may be spent.

Clause 4 provides for the creation of a sinking fund as contemplated by the General Loan and Stock Ordinance, 1950.

Clause 5 empowers the Governor to use a system of Treasury Bills to finance the objects included in the schedules pending the raising of the loan. I am afraid it will be necessary for me in committee to move a small amendment to clause 3. That amendment will provide that the Government may only spend the extra sum necessary to defray the expenses on that purpose, and on that purpose alone. Inasmuch as the amendment seeks to impose a restriction on the manner of spending I have no doubt that I shall get full support for the proposed amendment. I now, sir, strongly commend this Bill to the universal support of the Council. It is an earnest of our intention to go forward with that development so necessary if we are to achieve in full the promise held out by this young and growing country.

With that, sir, I beg to move.

MR. COOKE: There are one or two points, sir, I would like to be cleared

[Mr. Cooke]

up before I give my support to this motion. My friend referred to the Development Report of 1946, and I would like, sir, to quote one or two passages from that report which amount to promises that would be carried out if we on this side of the Council accepted the report. Now, sir, I regard a report of that nature, which envisages the expenditure of a sum of money, more or less in the light of a company's prospectus, and if a company in its prospectus makes certain promises I think that the shareholders have every right to claim that those promises be fulfilled. I am quoting a very short extract to draw the attention of the Council to it. On page 4 it says that "one of the basic principles in this country is to use the natural resources of the country, including manpower, in a manner calculated to increase the national income of Kenya in the shortest space of time so as to raise, as soon as possible, the standard of living of the majority of the inhabitants".

Now, sir, on page 10 there is another passage which more or less sums up what that policy should be: "The committee would stress the point that unless the African mind can be brought to the pitch of being able to comprehend the broad requirements of a rehabilitation and development programme and, more particularly, unless the principle that 'all mutual work' can be brought before the African in a convincing and effective way, there is no alternative to economic disaster".

Now, sir, that is a pretty strong expression. And I would require that all races should be required to work just the same as an African. There are one or two assurances I would like from the hon. members. I would like to know what relationship loans are going to bear to the country's surplus balances. Now, sir, there are a few people in this country, a few misguided people, if I may use such a mild expression, who talk about a fund which shall be sacrosanct and that large proportions of our surplus balances should not be touched until there is a world depression, or a slump, or whatever you like to call it. In other words, that money should be frozen. Now supposing we introduce—I hope I am not becoming irrelevant—supposing we introduce this principle to our private

lives—I know you, sir, to breed Jersey stock—

THE SPEAKER: I must deprecate personal reference to the Chair.

MR. COOKE: Well, supposing Mr. X breeds Jersey stock and says, "I am afraid a depression is coming along and I don't think I can afford to buy a bull this year. I won't buy because I think a depression is coming along". The whole economic position of this country would soon come to an end if we introduced into our private lives the timidity which some show in their public lives.

There is this point also. We are, as my hon. friend has referred to this morning, borrowing from a long-suffering British public who have borne the burden and heat of the day for many years. We are borrowing from them large sums of money for the Colonial Development Fund; and is it in any way right that we should borrow all this money from these over-taxed people while we are afraid to spend money and instead put it into a fund which shall be sacrosanct. I say abolish the thought. I do not think that we would be justified for one moment in doing such a thing. My hon. friend seems to have forgotten one of the oldest proverbs going, and that is "Money makes money", and I do not think that he quite appreciates, sir, that money spent to-day, as emphasized in the report, will increase the taxable capacity of this country. I am afraid that I have got to agree that a great deal of the money spent so far has not increased the taxable capacity of this country!

I have just heard this morning the report of the Development and Reconstruction Authority, and I find that this very important Authority met only four times last year. Well, I happen to know in Rhodesia the Authority sits once a month, keeps elaborate minutes and goes most meticulously into expenditure. Now we are asked that this large sum of money, six million pounds, be put into the hands of people who spent five million pounds last year, and only met four times in the year. I think it is an indictment on the financial adviser in this country. There should be some kind of assurance that this year the Development and Reconstruction Authority will

[Mr. Cooke]

meet regularly and take full responsibility and indeed present its report monthly to the Standing Finance Committee, who, after all, are ultimately responsible for expenditure. I would like to know, sir, because I confess I am not very good at figures, I would like my hon. friend to tell me how much money, actual hard cash, not money on paper, not money with the accountants in a book, but how much he can lay hands on. He says he has a surplus of something like £1,150,000. Does this mean it is in the kitty now ready to be made use of if necessary? I always think when we consider the expenditure of money in this country we consider it from a very narrow basis. It is not really what Mr. X can afford or what Mr. Brown can afford and what Mr. Jones can afford. It is what Mr. Kenya can afford. In other words, what the national income of this country can stand. Having decided what that national income is then we put the burden on individual people. Mr. Jones will pay a share, and Mr. Smith will pay a share according to their ability. But if you are going to individuals and say so and so cannot bear this taxation, then you are taking a distorted view of the finances of this country. Now it is said that the national income of this country has been grossly exaggerated and one or two people on this side of the Council agree. I do not. I think it has been calculated with most meticulous care by people who are experts on the job—I would like an assurance from a member of the other side, perhaps my hon. friend the Member for Commerce, what he considers is the national income of this country, and when we find out what the national income is we shall then be in a better position to say what our taxable capacity is. My hon. friend assumes we can borrow only £18-million in the next something years, but is that the case. If so, his guess is as good as mine. Or is it the opinion of the financial advisers in England. If it is, I hope we shall be told so.

The debate was adjourned.

ADJOURNMENT

Council rose at 12.45 p.m. and adjourned until 9.30 a.m. on Thursday, 11th May, 1950.

Thursday, 11th May, 1950

Council reassembled in the Memorial Hall, Nairobi, on Thursday, 11th May, 1950.

His Honour the Speaker took the Chair at 9.30 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of the 10th May, 1950, were confirmed.

PAPERS LAID

The following paper was laid on the table:—

BY THE HON. MEMBER FOR AGRICULTURE AND NATURAL RESOURCES:

Department of Veterinary Services Annual Report, 1948.

EMPLOYMENT OF PERSONS (MEDICAL TREATMENT) RULES, 1949

MR. MACNOCHIE-WELWOOD (Uasin Gishu): Mr. Speaker, there is a small alteration I should like to make in the wording of this motion which I propose to move. On the Order Paper it reads:

"It is the opinion of this Council that the Employment of Persons (Medical Treatment) Rules, 1949, should be suspended and referred back for reconsideration to the Labour Advisory Board." The words "should be suspended" should be substituted by the words "should be revoked".

In moving this motion, after the admiration expressed by this Council yesterday of the exuberant fecundity of the hon. Labour Commissioner, I feel almost diffident in criticizing his latest child, I think it is perhaps not entirely fair to do so as I think this is rather an accident by the Medical Department and shows a most regrettable absence of prenatal care by the hon. Attorney General with which I think this Council will agree when I have discussed the particular rules to which I object.

No. 3. "An employer shall take all reasonable steps to ensure that every case of illness or injury of any employee is brought to his notice".

I should like to hear from the hon. the Labour Commissioner what steps an employer could take to find out when a person should be ill in his employment.

[Mr. Maconochie-Welwood]

No. 7 (2). "Where, in the opinion of the Director of Medical Services, adequate hospital accommodation is not readily available at or near to the place of employment, he may order an employer to provide such accommodation as he may consider necessary at the place of employment, and the employer shall provide such accommodation to the satisfaction of the Director of Medical Services"

This, in effect, establishes a completely autocratic position for the Director of Medical Services. It makes it possible for him to say that his own hospital is not adequate and therefore the employer should construct one. These hospitals are notoriously inadequate and therefore the onus is placed on the employer to replace the shortcomings of Government.

No. 9. "Where it is necessary for an employee to attend at a hospital for medical treatment, his employer shall provide such reasonable transport as is necessary for taking such employee to such hospital, and, on his discharge from hospital, back to his place of work, whether or not his contract has expired in the intervening period".

That again, I submit, is a most impossible clause both in fact and in law. What is "reasonable transport". There is no definition of it. It does start an entirely new principle, and in the opinion of this Council, new principles should not be laid down by rule, they should be laid down in an Ordinance or by amendment to an Ordinance.

No. 11. "Every employer shall provide medical treatment and necessary transport for the dependants of any employee who is a resident labourer within the meaning of the Resident Labourers Ordinance, 1937".

This is perhaps the most serious one of all because it seeks in effect to impose taxation on a special class and makes the employer responsible, not only for his employee, but his wife and children; more than that if he has three or four wives, he is responsible for them all. He is responsible even for the mistresses of his employee and if they have children it is entirely up to him to take them in to hospital when sick. It might even be taken to include taking them into hospital to have their children in which case, if they show the amazing profligence that the Labour Commissioner shows in legis-

lation it is going to be exceedingly expensive.

11 (c). This is an alteration from the original Ordinance and says:—"Provided that no employer shall be liable for hospital fees in respect of an employee who is suffering from illness or injury which is proved by the employer to the satisfaction of the Commissioner of Inland Revenue to have been contracted prior to employment or to be attributable to illness or injury contracted prior to employment".

On the Commissioner of Inland Revenue, of all people, does the decision rest whether an employee contracted an illness prior to his employment, and it constitutes an alteration to the original rules which laid down that the employer shall not be responsible for the illness contracted by the employee when not at work. I must give a case which arose recently, of an employee who went on leave and was injured. While on leave he was knocked down by a bus and broke his leg, and the employer was responsible for the whole of his medical fees because of this accident. Now I must submit that this is an attempt by Government to shovel off their responsibilities on to the employer. It is, in fact, specialized taxation imposed by rule in the hope that it would escape the attention of the legislature. That is what I would object to. That is what I am sure everybody here will object to. I am the first to agree that employers should take all possible care of their employees.—Probably more is done voluntarily than by law and compulsion, and I submit that these rules require to go back and be drastically altered and possibly resubmitted to this Council. I would urge everybody here to support this resolution, not alone because of the things I have pointed out, but to establish the principle that this Council has the right to send back rules made by Members for reconsideration or for redrafting, and that they cannot be slipped across in this way. I may say that one of the reasons why I was determined to bring this motion is that I met two officers of the Honourable the Labour Commissioner's Department to whom I spoke of these Rules, and both of them said to me "These Rules are now law and you can do nothing about it". I was quite determined that something could be done about it and it should be shown

[Mr. Maconochie-Welwood]

once and for all that something can be done about rules after they are passed and laid on the table of this Council. Mr. Speaker, I beg to move.

MR. HAVELOCK (Kiambu): I beg to second, sir, and reserve my right to speak.

THE LABOUR COMMISSIONER: Sir, I have been authorized by Government to say that we shall accept the motion as it stands. I do not propose to argue the points across the floor of the Council today because I think the motion properly refers the rules back for reconsideration by, as it were, a committee of experts, and I do not propose, therefore, to deal with the reasons which led the Advisory Board, one by one, to support these rules. What I do want to do is to say I cannot accept the suggestion that the rules are in any way an attempt to shovel off the Government's responsibilities. I think those were the words. The intention behind this is to ensure that employers shall take proper care of their workers. That is the basic principle behind it, and I am most grateful to hear from the hon. mover that he supports this principle—he says that all good employers do so. My retort is that all employers are not good employers, and therefore it is necessary to establish some standards for those who fall below the good standards, up to the level of the good employer. But I have accepted the motion on behalf of the Government and I think it is very right and proper that it should go back to the Labour Advisory Board. I am sorry to hear that any officers of my department have taken the attitude which has been stated by the hon. mover, but the law itself is explicit on the subject.

This is under section 79, sub-section (3) of the Employment Ordinance, and I think I will just read it out for the House to hear:

"All Rules made under this section shall have the same force and effect as if they had been enacted in this Ordinance and shall be laid as soon as conveniently may be before the Legislative Council; and if a resolution is passed within forty days of their being laid before Legislative Council praying that any such Rule shall be revoked or amended such rule shall thenceforth be revoked or amended but without prejudice to anything done thereunder."

That establishes the principle beyond any question, that this Council has the right to revoke or amend rules so made and it has exercised that right this morning. No objection is taken to that, but I do want to emphasize so far as this side is concerned, we are responsible for the presence of this rule in the Ordinance, and we are honouring our obligation this morning in my view by backing the motion which has been put before us. I would make one further remark. Perhaps rule 8 has escaped the hon. mover's attention, or perhaps he wished to make no reference to it. At the moment it reads, in relation to an application to be made for treatment: "Every such written request shall be dated and shall contain the employer's registration number and name" I take it that may stand, Sir, I beg to support.

MR. MATHU (African Interests): Mr. Speaker, there are only two or three points I wish to make in supporting this motion. One is that I do hope that the employers, during the interim period when these rules are put back in cold storage for reconsideration by the Labour Advisory Board, will not say that they have no power of obligation to see their workers are properly looked after. If they have no rules to make them do so, you can see these things happening, and I should like an assurance from the legal people in Council whether really we are leaving everything *in vacuo*, or whether employers will still have the obligation to see their workers receive medical treatment when they require it.

The other point—I should not like to suggest that this motion is a censure on the Labour Advisory Board or the Medical Department, because I am a member of the Labour Advisory Board. We have gone through this very carefully before the rules were promulgated and it is very fair for me to say that it is not possible to cover every point of view in such things as these. The Medical Department, I think, should not be censured in this because they too would find it impossible to cover every aspect of the problem.

The other point which was raised by the hon. mover, which I think is very important—I think he tried to emphasize the importance, the imperativeness of the employer looking after the dependants of the employee. I do not see how a man, who is working in a farm who has a wife

[Mr. Mathu]

and two children at the house sick, could devote all his attention to his work and produce efficiency when he has at the back of his mind the illness of his wife and of his children. That I think is an important part of the rule that the employer should do this in his own interests, if I may say so, because I do not see how a worker could do his work efficiently if he has these troubles of a family when they are sick. I believe it is a principle accepted not only in this country but elsewhere that members of the Civil Service are entitled to medical treatment for themselves and for their families. That I think is a very important point. He went on to suggest that sometimes things become very difficult as you have, among the Africans, many who have more than one wife, but I am afraid you will have to take things as they are. That is the position of the African. If the employer is prepared to employ a person with so many wives I think he will have to accept the responsibility. (Laughter.)

Finally, sir, may I say that I appreciate the difficulty that the hon. mover and others have mentioned in regard to the definition of such things as the provision of transport and so on, but until we can have very extensive medical services throughout this country it is not possible to tie down any specific thing in regard to the treatment of cases unless we have a hospital or dispensary on every farm or village in this country. Until we have got that I think the Medical Department could do no more than what they have done, and I hope hon. members on this side of the Council, when we come to discuss these things, and the Africans voice their views for the extension of hospitalization in this country, will be prepared to vote the necessary funds to make this possible. Sir, I beg to support.

THE ACTING CHIEF SECRETARY: Mr. Speaker, my hon. friend the Labour Commissioner has already made it quite clear that the hon. mover is entirely within his rights in moving this motion, and in commenting on the substance of these rules, but I must draw attention to one of his remarks which certainly cannot be allowed to go past without my comment. If I understood him aright, he accused the Government of endeavouring under cover of rules to— I think he said—slip across important new principles

which ought to be made the subject of ordinances or amendments to ordinances. I hope that before he winds up he will realize that it would indeed be a ridiculously disingenuous Government which sought to proceed in the way in which these rules have been presented if it should sink so low as to wish to slip things through without members having the opportunity of discussing them. Before laying these Rules on the table Government fully consulted its advisory board, the Labour Advisory Board, of which, as the hon. mover knows, some hon. members opposite are members. These hon. members had more than one opportunity of studying these rules before their formal presentation to this Council, and in these circumstances I hope the hon. mover will agree with me that it is quite wrong, when a measure has been through that sort of sieve, to accuse Government of trying to slip things through which they did not wish to see the light of day in Council.

THE ATTORNEY GENERAL: Since the hon. mover has made a reference to me I should like to point out that although these rules have been examined by my department—and I understand that there are a number of points which the hon. mover made himself this morning that were then pointed out—it does not rest with the Legal Department to prescribe policy. I think that what has fallen from the lips of the hon. Chief Secretary with regard to the Labour Advisory Board makes it quite clear that these rules were approved by that body in principle before they came to my department at all.

I must say that I think that it cannot be left uncontradicted that Government has attempted to "slip something through" in the way in which has been suggested. Not only have the rules been placed before the Labour Advisory Board but they have, in accordance with the Ordinance, been placed on the table of this Council, and the Ordinance, as the Labour Commissioner has pointed out, gives a period of 40 days in which the Council may express approval or disapproval of these rules. If that procedure is adopted, as it has been adopted in this case, then I feel there is no lack of openness and there is no concealment, and that it is a pity that such a charge should have been brought. I felt that I must not leave that uncontradicted.

I feel that in other respects also the hon. mover, who is perfectly within his rights in moving this motion, and with a good part of whose speech I entirely agree, has overstated the case: for instance when he suggested that an employer can, by virtue of these rules, be constrained to build a hospital. By that kind of assertion he merely weakens what would otherwise be a good case. Sir, I beg to support.

THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT: Mr. Speaker, I must, on behalf of the Medical Department just correct the hon. mover on two small points. One, sir, he seemed to think that the Director of Medical Services had sought the greatness imposed upon him in these rules. I can assure the hon. mover this is a question of the Director of Medical Services having greatness thrust upon him. The other point I would like to clear up is when the hon. mover spoke about the medical facilities, in so far as hospitals are concerned, always being inadequate, and referred to it as a shortcoming of the Legislative Council as a whole (hear, hear) which prefers to vote money for other things than hospitals. My department, sir, can only provide hospitals within the money graciously transferred to their control by the Legislative Council.

THE SPEAKER: If no other member wishes to address Council I will ask the hon. mover to reply.

MR. MACNOCHIE-WELWOOD: Mr. Speaker, in reply to the hon. Labour Commissioner in the matter of the intention of Government to remove expense from Government to the employer. I entirely exonerate Government from intentions in the matter—it is the question of the effect. The effect is to remove certain expense which normally falls on Government and to make it fall on the employer. I am sure it was innocent of intention—a lot of these rules display a certain innocence!

I did refer perhaps unfairly to two officers of his department who took the view that rules were now law and nothing could be done. I only mention that to show the ignorance of the public and even of officers of the department of what, in effect, rules are. I am well aware rules can be debated in Legislative

Council, otherwise I would not have brought the motion, but many people are unaware of it, and they do not like rules being brought in in this way.

The hon. Mr. Mathu said that he considered it was imperative for the employer to look after his employees. I think I said that I agree. As regards the question of his looking after the dependants, I think any decent employer does his best. It is simply when you make it a law he shall do so you are imposing a tremendous potential expense upon him which might be dangerous and might be abused by the employee.

I do not think there is much else to answer except the remarks of the hon. Member for Health and Local Government, who said that it is not in fact the fault of the Director of Medical Services that he figures in this Bill as an autocrat. I am well aware it is not his fault—it is his misfortune, but he also added it is the fault of the Legislative Council which is the cause of hospital accommodation being inadequate. I agree in part, but Legislative Council has to make the best of the money available and does its best for medical services. I merely repeat it would be possible legally for the Director of Medical Services, under the wording of these rules, to compel an employer to make up the shortcomings of Government, and I think when the hon. Member for Law and Order discussed the same matter he rather misses the particular point that I have made, which was only a criticism of the wording.

I do not think there were any other points that I need answer in this debate, and I put up the motion in the hopes that everybody will now find themselves able to support it.

The question was put and carried.

PERMANENT COURT OF APPEAL FOR EAST AFRICA

THE ATTORNEY GENERAL: Mr. Speaker, I beg to move a motion as follows: "Be it resolved that this Council is of opinion that it would be desirable to establish a Permanent Court of Appeal for East Africa and accordingly prays that His Majesty may be pleased to consider amending or replacing the Eastern African Court of Appeal Order in Council, 1921, with a view to establishing a Permanent Court of Appeal for East Africa on the lines proposed in the White Paper

[The Attorney General] entitled Proposals for the Reorganization of the Eastern African Court of Appeal laid on the table of this Council on the 9th May, 1950*.

Sir, under the Eastern African Court of Appeal Order in Council, 1921, the Eastern African Court of Appeal was constituted to hear appeals in all civil and criminal matters in the courts of the territories comprising Kenya, Tanganyika, Uganda, Zanzibar and Aden. It is now proposed, if the new court is set up, to include the Somaliland Protectorate amongst those territories. The present court is composed of the Judges of the Supreme Court or High Courts of the territories that I have mentioned, though in actual practice its membership is drawn from the Chief Justices of those territories and from the Chief Judge of Aden when they are available.

Under the rules, Quarterly Sessions of the present court are held at Nairobi, Kampala, Mombasa and Dar es Salaam. The court has, on occasion, sat in Zanzibar. Now, sir, there are various disadvantages of the present position and the main one is delay, delay in hearing appeals. Another disadvantage is the absence from each of the territories of the Chief Justice of that territory, and a third disadvantage is undue pressure on the court in hearing and determining appeals. That position is, of course, not improving, it is getting worse as the pressure on the court increases and the number of appeals increases.

I think that this Council will agree that in the hearing of appeals, in criminal matters at any rate, expedition is a matter of paramount importance. Most of the appeals dealt with by the Court of Appeal are criminal cases, and, of those, two-thirds are appeals from convictions in murder cases. It is most necessary to have reasonable speed and expedition in dealing with appeals. Due to the fact that the court sits only quarterly, and it would be quite impossible under the present arrangements to hold more frequent sessions, there is bound to be delay between the time when a criminal is convicted on a murder charge and when an appeal can be held. An average time of about three months ensues and then after that there is, of course, the consideration by the Governor in Council of the case of any criminal whose appeal has been dis-

missed, and there may be, and must be, some further delay. In the result too long a time elapses between the conviction of the criminal and the execution of the sentence in capital cases. Now while the creation of the new Court of Appeal which is proposed will not do away with these delays, it should reduce them considerably, especially during that period between conviction and appeal when humanity demands that there should be speed. Delay also occurs in the hearing of civil appeals, and criminal appeals in other than capital cases.

Now with regard to the second point, the absence of the Chief Justice from the various territories, it will be appreciated that, in addition to his judicial functions, a Chief Justice has considerable administrative responsibility in his territory, and it is not desirable that he should be absent from his territory for long periods in each year. In particular a burden falls upon the Chief Justice of Kenya, who is the President of the Court of Appeal and thus normally attends every session. The amount of time which may be spent by a Chief Justice away from his territory can be appreciated when I say that in 1945, as is mentioned in the paper which has been laid, the Court of Appeal sat for 17 weeks, and in 1946 for 20 weeks, in 1947 for 15 weeks and in 1948 for 15½ weeks. That will give some idea of the demands upon the time of a Chief Justice which the present system requires. During that time, of course, it is obvious that there is one less judge in the territory, and accordingly there is a delay in disposing of cases within the particular territory. It would not be possible, as I have already said, for the Court of Appeal as already constituted to hold more frequent sessions, because the position as regards the territories would merely become worse.

The unsatisfactory nature of the present arrangements has been realized for some time, and a suggestion was made some time ago, that we should follow the example of West Africa and set up a permanent Court of Appeal which would have its own President and its own judges of Appeal, and thus relieve the Chief Justice of these onerous functions. It is proposed, therefore, that the Eastern African Court of Appeal should be composed of a permanent President and two permanent Associate Judges of Appeal. In addition all mem-

[The Attorney General] benches of the territorial benches would be called upon when required, but the ordinary composition of the court would be that which I have said, the President and the two Associate Judges of Appeal. If these proposals are adopted it would mean a new Order in Council.

It is proposed that the court should have a permanent base, and Nairobi has been suggested as the site of that central base. It is proposed that the court should hold fortnightly sessions which should enable considerably greater speed to be achieved in disposing of appeals. While it is proposed, as I have stated, that the court should be based in Nairobi, it is desirable that it should from time to time visit the other territories. That is particularly necessary for avrious reasons, and one of them is in order that the people of the territories may see that this is their own court and they may see that justice is being done in their own territories. The suggested arrangement is that the court should visit the territories by arrangement with the Governors of those territories, the actual dates being left to the discretion of the President of the Court. It is expected that, in the case of Uganda, the court would hold not less than four fortnightly sittings annually in that territory. In addition to the President and the Judges of Appeal, it would be necessary to appoint a Judge's Marshal and a Registrar who might, at any rate for the time being, be combined with the Registrar of the Supreme Court in Nairobi. There would have to be a certain clerical staff and capital expenditure on the acquisition of houses for the permanent members of the court, and the provision of a suitable court, including judges' chambers and court offices. At present there is no permanent courtroom assigned to the Court of Appeal. The Court of Appeal has one of the courts in the Law Courts building which means that a judge displaces a magistrate, and the magistrate has to hear cases in chambers. This is not a satisfactory position and should not be allowed to obtain if a permanent Court of Appeal is established. The existing Law Courts in Nairobi should have certain structural alterations made to them which would enable them to accommodate the new Court of Appeal. This would entail moving some of the non-legal departments which are now in occupation of

that building. It is proposed that these structural alterations should be made and that Kenya should charge an economic rent for the accommodation. The financial proposals are set out in the White Paper. At present Kenya receives the total income from the Court of Appeal and pays all the outgoing. The average loss over the years 1942 to 1946 has been at the rate of £700 per annum. It is proposed that the cost of the new court should be shared in agreed proportions by the Governments of the territories and that each should retain the fees arising from its own appeals. It is impossible to give an accurate estimate of capital and annual expenditure at this stage, but an estimate has been given in the White Paper which shows that the total recurrent expenditure would be in the neighbourhood of £13,700, and capital expenditure, mainly caused by the provision of houses for permanent members of the court, would amount to £18,000. It is suggested that that expenditure should be shared between the territories and that Kenya, Tanganyika and Uganda should be responsible for meeting the expenditure in equal proportions. A rent of £250 would be paid by the Court of Appeal to Kenya. As regards recurrent expenditure it is proposed that Zanzibar, Aden and British Somaliland should make fixed annual contributions amounting to £1,700 a year, which could be divided as follows:

	£
Zanzibar	600
Aden	600
British Somaliland .. .	500

The balance of £12,000 would fall to be met by Kenya, Tanganyika and Uganda in equal shares, as I have said, and each territory would retain the income from appeals from that territory. Kenya would thus be required to provide £8,500 in respect of capital expenditure, and £4,000 in respect of recurrent expenditure. It is estimated that £800 per annum would accrue to Kenya as revenue by way of fees, and it is expected that savings in the judicial department's expenditure would be possible. Those savings are in respect of transport, travelling and personal emoluments of clerical staff amounting to an estimated sum of £1,935 per annum. It is therefore estimated that the net additional recurrent cost to Kenya would be in the region of

[The Attorney General] £1,250 per annum. Those estimates are tentative and do not provide for such things as leave periods and for court staff in territories other than Kenya.

These proposals, as I have mentioned, have been under consideration for some time, and have been fully considered in the various territories, and the views of the territorial law societies have been obtained. On the whole there has been a very general measure of agreement with the proposals, though there has not been complete agreement on all the details.

Sir, the Council is now asked to approve the scheme and to ask that His Majesty will be pleased to consider the making of an appropriate Order in Council to enable the Court of Appeal to be set up and the scheme to be put into effect. Sir, I beg to move.

THE ACTING CHIEF SECRETARY: I beg to second and reserve the right to speak.

MR. MADAN (Central Area): Mr. Speaker, I rise to support this motion. The delay that is involved in the hearing of appeals by the East Africa Court of Appeal is not confined to that court only. It also goes as far as the Supreme Court and from there to some extent spreads to the Magistrates Courts also. I feel, sir, it is necessary that this court should be reorganized, because litigants have a right in relation to criminal matters—litigants have a right to seek justice and examination of cases as quickly as possible. That cannot be done at the moment for the various reasons which the hon. Attorney General has given to this Council, and it also results in delays in the hearing of matters by the Supreme Courts and territorial Supreme Courts, because judges have to go away; which results in the adjournment of cases. This delay is not confined only to the Court of Appeal. As I have already stated, it is very noticeable in the Magistrates Courts, especially in civil matters where one cannot get a date, even for a year, in the matter of being heard. I wish to submit that that difficulty could be overcome by the appointment of additional magistrates and judges, and as the Indian Members suggested about two years back in this Council, by the appointment of Indian magistrates and judges.

MR. BLUNDELL (Rift Valley): On a point of order, sir, is the hon. member strictly relevant?

THE SPEAKER: In what way?

MR. BLUNDELL: It seems he is now discussing the appointment of magistrates and not the proposals put before us by my hon. and learned friend, the Attorney General. (Hear, hear.)

THE SPEAKER: It would be in order to discuss alternatives on this motion. It would be in order to criticize the proposals. I cannot see it is out of order at the moment.

MR. MADAN: Thank you, sir. As I was trying to submit, that delay could be overcome by the appointment of Indian magistrates and judges, and those of us, who are in the know of things I think will agree there are people in the profession who would acquit themselves well. The majority of litigants are Indians and it is a pity that after so many years of fighting, if I may put it that way, they cannot have their own magistrates and judges. The Europeans have their own people to try their cases, and so do the Africans. They have their councils and tribunals, and I do submit that the time is overdue that Indians should be allowed to take part in the administration of justice in this Colony. I was very glad to read in the proposals that it was proposed to throw out some of the departments which occupy the Law Courts now. That should have been done years ago (MR. BLUNDELL: The Secretariat.) because the Law Courts or the judicial department can employ the accommodation more usefully, and the shortage of accommodation is a hindrance to the administration of justice. You, sir, know well the saying that justice must not only be done but it must also seem to be done. At the moment that is not the position in the Law Courts here, and the congestion is so much that magistrates have to sit in chambers; sometimes they stand in the lobby and talk to advocates. That removes the dignity which a judicial officer should carry. It is not the fault of the magistrates and they cannot help it.

The only other suggestion I have to make is in connexion with the appointment of the Judge's Marshal. I feel, sir, if the registrar of the Supreme Court is expected to discharge both duties for the time being it would not be fair to him, because we all know, with the expansion of work and the increase in the number of criminal cases that the Supreme Court has to hear, it is practically im-

(Mr. Madan) possible for the registrar to attend these matters properly, so I would suggest that the Judge's Marshal might be appointed straight away when the permanent Court of Appeal comes into being. I beg to support.

MR. MATHU: May I just, sir, correct an impression that may have been created by the remarks of the previous speaker, that Africans have their own judges. I just want to place on record that Africans have not got judges either in the Magistrates Courts, the Supreme Court or in the Court of Appeal for Eastern Africa. Their business is only local affairs, and does not come into the high levels of administering justice, and I do hope, sir, that what the hon. member has anticipated will come true, and Africans will have their judges in all courts.

THE SPEAKER: If no other member wishes to address Council I will ask the hon. mover to reply.

THE ATTORNEY GENERAL: Mr. Speaker, I do not wish to go quite as far as the hon. Mr. Madan in appointing African judges at once, and neither do I think I can say what would be the racial composition of the proposed court of appeal or of the present judicial bench. I wish to keep this entirely on a non-racial basis. (Hear, hear.)

The other point which was raised was whether the registrar can be expected to combine his own duties with those of the registrar of the proposed Court of Appeal, and I must say I have doubts myself as to whether he will be able to do both jobs and whether, if he is now able to do them both, he will be able to continue so to do, because the work is undoubtedly increasing very quickly. It may be the wish of this Council that that matter should receive further consideration. If that is the wish of the Council, then I will ask that further consideration be given to it.

Sir, I do not think that there is any other point to which I need reply, and in closing I would simply say that I take it that the absence of debate means that there is very general agreement on all sides of the Council with these proposals, and that I am glad to note that. (Applause.)

The question was put and carried.

ELECTRIC POWER (AMENDMENT) BILL

SELECT COMMITTEE REPORT

THE ACTING SOLICITOR GENERAL: Mr. Speaker, I beg to move: That the Report of the Select Committee on the Electric Power (Amendment) Bill be adopted.

Sir, the Select Committee met in Nairobi on four occasions. At one of those meetings the committee took oral evidence from parties invited to give such evidence whom the Committee considered should be regarded as interested parties. They were the East African Power and Lighting Company, what was then the Municipal Council of Nairobi, the Parklands Residents Association, an association, I believe, which represents a number of residents in the immediate vicinity of the Power Station, and a Mr. Shah who, to the knowledge of the Committee, had made a claim against the Company, alleging damages resulting from the operation of that station.

The Committee also visited the Parklands Power Station in order to obtain a first-hand impression of the state of affairs which, if I might say so, had been the immediate cause of the Bill. I emphasize "immediate" because I think it will be agreed that such an amendment to the Ordinance was necessary, and was indeed inevitable, in order to place electrical undertakers in this Colony on no less favourable terms in regard to their liability for damages for nuisance as similar undertakers enjoy in the United Kingdom.

Before visiting the Station the Committee took steps to endeavour to ensure that all the plant of the Company was going at full speed. It is regrettable that on the occasion when we visited the station one of those rare breakdowns occurred which put out of action one engine.

From the oral evidence which the Committee heard they had some indication as to the history both of the station and the residential area. I don't think it will be necessary for me to go into detail—it is all set out in paragraphs 7, 8, 9 and 10 of the Report, I will, if I may, specifically draw the attention of hon. members to aspects of it which I consider of importance.

[The Acting Solicitor General]

In the first place it is clear that the station was in existence many years before any residential area was thought of. In fact almost 40 years. In the second place, by the terms of the Company's lease of one of the plots of land on which that station is erected, they are required to maintain a power station. Now, if they had not maintained it they would have committed a breach of their covenant. Thirdly, until the period 1945 to 1948, there appears to have been no intensive building of dwelling houses in that area. From evidence which we heard it seems that there was a belief current in the minds of some people who built in that area that the Company had no intention of extending the generating plant, but merely of retaining the station as a distributing centre, there appears to have been no real foundation for any such belief. On the contrary, as far back as 1943 we heard that the Company had come to a decision to increase the station to its present output. There was, so far as we are aware, no inquiry made of the Company as to their plans in relation to Parklands Power Station prior to the erection of houses there, and hon. members may feel that prudence would demand such an inquiry which, in the circumstances of the 1943 decision would have resulted in information being given to them as to their plans.

At the last sitting of this Council the Council approved in principle this Bill. The Select Committee were in entire agreement with that view. We have, however, given the provisions of the Bill the most careful consideration and we have come to the conclusion that the provisions, as they stand, are unnecessarily wide. The provision which perhaps has received the most general criticism before the Committee was that in Clause I which provided for retrospective exoneration. The provision of Clause I would have made the whole of the Bill operative on the 1st day of January, 1949. There was before us no evidence that any other works would require any retrospective exoneration and we therefore came to the conclusion that a general provision for retrospectivity was too wide. We have therefore recommended that the words "and shall be deemed to have come into operation on the 1st day of January, 1949" should be deleted from Clause I.

The Committee, however, considers that in relation to the Parklands Power Station there does exist the need for the power to make an order retrospectively, and have recommended that sub-section (5) of the new section 67 should be amended so as to make it possible to make an order retrospective only in relation to scheduled works. This provision, hon. members will appreciate, will ensure that no order in the future can give retrospective exoneration without the Council's approval. The schedule would have to be amended by the introduction of a Bill.

Now the next respect in which the Committee considered that the provisions of the Bill were too wide was in sub-section (2) of the new section 67. As that section at present reads "exonerated" may be given even from liability for nuisance caused by negligence" that, the Committee were unable to accept. It seemed to us that there was no justification for any works to be exonerated from a nuisance which was caused or contributed to by negligence, either in the maintenance, installation or operation of those works. Nor, indeed, did we consider that works ought to be given exonerated if the nuisance was practically preventable. I emphasize "practically", and the provision itself indicates the matters which are to be taken into account in determining whether practicable means exist for substantially reducing a nuisance.

The Committee have, therefore, on that aspect of the Bill, recommended that in sub-section (2) the words "either wholly or" where they occur in the context "either wholly or to the extent specified in the order" should be deleted and in addition they recommend that a new sub-clause (3) should be added which will provide that "an Order under this section shall not deprive any person of his right to bring any action for damages for nuisance, if the nuisance can, by any reasonably practicable means, regard being had to the public interest, the state of scientific knowledge and to situation and expense, be abated or substantially reduced, or again if the nuisance is caused or contributed to by any negligence either in the installation, operation or maintenance of the work specified in the order or of any works carried on in conjunction therewith". The Committee considered these last

[The Acting Solicitor General]

words necessary because certain works in a building may be exonerated because they are the most likely to cause a nuisance. A nuisance may, in fact, be contributed to by negligence in the operation or maintenance of other works in that building, carried on in conjunction therewith, and it would clearly be wrong for the licensee to evade responsibility by these means.

The last respect in which the Committee considered that an amendment to the Bill was necessary was in order to ensure that each application for the making of an Order under this section should receive individual consideration as to the particular circumstances which surrounded the application, and as to the particular circumstances of the works. The Committee considered that it was not desirable that any Order should be capable of exonerating more than one works, and in order to accomplish this the Committee have recommended that an additional new sub-section (6) be added to the section 67 to read that "The Governor in Council shall not, in any one Order, made under this section exonerate from any liability for nuisance any licensee, operator or owner in respect of works carried on by such licensee, operator or owner on separate sites unless such separate sites are contiguous".

The most normal instances the Committee had in mind was possibly a station at Nakuru and one in Nairobi, and one in Eldoret. That was a state of affairs which we did not consider desirable and hence the insertion of this clause. I have omitted one amendment of importance, and that is in sub-section (2) the Committee considered that the power to make an Order should be exercisable not by the Governor, but by the Governor in Council, and we have accordingly recommended the amendment. The only amendments, Mr. Speaker, to which I have not referred are those of a purely consequential nature, and I did not think members would wish to be burdened with any remarks on them. Sir, I beg to move.

MR. NATHOO (Central Area): Mr. Speaker, first of all I should like to congratulate the hon. Acting Solicitor General on the excellent maiden speech he has made in putting forward this

motion. There is, sir, however, one point on which I wish to draw his attention, when he said that the Committee was in full agreement about the principle adopted in Council. I made it quite clear when the discussions took place that since the principle had been accepted in Council it did not matter whether we were against it or for it—we had to go on the basis that the principle had been accepted, and that at no time had I agreed this principle was a desirable one or one that should have been adopted.

Then, sir, he mentioned something about the people who lived in that area and the belief that this power station was in the nature of a distributing and not a generating centre. That belief was not confined only to members of the community that stayed in that area, but was a general belief, and although there may not be any foundation for the belief some of the buildings had been put up under that impression. That also raises a point as to why these people prefer to go and live in an area where there was already a power station. In the first place I would like to mention this is the result of absolute carelessness and negligence on the part of the municipal council in allowing a residential area to spring up in an area where there was already a power station. The land was there and either the residents stayed there or had to go miles from the town.

However, sir, I would like to make it quite clear that the Chairman of the Select Committee and all the other members, when they were discussing this question, showed great impartiality and sympathetic consideration of the case of these members of the community, and I must pay tribute to their fair-mindedness and sense of understanding of the difficulties of these people. (Applause.)

There is, sir, also one point I would like to mention here—that is that we have been given a definite undertaking by the representatives of the Power and Lighting Company that within the course of next, at most, three years, they will transfer their generating plant to another part of the town, and in a short period the inconvenience which has been experienced by the members of the community staying in this area will be removed.

Sir, I beg to support.

THE ACTING SOLICITOR GENERAL: Mr. Speaker, on the first point made by the hon. Mr. Nathoo, I would accept his amendment and put it in this way—that perhaps the majority of the committee were in agreement with the view of this Council that in principle the Bill was sound. I accept also that there was a general belief—there was no real evidence of that, but we did have evidence of such a belief in the minds of certain of the persons who built there, but it was suggested that there was further this general belief, and it seems to me to matter little whether it was general or particular, because it was after all the particular persons whose inquiry would have resulted to their own benefit in preventing them doing something which they have done.

I did not mention anything about the attitude of the municipal council towards the erection of a residential area in that vicinity, because clearly I think it is without the terms of this committee's reference, and whether or not they had the power to prevent it was not apparent.

It is perhaps only left for me to agree with the hon. Mr. Nathoo that the East African Power and Lighting Company did make it very clear that they had every intention of removing with the utmost speed to their new site in Nairobi South, and that is a matter which possibly, in considering any applications, the Governor in Council may think fit to make a condition precedent to the making of the order that such steps as they are able to take to expedite that move should be taken.

Sir, I beg to move.

The question was put and carried.

THE DEVELOPMENT BILL

SECOND READING (Continued)

THE SPEAKER: Bills for second reading, continued. Mr. Cooke was speaking when the debate was adjourned.

MR. COOKE (Coast): Mr. Speaker, I do not know who is responsible for arranging the order of the day, but I think when a debate is initiated that it should be carried on. I think it must be inconvenient to a lot of people, including the Press, if we intervene with other motions, unless of course they are of outstanding immediacy.

Returning to the question of the loan with regard to the remarks made by my hon. friend, the Member for Kiambu, the other day that the floating of the Railway loan resulted in a loss to the Railway of approximately £40,000, I think if he will excuse my saying so, it is easy to be wise after the event. Possibly if the loan had been floated, we will say at '99 or '98 it might not have been the success it was, because the City of London is probably very sensitive to factors of which we in this country are totally unaware. I am not going to ask my hon. friend what this loan could be floated at, because of course that would be most improper, but I have no doubt he will give that factor the fullest consideration.

With regard to the floating of this loan, I hope a large portion will be made available to investors in this country (hear, hear), because if we do that not only is there no transfer of money from this country, and the national income will not thereby suffer, but also it will, by curtailing expenditure on consumer goods, perhaps lead to a certain disinflation in this country and reduce the cost of living which is such an important factor in Kenya to-day.

I would like to return very briefly to the relationship between loans and our available surplus balance. I will admit at once that both loans and surplus balances are necessary to carry on the development of this country, but I do dispute the policy of taking from the taxpayers of this country money which you are not going to make use of immediately. I think in the words of the old phrase, it should be allowed to fructify in that case in the pockets of the people, especially people who show enterprise and courage in erecting such large buildings, for instance, as the Mansion House or Barclays Bank. Surely money productively employed, or productive potentiality, should be left in the hands of the taxpayer, unless the State are going to make immediate use of that money. That seems to me, sir, an economic truth which must be incontestable. And what kind of prudence or economy is it that tolerates the state of a road which hindered reinforcements from being sent up to the Suk country the other day?—if the money is there, that money should be spent; take the state of the road be-

[Mr. Cooke]

between Thika and Sagana, which is probably losing to the users of this country at least £100,000 a year, whereas for the expenditure of £500,000 you might have a tarmac road. My hon. friend, the Member for Rift Valley, who made his very able and excellent suggestion yesterday about bursaries, might be told later on that there is no money available, that there are other priorities. Meantime there might be £5-million in the surplus balances of this country. And indeed I might mention other matters. Consider tourism, for instance. I read the other day that the tourist traffic of this country was bringing in £3-million. If by making better roads and improving the conditions of this country we attract more tourists and make £6-million, surely that would be productive expenditure of money, and if Americans and others could leave this country, instead of saying "We left a magnificent country with grand scenery but with the worst roads in the world", and say "We left a country with some of the best roads in the world", that must have value as an advertisement.

Finally, I might mention the Mombasa water scheme. If that scheme is not put into effect within a short time you may have—and nobody knows better than my hon. friend the Member for Health and Local Government because he has written a very able report on the subject—a very serious outbreak of disease which would paralyse the port and partly paralyse the rest of the country. Those are arguments which I think support the use of our surplus balances for productive expenditure. I will always admit that a certain amount must be kept in reserve for contingencies, but not frozen. It must be ready to be used for contingencies as and when they may arise. It seems to me that we are in this country at the parting of the ways. The financial policy we decide on within the next few weeks is bound to have great effect on the development of this country. Let us think wisely and deeply and well, because the whole future prosperity, not only of Kenya but of the other territories, depends, I think, on the wise and prudent expenditure of the money at our command.

The debate was adjourned.

Council adjourned at 11 a.m. and resumed at 11.15 a.m.

The debate was resumed.

MR. ERSKINE (Nairobi South): Mr. Speaker, this Bill, which authorizes the Government to raise a loan of £6-million, has my support with certain reservations. Sir, I feel I must detain hon. members just a little while, while I explain. I do not believe that this sum of money, which we are now borrowing, is sufficient. I am quite certain that we are losing an opportunity at this stage to make a larger loan. I feel that more money is required, and when the hon. Member for Finance goes, like Oliver Twist, to ask for more, it may not be quite so easy to get more. My hon. friend the Member for the Coast yesterday, I think, asked a certain question. He wanted to know what would be the borrowing capacity of this country. We all have our ideas but there is such a thing as fiscal orthodoxy and it is generally recognized by most economists that at least 25 per cent of the national income can be taken as a basis from the taxpayer for public funds per annum. On the basis of national income of £60-million it might therefore be considered a proper level of taxation to take, in this country, a matter of £15-million per annum. (Hear, hear.)

It is possible to conceive in one, two or three, or perhaps five years that the public as a whole will be content to retain for themselves 75 per cent of the average citizen's income and subscribe 25 per cent to public funds; in order to maintain those services such as building of roads, hospitals, schools, and do all those things which the citizens, in their own capacity, as we have heard only this morning, are unable to do for themselves. I do not myself think for the moment that we shall need more than about £12-million for ordinary recurrent expenditure, but I am putting it at a maximum figure. That leaves a possible surplus of £3-million which the Member for Finance might be able to obtain from the public of this country for public spending. Now, sir, £3-million per annum for interest and the rate of amortization of public debt, say we put it at 4 per cent, this needs to be multiplied by 25 times to capitalize that sum, and it gives, say, a sum of £75-million. Now I am postulating that it would be possible for us to believe, with all sincerity, that this country might, during the next five years,

[Mr. Erskine] borrow up to a sum not exceeding £75-million for the development of our country. Sir, I know I see smiles on certain faces opposite, but that does not worry me in the very least. I have just received the annual report of the Development and Reconstruction Authority, and I find that after a tremendous amount of whittling down those persons who are keen on roads alone want £9-million. Now, sir, there are limiting factors when it comes to raising £75-million. One of the limiting factors is, of course, the difficulty in raising the money, and the other which, although there are smiles on this side of the Council, another factor which is more important is, as my hon. friend the Member for the Coast says, the lack of courage, and the difficulty of persuading hon. members to agree with my figures and postulates, and the inevitable consequences, and I refer, of course, to taxation. Now, sir, I want to say a word on the report which has just been issued, the Development and Reconstruction Authority Report for last year, because it does bear on the question of this loan. I think it was round about 1948 that certain factors arose in this country—it became very difficult to raise money and more easy to obtain goods and services. As a result we read in this report, "It became clear that the rate of expansion could not be allowed to continue uncontrolled since it would result in the authority of spending on a faster rate than finances could be provided". Sir, that occurred in 1947. Now, what action did the authority take. I will tell you what they did. They copied six new bodies and called them the Planning Committee, and there were two officials and four unofficials on this Planning Committee, or more rightly the unplanning committee. It had the job of acting as a four-wheeled brake on development. So there was no reason for appointing this committee. If we study the "yellow peril" as I see my hon. friend in front of me is studying at the moment, you will see the terms of reference regarding new works or projects, so, sir, for what possible reason could this Planning Committee have been called into being, except to undo those things, to prevent new works and new projects.

Now there was one other term of reference that the Development and Reconstruction Authority had, and that

was to control expenditure of allocated funds and allocate other funds placed at its disposal by the authority of Legislative Council. It is just that which we are doing in this Council this morning. We are about to provide, at the disposal of the Authority, for the amount of £6-million. Now I have the very greatest confidence in my hon. friend the Member for Finance, I have confidence in the nine gentlemen who make up the Development and Reconstruction Authority Planning Committee, but not so much confidence. I know these gentlemen particularly well. They are called for an occasional afternoon to discuss this matter. But my hon. friend the Member for Finance has given his entire life to the study of this question. It is his job to handle these moneys and if I help to provide this £6-million I would far rather that he had the disposal of it than committees called at a moment's notice. Now, sir, I want to turn to one example to explain why it is that I say that this £6-million is grossly insufficient. The Bill itself has a schedule. I will take one item only. "Public Buildings, £14-million. The allocation of sums provided in the 1950 Estimates under the various headings included buildings over £3-million. Subsequently it dwindles down to £2,200,000, and now still further we dwindle down. I gather from the schedule of this Bill, to £14. Now is that the wish of the people of this country? Do we still want to see the district commissioner in Nyeri in a mud and wattle hut? Do we still want to see Government departments not only cluttering up the Law Courts but cluttering up commercial buildings in the town? Sir, if it is possible and if it is wise for Barclays Bank to put up an eight-storeyed building at this stage, would it not be prudent and wise for Government to take the same action? Perhaps I am wrong. Perhaps banks are able to borrow the money cheaper than Government, but I don't think so. So let us go back to what I was saying before. Let us appreciate that the Development and Reconstruction Authority and the Development and Reconstruction Authority Planning Committee are both brakes. D.A.R.A. we will call B.O.D., brakes on development, and the Planning Committee F.W.B.O.D., four-wheeled brakes on development. So let us decide the maximum amount which we can borrow. Let us

[Mr. Erskine] face the consequences and let us try and build up and develop this wonderful country of ours. (Applause.)

MR. NATHOO: I would just like to agree myself with the Member for the Coast and the Member for Nairobi South in the doubts they have expressed. At this moment, sir, I do not propose to go into details thereto, but I would like an assurance from the Member for Finance that some sort of strictness will be kept over the activities of the Development Committee when they change and chop certain items, and also in starting new projects. I would also like to associate myself very strongly with the remarks about the Planning Committee which the hon. Member for Nairobi South has referred to and I suggest, sir, that the Government go into the matter and see that these things will not happen again in the future.

Sir, I beg to support.

MR. PATEL (Eastern Area): I am in complete agreement with the principle of this Bill for raising money for the development of this country.

I am also in agreement with the hon. Member for the Coast and the hon. Member for Nairobi South that we can afford to borrow more and spend more. Sir, I would at the same time like to say that as this Bill authorizes to borrow money which would be handed over to the Development and Reconstruction Authority for spending, I wish to register my lack of confidence in the Development and Reconstruction Authority in this respect by voting against the Bill. It may seem strange that I should take this step, but I would like to illustrate my reasons for doing so. The Development Authority has not, in my opinion, behaved in a manner which would command confidence of the population of this country. I will illustrate my view, sir, by giving the figures of the amounts which were to be spent for education buildings and the amounts which have been later on sanctioned and spent particularly for European and Indian buildings.

Sir, the Development Committee very carefully went into the needs of these two communities and recommended that £670,700 should be spent on European educational buildings, and £636,000 on

Indian educational buildings, the only difference being £34,200. That makes nearly an equal amount for both sections. By the end of 1949 the amount sanctioned for European educational buildings came to a little over £11-million, and the amount sanctioned for Indian educational buildings was raised to £726,500, being a difference of £824,800. That means the amount in the case of European educational buildings was altered by the Development and Reconstruction Authority to more than twice in the case of Europeans. I am not grudging the amount spent on European educational buildings but I am trying to point out that the committee went into the needs of both communities very carefully and reported the amounts which should be spent, yet now we have this very great difference between the amounts for the two communities. The difference which originally was £34,000 was by the end of 1949 £824,000, in the case of these two communities. The actual amount spent by the end of 1949 by the Development and Reconstruction Authority was in the case of European buildings £786,391. In the case of Indian buildings it was £247,375, being a difference of over £539,000—that is three times less. Originally the Development Committee reported that the amounts which should be spent on these two sections should be nearly equal. When the actual difference by the end of 1949 is so different from what the Development Committee recommended, how can anyone in this Council expect the Indian community to have any confidence in the Development Authority, with this kind of treatment meted out in the case of Indian educational buildings? That is the reason why I wish to register my protest and I want to take this opportunity to do so.

Now sir, I would like to say that the amount which is now put forward for educational development in the Loans Bill—£1-million—will not be sufficient for the purpose of meeting the needs of the various communities residing in this country. I suggest that that amount will have to be raised substantially. To illustrate that point I would like to say that to-day the various sections of the Indian community are ready to put up their own school buildings if there is more help coming forth from the Development and Reconstruction Authority

[Mr. Patel]

I have been urging the Government to help these people in order to lessen the burden on the central Government. There are to-day various sections of the Indian community who are prepared to put up educational buildings cheaper than the Public Works Department can ever hope to do, and they are prepared to put in a pound for a pound. That means that supposing the Government want to build a school building for £80,000 the Indian community will be able to build that for £60,000, and then they will spend £30,000 of their own. That means Government would save £50,000 by allowing these various communities to put up their own schools, but unfortunately in spite of urging the Government time and again they have not seen fit to provide sufficient money for these various projects, and thereby the Government has, in my opinion, lost the opportunity of doing the very thing we have been asking in this Council, of the Indian community helping themselves.

That is the reason why I suggest that the amount of £1-million will not be sufficient for further provision to meet the needs of the various communities. If I may be allowed to enlarge upon that point, to-day the cost of educating an Indian child at a Government school is roughly £25 a head. Government pays £6 towards the cost per child in grant-aided schools. Even if that amount were raised to £10 per child, Government would save about £15 per child if this scheme went forward, and the Indian community are ready to play their part provided the Government will also play their part in providing capital expenditure of a pound for a pound. I may inform this Council that at one time there was a strong opposition from certain European Elected Members against an increase of grants to grant-in-aid schools, but that has cost this country a great deal of money and has created a difficult situation in regard to the Indian education in this country. For these two reasons I should like to say that I am not satisfied with the workings of the Development and Reconstruction Authority. They have not acted impartially, as my hon. friend Mr. Nathoo put it, and I have quoted figures in regard to educational buildings. If the figures in regard to other matters like medical

buildings, etc., are scrutinized perhaps the situation will be found the same. I do not know because I have not gone into other figures. That is the reason why I would like to show my resentment against the working of the Development and Reconstruction Authority during the last five years, by voting against this Bill.

MR. HAVELOCK: I will be very interested, sir, to hear the hon. Member for Finance. There were many pertinent points—I will not say impertinent—raised by my hon. friends, the Member for the Coast and the Member for Nairobi South, especially the Member for Nairobi South's figure of a loan capacity of £75-million. I associate myself with the remark that £6-million is of course too little, but surely it is merely the first instalment? That is what I understood, and no doubt further borrowings will take place in the future, but I understand that we have to stagger the flotation of our loans according to the market and how much we can get on the market at a particular time. All the same I believe that it would be advisable for the financial officers to inquire of and indeed to press the London pundits who seem to rule us in this matter, to see whether we could not raise a larger loan, even at the beginning. There have been some very stringent criticisms of both the method and system of the Development and Reconstruction Authority, and the Authority and Planning Committees. I am certainly not going to try to defend them because I am not satisfied with the activities of the Authority in the last few years, and I believe that some infusion of new blood and a new spirit should be put into both the Development and Reconstruction Authority and the Planning Committee, to make them get on with the most vital work which does seem to me to have been inordinately delayed over the last few years.

Sir, the remarks of the hon. Mr. Patel and the hon. Mr. Nathoo as regards capital expenditure on Indian education I must say have my great sympathy. I believe that they have both put up a very strong case which requires serious and immediate study by Government.

The matter of a reserve was mentioned by my hon. friend the Member for the Coast, and I still am of the opinion that some sort of reserve should be held by

[Mr. Havelock]

this Colony. I also agree with him that a lot of the reserve should be liquid, in that we should use it as far as possible for short-term loans. Of course, it is more the responsibility of the Member for Finance, but I had in mind a figure to the tune of £5-million of which £3-million would be completely liquid, used as short-term loans and for short-term financing of capital projects before further loans were raised, and I believe a matter of £2-million would be necessary to cover all contingencies.

The hon. Member for the Coast also referred to the debate of yesterday on the General Loan and Stock Bill Ordinance. I quite appreciate the delicacy of deciding on what terms any loan should be floated, and of course this particular Bill to which I am speaking is vitally affected. There have been strong criticisms of previous loans floated by East African territories and, although it was being wise after the event, criticisms by people who one could say were real authorities in the financial world. I believe there were strong criticisms by the *Economist* and the *Financial Times*, and I do not think either of those papers can be looked upon as irresponsible or frivolous. I would like to say that if it is found that when this loan which we are discussing under this Bill is floated, that we have lost money owing to the wrong terms on which it was floated, then I believe it is a duty of the hon. members on this side to take as strong steps as possible to see that no further loss is incurred by the Government not being able to receive all the advice necessary. (Hear, hear.) I do believe that this is a test case, and we will see how it is floated and what happens.

There is one small question I would like to ask the hon. mover, and that is what is the interest that will be charged to us by the Joint Colonial Fund which the hon. mover told us might finance our capital schemes pending the raising of loans? There is another question, sir, a matter of our loan ceiling, which has been brought up. I cannot see why moneys which are invested locally should affect our loan ceiling—either the portion allowed to local investors of the main loan, or to the investors of a completely local loan—I cannot see why they should affect our loan ceiling. It is not

an overseas payment. The commitment was entirely within our own country, and I can see no reason why the London market and the Allocations Committee, or whatever they are called in London, should have any right to interfere on that basis: I would like the hon. Member for Finance to comment on this particular aspect when he replies, and also to make further inquiries in Britain to see whether he could not raise further moneys for our development here by floating local loans or giving a greater share of our loans to the local market, and at the same time not interfering with our loan ceiling.

I did notice, sir, that when the hon. Member for the Coast was speaking he did say that he thought that the next few weeks would be vital as regards our final policy, and I noticed a worried expression on the face of the Member for Finance. Surely within the next few weeks the hon. Member for Finance will be planning his 1951 budget, and it will then be, during that time, that he will have to take great decisions as to what our future financial policy is going to be. The hon. Member has warned this Council that this budget will be his, and I do hope that the hon. Member will agree that the next few weeks are vital.

Sir, I beg to support.

THE ACTING CHIEF SECRETARY: Mr. Speaker, speaking in this Council on the 20th January last, when introducing the Development and Reconstruction Authority budget, the Chief Secretary said: "I understand that there is still a good deal of confusion and perhaps misconception on the subject of the object and functions of the Development and Reconstruction Authority, so I will open my remarks by saying something about the authority itself". He went on to say a good deal about the authority itself, and so far as I can remember, I may be mistaken, there were quite a number of hon. members present in the Council when he made his speech. I can only think, having listened to one or two speeches which have been made to-day, that if they were there, and I believe they were, they either were not listening or were asleep. He made it perfectly clear, first of all, that the primary purpose of the Development and Reconstruction Authority was to deal with the execution of approved development plans. Now, the hon. Member for the Coast speaking

[The Acting Chief Secretary] yesterday quoted from page 4 of the Development Committee's report where it is written that "one of the basic principles of development planning was to use the natural resources of the country, including manpower, in a manner calculated to increase the national income of Kenya in the shortest space of time so as to raise, as soon as possible, the standard of living of the majority of the inhabitants." He then went on to say that that basic principle had been lost sight of and attempted to lay the blame fairly and squarely on the members of the Development and Reconstruction Authority. Now that is completely unjust. The Development and Reconstruction Authority has never been anything else but an executive authority. The Development and Reconstruction Authority was not set up as a planning committee. The planning as to how the actual money set aside in the Development Committee's report for development and reconstruction purposes should be spent, the spending of it, as the Chief Secretary said, was done by members of the Government responsible for the services under their control. Their plans have, in every case, been brought before this Council, either at the time when the Estimates were prepared and debated, or in a few instances in between the presentation of budgets, but the Development and Reconstruction Authority has, ever since its inception, had nothing more to do than execute plans put forward to this Legislative Council and approved by this Legislative Council.

MR. ERSKINE: On a point of explanation, sir, does it not read in paragraph 7 (11) of section II of terms of reference as follows:—

"to propose new works or projects..."

THE ACTING CHIEF SECRETARY: The point that I am trying to make is that whatever works the Development and Reconstruction Authority has undertaken and made itself responsible for, have been works which have been approved by this Council. It is necessary to emphasize this point, in order to show why the hon. Member for the Coast was, to my mind, quite unfair to the members of the Development and Reconstruction Authority in the strictures which he has made on them.

MR. COOKE: On a point of explanation, if the Development and Reconstruction Authority was not carrying out the policy laid down in this programme, why were they not instructed to do so by the Chief Secretary as Chairman?

THE ACTING CHIEF SECRETARY: I do not admit for one moment that the Development and Reconstruction Authority has not carried out the policy. I am saying that what the Development and Reconstruction Authority has done has been done with the approval of this Legislative Council, and if any bricks are to be thrown at what has been happening during the year since the Development and Reconstruction Authority has been set up, then those bricks should be thrown at this Council, which has annually approved its plans. My hon. friend the Member for Eastern Area, Mr. Patel, made a remark which I must contradict. When dealing with educational buildings I think he said that the Development and Reconstruction Authority had altered plans approved by this Council. They have never done any such thing, so far as I am aware. What they do do is to allocate priorities within the programme which is approved by this Council, and what I think the hon. member had in mind was that funds, over and above the funds for which provision was made in the Development Committee's report, particularly for the construction of educational buildings, have been provided for one or two European schools before the total sums earmarked in the Development Committee's report for Asian schools had been fully expended. As hon. members will probably remember, we had a very long discussion both at the time when the 1950 budget was discussed and during discussion of the 1949 budget, on the provision that was made for school buildings. It was explained then why it had not been possible to get on more quickly with the building of Asian schools, and I am not going to repeat it all again now, but there were reasons which had made it extremely difficult for the Development and Reconstruction Authority to get on more quickly with the building of these schools. I also pointed out that what had actually been done by the Development and Reconstruction Authority in 1949 was a considerable improvement on what it had been possible to do in earlier years.

[The Acting Chief Secretary] What is being done this year is again an improvement on what it was possible to do in the years preceding 1949. The hon. Member for the Eastern Area has said quite correctly that the Asian authorities have let Government know that they are anxious to get on with the construction of their schools, if only Government will agree to make capital grants on a pound for pound basis. That is absolutely correct and I assure the hon. member that now that we are in a position to plan how we can most usefully spend the further capital funds that are going to be available over the next five years, these representations which have been made will be kept closely in mind. But the fact remains that the Development and Reconstruction Authority can only spend moneys which are voted by this Legislative Council.

The hon. Member for the Coast made one other complaint. He pointed out that the Development and Reconstruction Authority had only had, I think, four meetings during 1949. I do not myself accept that the efficiency of an authority should necessarily be measured by the number of meetings which it has and the length of the minutes which are produced. Some might feel, and I do, that action rather than words and the preparation of minutes is the more important. But the hon. Member for the Coast clearly attaches more importance to meetings and minutes, and I am happy to tell him that three such meetings have already taken place in 1950, and minutes were produced in respect of all of them.

MR. COOKE: They have taken my advice, I should think.

THE ACTING CHIEF SECRETARY: It is only during the last few weeks I have had the responsibility of answering for the Development and Reconstruction Authority and looking after the Development and Reconstruction Authority, and certainly it is not possible for me to discuss in detail some of the charges which have been made during this debate, as it would be if His Excellency were in his normal Chair and speaking as Member for Development.

MR. COOKE: I made some charges in December.

THE ACTING CHIEF SECRETARY: Yes, and they were very well answered if I

may say so. Hon. members have not, and still do not appreciate that the Development and Reconstruction Authority is an executive body. I would underline that again on this occasion, and I do hope that when the Development and Reconstruction Authority's works again come under review their function will be better understood than it has seemed to me this morning or yesterday morning, as is the case.

MR. COOKE: It is very well understood, sir, but my charge is that the executive committee of the Development and Reconstruction Authority were not executive.

MR. BLUNDELL: As some of the moneys in the Development Bill in question will pass through the channel of the Development and Reconstruction Authority Planning Committee, in all probability, I wish to say a few words on it. I do not consider that at the present time the Development and Reconstruction Authority Planning Committee has caused delay in new projects, because the Development and Reconstruction Authority budget up to 1950 has been passed by this Legislative Council. It is in respect of 1951 that it might cause delay. I want to make it clear in the light of the remarks made by the hon. Member for Nairobi South, I am myself at the present time a severe critic of the Development and Reconstruction Authority Planning Committee of which I am a member, and have expressed my views to the hon. member opposite on the matter. It has been in being for something like 15 months. As far as I know with one or two small exceptions of applications for money for the Colonial Development and Welfare Fund, it has planned nothing, because in the original instance there were considerable delays in calling the body together.

Secondly, it was asked to plan for a total sum of a very large amount—something in the region of £18-million, and it was upon that assumption that members were asked to put forward their plans to the Development and Reconstruction Authority Planning Committee. On that basis members put forward their proposals which were voluminous and in much detail. Subsequently considerable confusion arose as to the actual amount of money available to the

[Mr. Blundell] Development and Reconstruction Authority Planning Committee, and it was then discovered that the moneys that we originally assumed would be available would indeed be reduced to somewhere in the region of a third. This caused us to go through the allocations of money to so far as they affected the various matters such as buildings, allocations to agriculture, education, etc., but it also had an adverse effect which was that, having decided in our minds what might well be the block allocations of money to specific members, those members had to be re-circulated with a view to reducing the original picture they had drawn to the size of the moneys which might be available. I do not see, frankly, any improvement in the streamlining of the organization behind the Development and Reconstruction Authority Planning Committee. It takes members some time to work out the reorientation of their finance in regard to their projects. It is my belief, and I would like to say it quite openly, that the Chairman of the Development and Reconstruction Authority Planning Committee is overworked and cannot get through the work. For instance, just before Civic Week, we made certain block allocations. It was agreed that we could meet within a week to break those down further. That meeting has never been called and something like six weeks have passed. I know there are reasons and excuses for these delays, but the reason I mention this is that I did not wish to sit here and by my silence have it inferred that I was satisfied with the work of the Development and Reconstruction Authority Planning Committee. I am extremely dissatisfied. I do not think it is working. I consider the whole method of presentation of facts to the committee, the whole of the streamlining of ideas both on the money side and the project side is either too cumbersome or is not properly prepared, and we are already beginning to see the great dangers which are going to arise from that. They are these. Here we are in May and we shall, or hon. members opposite will undoubtedly have to start considering what are going to be the Development and Reconstruction Authority estimates for 1951, and those estimates will have to be prepared, I believe, around June, but every time an estimate is made, and if it comes into

the budget, it will negate the work of the Planning Committee. Again, that is already happening in another place, in the Standing Finance Committee. We are asked to make there *ad hoc* decisions on matters—we have made one recently, and there is one coming up in the future—on expenditure of capital moneys, which must inevitably reduce the amount of money available to the Planning Committee. (Hear, hear.) I issue these words of warning because I have seriously considered whether I personally would remain a member of that committee unless its whole executive functions are speeded up and put in a clearer form.

MR. MATHU: Mr. Speaker, I rise to support the second reading of this Bill and to associate myself with previous speakers on the dissatisfaction which exists amongst the African community in regard to the working of the Development and Reconstruction Authority Planning Committee. First of all there is no direct African representation on the Planning Committee, and as the hon. Mr. Patel argues, there is no impartiality in this Planning Committee. It may be one of the reasons why projects affecting the African community in this country and emanating from the Development and Reconstruction Authority Planning Committee do not get speedy execution. The other point I want to raise is that I entirely agree with the hon. Member for the Coast on a point he has made many times, that we require courage in spending money for development and also in raising loans, perhaps more than we envisaged in this Bill. Now, when the Development Committee was sitting and producing this report they made it very clear that the role of the African community in the development of this country is a very important one. As a matter of fact in paragraph 30, if I may quote just one sentence there which was quoted in part by the hon. Member for the Coast, it is stated: "The Committee would stress the point that unless the African mind can be brought to the pitch of being able to comprehend the broad requirements of a rehabilitation and development programme and, more particularly, unless the principle that 'all must work' can be brought before the African in a convincing and effective way, there is no alternative to economic disaster". I want to underline the words "there is no alternative to

[Mr. Mathu] economic disaster". That places the position of the African in a development programme for this country in the right perspective—that other things remaining constant, the participation of the African in the development of the country is a very vital one. At the moment we have no economic future here, as the Development Committee says, unless we make sure that the part the African plays in the development of this country is an effective one. The Development Committee did suggest that the ability of the African to make that contribution would depend upon his comprehension of the broad requirements of the development programme. In other words, it depends upon the education that the African is going to receive. In that paragraph the committee says: "By the criteria referred to in paragraph 9, it is by giving a measure of education to the illiterate and by the provision of technical and vocational training for the suitable minority of all races that the economic prosperity of the country at its present stage of development will be most rapidly furthered". Here we are proposing a £1-million loan for education. This is for all communities in this country and I would like to suggest that even if the whole of that was devoted to African education we would not have sufficient, because at the moment in order to increase the pace of development and to increase the national income of this country we would require perhaps three or four times as much money to devote to African education. The Development Committee when providing funds for the education of all communities did in 1946 provide per head of the population a very small amount towards African education, about four shillings per head of the African community, 68 shillings per head of the Arab community, 174 shillings per head of the Indian community, and 580 shillings per head of the European community. You can see, sir, that there are not funds really voted according to needs, because the needs of the African community, to help him in the development of this country, are relatively higher than any of the other communities.

Now just one more point. We are here proposing that £1-million should be loaned for road development. I person-

ally am a great believer in spending money as much as we can on the development of roads. The hon. Member for the Coast cited the recent disturbance in the Suk area and said perhaps the road was one of the factors which hindered the authorities getting at the trouble. There are many other roads in a similar condition throughout the country. I do not want to anticipate the debate which must come later on the Road Authority report in this Council, but I would like to say we are a bit afraid, I think, of going speedily and decidedly about the development of roads and the improvement of roads throughout this country, particularly in the African land units where we have to have agricultural produce moved from one place to another and it is impossible to do this in wet weather as practically all the roads in these areas are impassable. I would like to appeal to the hon. Council and say that if Government found it possible to suggest an amendment to this Bill at a later stage, that we might be able to borrow more than £6-million. I say, "Get ahead with the development of this country where necessary and with determination". We are not waiting for another Kenya. This is ours, and I think it is high-time we went forward with it.

THE MEMBER FOR COMMERCE AND INDUSTRY: I had every intention to intervene in this debate particularly after my hon. friend the Member for the Coast had made his speech in which he asked me to comment on certain aspects, but the debate was adjourned. I felt it was my duty to do my best to give any guidance I could in this very important matter before Council. Now, sir, I do not in speaking wish to comment on points that have been raised by hon. members. Those no doubt will be dealt with by my hon. friend. Some of them have already been dealt with, but I do wish to make one comment, because it does seem to me to go to the root of the whole matter. A great deal of this debate, and I have listened to it with the greatest care, Mr. Speaker, has been at a very high level indeed. In fact every contribution made in this debate I would say has been made from the standpoint of sincerity and the standpoint of constructive thought. But I would make one comment, because a certain trend, the

[Member for Commerce and Industry] result of complete sincerity, has rather alarmed me. There has been a certain tendency to discuss, shall I say, what the size of a particular slice of the cake should be and not quite enough attention has been given to the size of the cake and the ways and means of making it bigger. That brings me to what I consider is a most important point, and I make this observation as a professional economist, not as a member of this Government.

It seems to me that the ability of this country in common with any other country to raise loans, whether they be internal loans or whether they be external loans, is based upon its credit-worth in the minds of its own inhabitants and in the minds of people outside the country. It seems to me that is the basis upon which we should approach the whole question of loans. Now what is credit-worth? What is credit-worthiness? Credit-worthiness in our case is what other people think about the resources of this country, the type of investment in this country, and the wisdom or otherwise of investing in this country. In other words, they look on us as a business proposition. We have a certain amount of capital in the form of natural resources. We have capital in the form of ability to make the best use of those resources, and we have capital in the people of this country and their various skills. That is basic to any question of credit-worthiness. I have said, I think, two and a half years ago in this Council that there was room for six or seven times as much capital investment in this country as we had at that time. I am able, through my contacts with unofficial sources, to say that capital investment in this country at the present juncture, and during the past two and a half years, has been one of healthy progress and is continuing as such. I would say, at an accelerated rate. I make that point because it is necessary that I should make it before I attempt to answer the hon. Member for the Coast. Now, sir, the national income of this country, first referred to by me in this Council nearly three years ago, was then the subject of some doubt. It was a matter of 10 per cent tolerance either way. Those were my words. I also said that as time went on and as we, shall I say, improved our methods of measuring the various fac-

tors, I could promise this Council that measurement would become very accurate and eventually would become the principal yardstick by which the fiscal policy of this country could best be governed. A great deal of progress has been made in that direction; I am not suggesting for one moment that the figures of the national income as published and as I am going to refer to them in one moment, are completely accurate. What I do say is that that margin of error in either direction has been reduced. It is now approaching a 5 per cent margin either way rather than a 10 per cent. I would say secondly that we are getting to a point where we can define more accurately and more closely the various factors that make up the national income. At the present time the national income of this country, with the provisos I have just made, is on the 1949 basis, I believe, running somewhere £70-million sterling per annum. Now, sir, that is a very big advance on the last figure. But just as in business there is such a thing as a running accountancy system which enables one to publish a balance sheet at the end of the year, as many members of this Council know, and one member at least is expert in such things, so when measuring the national income it is possible to make a running account, and so when I refer to that figure I am not giving the final figure. I will, therefore, go further, sir, and say that the national income at the present time is, if anything, running at a higher level than the figure I referred to for last year. Now, sir, I have stressed this point because it is of consequence to hon. members in considering their attitude to this Bill, and to the whole question of loan policy.

I submit, sir, always assuming the margin of error I have referred to, it is a reasonable proposition that the loan ceiling that can safely be permitted is related to the national income for the past few years and is related to what it is reasonable to expect in regard to the future. Having said that, sir, I would make this further point, that in considering this Bill we are, in fact, as my hon. friend the Financial Secretary has made absolutely clear, considering the larger question of general loan policy, and, sir, this is of the greatest importance. We are, in fact, in voting this Bill, which

[Member for Commerce and Industry] I am sure hon. members will wish to do, we are, in fact, framing policy that is bound in part, at any rate, to govern Government's future budgets in this Colony. Now, sir, that is not my concern. My concern is the future of this country, and before I sit down I want to make one further point. We are also, in considering loans, considering the economic future of the Colony, which, with the greatest respect to my hon. friend, is the ruling factor in relation to the finances of this Colony. What, then, is to be our guiding principle, that is in relation to loan policy. First of all, I have said we have in the national income figures a yard-stick becoming more and more accurate. Secondly, our credit-worthiness is, in fact, what determines our loan ceiling, and thirdly, there is the fact that all loans, whether local or overseas, affect credit-worthiness to a greater or lesser degree.

DR. RANA (Eastern Area): May I ask if the speaker is in order? It is more like a lecture. I would like to have your views, sir.

THE SPEAKER: The Bill before the Council is a Bill to authorize the raising of money. Raising of money involves the burden of the taxpayer. The representatives of the taxpayers have expressed their views with considerable width, if I might say so, so I don't think they can object to hearing what is being said. (Hear, hear.)

THE MEMBER FOR COMMERCE AND INDUSTRY: If I might continue, sir, I can promise the hon. member that I have nearly finished. (Laughter.) Now, sir, I was trying to make the point that credit-worthiness is a matter of the psychology of the people who lend the money, whether it be in London or elsewhere, and, sir, I was going to say that it will pay us to raise as much as we can within this country. (Applause.) The local money I have in mind amounts to a very considerable figure indeed within our loan ceiling. I would not put beyond the bounds of possibility a figure of five or six million pounds for local loans in this country at the present time. I am aware that I have laid myself open to criticism in this matter. I would observe that the hon. Member for Health and Local Government during the recent war raised

a sum, or should, I say, gently assisted in raising a sum which in terms of war loans was at least five or six times as great as certain people advised him was possible. I would make one further point, not only with regard to transfer payments but also the multiplier effect of economic activity which is one of the most important principles of economics. For instance, the interest paid on a local loan goes to a private individual who holds the loan in this country. What can he do? He can raise money on his holding. He pays the interest out in wages, or he spends it, and it is spent again. I am not suggesting for one moment that we should not raise every penny we can on favourable terms outside this country. We should do so, but this country, in my submission, is getting beyond the infant stage and is approaching maturity. In my opinion this country is developing in the most amazing way. There are faults in the country's economic position, but most of these faults are being remedied. They are being remedied by courage, such as that displayed by my hon. friend the Member for Agriculture and Natural Resources by investment, and by enterprise. I do feel, sir, that this honourable Council must not fall behind private enterprise in envisaging the future of this Colony in imaginative and courageous terms. (Applause.)

MR. MADAN: Sir, I have listened with interest to the hon. Chief Secretary and the hon. Member for Commerce and Industry when he said that the country was thinking about how big the slice of the cake was to be and not enough about the size of the cake. Those are very interesting remarks. It seems to me whenever the Asian members speak they bring in comparisons. It is unfortunate that we cannot avoid them. Before I do make any comparisons I want to make it clear that we Asian members do not begrudge any other community any allocation of money for purposes which are vitally necessary provided we are treated fairly, and we also get a due and just share to meet our requirements. In a vote of this kind one looks at the figure of £6-million, and inadequate though it is we feel doubtful as to the manner in which the money will be spent. I think it is conceded that the Planning Committee and the Development and Reconstruction Authority have failed to come up to the

(Mr. Madan) mark in the discharge of their duties, therefore we feel the sooner the control is placed in the hands of the Member for Finance the better. In making comparisons we took note of the money spent on education and we would like to know what happens to the allocation of priority in the building of schools for the Asian community. As you are no doubt aware, the boys school in Nairobi has not been started so far, and we are quite calmly told that plans are being made for the next five years. (Mr. COOKE: Tell them off!) We feel we have a blank past behind us, and all we can look forward to is the future. I feel constrained to say, sir, looking at the figures which were quoted by the hon. Mr. Patel and the hon. Mr. Mathu that never was so much spent for so few at the expense of so many. I do not mean to criticize the money spent on European education, but we feel we have a two-fold responsibility to discharge; first, of course, in the progress of the Colony, to see that every citizen, European, Indian or African, will be a person of whom we can all be proud, and that can only be done provided there are educational facilities for everybody; secondly, we have a duty to discharge to the whole community. We cannot see our children in the streets without any school buildings at all, nor can we tolerate our children going to school on alternate days only, as is happening now. Whenever the question of Indian education comes up we are told there are no sites, no funds, no teachers available, and sometimes no books available. It is for that reason that we are critical of these plans and the money that it is proposed to raise to be spent on development plans. It is not surprising that the hon. Mr. Patel stated that he would not vote for this Bill. I feel the same way about it, and I feel we Indian members must register our protest that we have not been fairly treated.

THE SPEAKER: If no other member wishes to speak I will ask the hon. member to reply.

Mr. COOKE: Would it not be a good idea to adjourn? It is a very important speech—he has only got ten minutes to finish it. There might be other business we could finish to-day. He would probably be interrupted in the middle of it. He will only be able like I did to get

ten minutes in and then the following day he will get some more presumably.

THE SPEAKER: If I get an application for an adjournment from the party interested, then it will be a matter for obtaining the consent of Council.

THE ACTING CHIEF SECRETARY: Mr. Speaker, I would like to propose that the debate on this Bill be adjourned in order to give my hon. friend the Member for Finance a run through without a break, and in the meantime if hon. members were agreeable we might deal with the remaining Bills on the Order Paper and take them through to their third readings.

THE SPEAKER: Is that the wish of the Council? (Agreed.) The debate on this Bill is adjourned. The next matter on the Order Paper is to go into committee on two other Bills.

THE SPEAKER: I want to refer to the question on the form of the Order Paper raised by Mr. Shirley COOKE this morning in the course of the debate, and I would point out that Standing Rule and Order No. 13 sets out the order in which business shall be, and that motions do take precedence over Bills. It was quite in order to have on the Order Paper the motion of the hon. Member for Uasin Gishu before we resumed debate on the Bill.

Mr. COOKE: I did not dispute the order. I only disputed the expediency. I knew it would be done, but we have in times past—

THE SPEAKER: If we have departed from the rule as a matter of expediency that must have been with the consent of the Council and by arrangement which can be made, and I do not dispute that. As your remarks will stand on record as perhaps criticism of the Clerk to Council, I thought it proper and just to refer to the matter.

Mr. COOKE: Thank you.

BILLS IN COMMITTEE

THE ATTORNEY GENERAL moved: That the Council resolve itself into Committee of the whole Council to consider the 1948 Supplementary Appropriation Bill and the Tea Bill clause by clause.

THE ACTING SOLICITOR GENERAL seconded.

The question was put and carried.

COUNCIL IN COMMITTEE

The Bills were considered clause by clause.

The Tea Bill

Clause 2: The Director of Agriculture moved: That this clause be amended by the insertion of the word "Growers" between "Tea" and "Association" in line 5.

The question of the amendment was put and carried.

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

The Attorney General moved: That the 1948 Supplementary Appropriation Bill be reported back to Council without amendment and the Tea Bill reported back to Council with amendment.

Council resumed and the report was adopted.

THIRD READINGS

THE ATTORNEY GENERAL moved: That the Bills be read the third time and passed.

THE ACTING SOLICITOR GENERAL seconded.

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

ADJOURNMENT

Council rose at 12.45 p.m. and adjourned until 10 a.m. on Tuesday, 16th May, 1950.

Tuesday, 16th May, 1950

Council assembled in the Memorial Hall, Nairobi, on Tuesday, the 16th May, 1950.

His Honour the Speaker took the chair at 10 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of the 11th May, 1950, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

BY THE ACTING CHIEF SECRETARY: Proceedings of the East Africa Central Legislative Assembly, April, 1950.

BY THE FINANCIAL SECRETARY: Report of Standing Finance Committee on Schedules of Additional Provision Nos. 6 of 1948, 2 of 1949, 3 of 1949 and 4 of 1949.

BY THE DIRECTOR OF AGRICULTURE: Annual Reports for 1948 and 1949 of East Africa Veterinary Research Organization.

Draft Special Grant to Uplands Bacon Factory.

Hide and Skin Trade (Imposition of Cess) (Amendment) Rules.

BY THE DEPUTY CHIEF SECRETARY: Voluntarily Unemployed Persons (Labour Reception Centres) Rules, 1949.

BY THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT:

Minority Note by Mr. J. J. K. arap Chemallan on Report of Commission of Inquiry into the Kenya Information Services.

DEVELOPMENT BILL

SECOND READING

The debate was resumed.

MAJOR KEYSER (Trans Nzoia): Mr. Speaker, I did not intend to take part in this debate, but I feel that I must express a view of members on this side of the Council, and I think, sir, that I am speaking for all members on this side when I say that we feel that the floating

[Major Keyser] of a loan of six million pounds at this stage is really not in keeping with the developmental requirements of the Colony for the next two years, and I feel, sir, that it would have been preferable had we, at this moment, made arrangements for floating a loan more in the region of ten million pounds instead of six million. Perhaps if it is not possible at this stage to amend this Bill by changing the six million to ten million, arrangements could be made for the floatation of a further four million pounds loan in the very near future, almost as soon as this particular loan has been raised.

I do feel, though, in view of what has been said in this debate, it is my own views I am giving now, that development should be carried out steadily rather than that we should indulge in a great orgy of spending, and possibly in a year or two be held up again. I feel that our development should be spread evenly over the years ahead, and I would also like to say with regard to the criticism that has been raised against the Development and Reconstruction Authority, I feel that some of it is justified. Nevertheless, I do also feel that one should realize the very great difficulties that the Development and Reconstruction Authority is faced with. Chiefly the great difficulty of the costs which are rising very rapidly against the plans that had been made out originally by the Development and Reconstruction Authority, and possibly a lot of the criticism and dissatisfaction in the Colony in the carrying out of their programme has arisen from that fact.

Before sitting down, sir, I should also like to say that I think that the hon. Mr. Patel has made out a case over the development of Indian Education, which all of us sympathize with, and I do hope that the complaint which he has put forward so far will be kept in mind by the Development and Reconstruction Authority in the future.

Sir, I beg to support.

DR. RAMA (Eastern Area): Mr. Speaker, I would just like to add a few words. I think enough has been said regarding the dissatisfaction and resentment, if I am permitted to use the word, about the Development and Reconstruc-

tion Authority Planning Committee and the various works that have been done, sir, I would like to point out to the Acting Chairman of the Development and Reconstruction Authority, in order to shelve all the responsibility it probably would be better if each member in charge of the various departments should be allocated a certain sum for whatever works are to be done by that particular member. I think the whole cause of this resentment is that only one or two people have dealt with it and we have been having changes as far as the Chief Secretaries of this Government are concerned, and the result is nobody knows which is priority and which is not priority. The best way would be, say, that the Member for Medical Services should be told that this is the amount and he should fix up a priority. The present Director of Education and the Member for Health and Local Government are also disappointed because they want a certain hospital to be done and they cannot get the money. I think the only way to get the thing done would be for each member to be made responsible to fix up priorities, and then there would be less dissatisfaction and the work would be done in a more appropriate way. This is my view, sir, and I do not think I have anything else to say, and support as far as the loan is concerned.

THE FINANCIAL SECRETARY: Mr. Speaker, in rising to reply to the debate on the Development Bill, I am conscious of my regrettable inability to rise to the oratorical heights already achieved! I must say, however, that I enjoyed many of the speeches from the opposite side of this Council, and I had the impression, sir, that many of the hon. members very much enjoyed making them. The hon. Member for Nairobi South, in particular, seemed to have a very good time. I suppose it was all that money! Now, sir, the general refrain which has been the theme song, if I may say so, of the speeches from the opposite side of the Council, has been that the amount of money, this loan of six million pounds, is not enough for our development plan. Of course, sir, it is not enough! There has never been any intention of the Government to regard it as enough. I made it clear, in my speech when introducing this motion, that the review of the finances of the development plan

[The Financial Secretary] which I made carried us only up to the end of the year.

Now, sir, just as that review is part only of a more general review which has been completed, and which in due course I shall unfold to the Council, so the loan before this Council is part only of a much bigger loan plan, which in due course will also unfold itself before this Council. The word "ceiling" has been referred to, as if it were some inflexible law, some immutable limit pressing upon us never to be removed by human agency. That is not so. We have to work to some figure, and the figure we have so far been given is 20 million pounds public debt. That limit is definitely flexible. My hon. friend the Member for Commerce and Industry has indicated that the loan raising capacity of a state is related to its credit-worthiness; that is to say credit-worthiness in the eyes of the financial world. Now that credit-worthiness is made up of a large number of factors, some of them obvious, some of them extremely subtle.

These have been expounded by a hon. colleague at great length and I think there is no need for me to gild that lily! Now sir, I suggest that one of the most important factors in the assessment of the credit worthiness of any state is the attitude of that state towards incurring public debt, its sense of responsibility. I agree that nothing is more to be deprecated than to be over timid. At the same time I think it is essential that we must distinguish carefully between boldness and rashness. Nothing would be more calculated to undermine the credit of any state than an attitude of rashness towards the incurring of public debt. A further important factor very closely related to this entity of credit worthiness is of course the capacity of the state to meet not only the service charges which loans bring in their train but also those charges which naturally arise from the development financed from the loans. Now it would be very wrong, I suggest, to let loans be raised at such a rate that we outrun our capacity to meet the loan charges and the recurrent development charges.

I am very well aware that development brings in its train an increase in wealth and an increase in revenue. I am very well aware of that, and from that point

of view I, sir, am very much an enthusiast for development—an enthusiast, I repeat. (MR. HAVELOCK (Kiambu): The right type.) But let me say this—all aspects of development do not produce an immediate return to revenue. In fact, some of the development projects must be very long term in this behalf. I refer to such things as education and public health. We cannot cut these things out of the development programme—we must have a balanced development. What is the use of spending large sums of money on soil conservation or even on roads if you have at the end of it an illiterate population or a disease-ridden population quite incapable of taking full advantage of their developed country or of carrying on where their predecessors left off. (Hear, hear.) I therefore suggest, sir, that we cannot expect over the whole field of development an immediate return, or indeed an early return from a considerable part of that expenditure, and that if itself must represent a limiting factor in our capacity to raise loans.

I have no doubt whatever that with the expanding economy of this country our capacity is growing. I have said before it is not a fixed limit. It is a flexible thing and it will be my policy and the policy of this Government to make full use of any expansion in our loan-raising capacity that may accrue.

Another theme that ran very much through the speeches of hon. members opposite was the question of surplus balances. My hon. friend the Member for the Coast asked my attitude towards the so called tax equalization fund. I have on more than one occasion said in this Council that in the manner in which that proposal has been put to me I do not agree with it. Nevertheless it is very essential in my view to have a reserve—a cushion. (Hear, hear.) It is essential that a cushion should be interposed between us and the possible impact of economic adversity. I believe the hon. Member for the Coast was very anxious about existing surplus balances, that they should not be tied up in an old stocking—they should not be allowed to lie idle. I can assure him those surplus balances are being used very fully and in a very good cause. The most important use to which those surplus balances are being put is crop finance—the making of advances to farmers in

[The Financial Secretary] respect of crops; against the guaranteed minimum return; the financing of the Cereals Pool; the first purchase of the crop; the financing of the Land Bank. Those activities absorb a very considerable portion of our surplus balances each year. The money comes back, but at any particular time a large proportion of that money may in fact be tied up in those activities. The tying up of money in this manner involves a risk, a financial risk. That risk is attendant on the provision of a facility for the agricultural industry of this country, and I therefore suggest that the risk is taken in a very good cause.

Now this commitment, this need to find money every year in order to finance the marketing of crops, is an expanding one. Each year more and more of our money, of our surplus balances, gets tied up in these crop finance transactions. That is only to be expected. Our agricultural industry, I am glad to say, is expanding. Our wheat crop, which only a few years ago was 900,000 bags, is now well over 1½ million bags. Naturally, therefore, the amount of money required for the marketing of that wheat crop is itself growing. So more and more of our surplus balances are utilized to provide what one might call working capital. It is true that the money comes back to us, but in as much as we have to find that money every year hon. members will realize that it is in fact quite frozen for other purposes. The hon. Member for the Coast asked me point blank how much of the present surplus balances could I actually lay my hands on. I will say, sir, at this particular time of year, very little indeed. It so happens that about May our maximum commitment in regard to crop finance is reached, but gradually the money will come back to the Exchequer. Had he asked me some time in October I could have given him a different answer. I could have said, I can put my hand on a considerable amount, whereas now I can say that I can put my hand on very little indeed.

MR. COOKE (Coast): On a point of explanation, sir, I asked how much is in the kitty, at the moment.

THE FINANCIAL SECRETARY: The hon. member is referring to the cash position. I take it. (Laughter.) Naturally, sir, the cash position depends upon precisely how we use our money, and I have been

at some pains to explain to Council that we have in fact purchased a very large part of the maize crop and wheat crop of this country, and the amount of money in the till actually as cash is therefore very small.

MR. COOKE: Ten pounds?

THE FINANCIAL SECRETARY: It might be £10, it might be £20. I have not had the opportunity of having the exact amount counted. Now hon. members will see from this analysis that in fact although we have on paper considerable sums known as surplus balances, those surplus balances do not exist as cash. They are being used, as they should be used in the best interest of the country. They could not now be withdrawn from the purposes for which they are being used without grave and serious repercussions upon our economy and particularly upon our agricultural economy. It is obvious therefore that you cannot regard surplus balances so used as the kind of reserve I have in mind. They could not be used as a cushion, to control the rate at which we might have to retrench our development. Everyone knows it is a most expensive thing, when you have built up a large development momentum, suddenly to stop it. Such action causes serious waste. Therefore I say we must have some reserve whereby, if we have to slow down, we can ensure that the slowing down is controlled and not uncontrolled and wasteful. What the size of this reserve should be I think is a matter for the legislature, that is a matter for this Council. Even the principle of a reserve is really a matter for this Council. I may be the chief financial executive, I may be the financial adviser, but the ultimate power of finance rests with this Council. This Council decides policy and I therefore put the idea before the Council that we must have a Revenue Reserve Fund, and that this Fund should constitute a cushion—not to be frittered away but retained as a cushion in order that we may adjust ourselves, if faced with economic adversity, slowly, and without undue stress and strain.

When we have achieved this revenue reserve fund up to an amount which we consider to be reasonable and adequate in the circumstances, then we might be able to consider further and larger con-

[The Financial Secretary] tributions from our revenue for development.

Now that dealt with two general points—the size of the loan and the surplus balance question. I have now to deal with a few less general points, and I think I would like to refer first of all to the point of the £75,000,000 loan, which was raised by the hon. Member for Nairobi South. He suggested that we would have over and above our expenditure a surplus each year of £3,000,000 which could be capitalized in terms of service and sinking fund charges to the tune of £75,000,000. I think possibly the hon. member might have overlooked—I do not know—that development itself involves recurrent charges. A £75,000,000 development plan—once it has been executed will produce recurrent charges of the order of between £7,000,000 and £8,000,000 per annum. So therefore recurrent charges in respect of moneys of that magnitude are between £10,000,000 and £11,000,000 a year and not £3,000,000.

MR. ERSKINE (Nairobi South): On a point of explanation, does not one's national income increase if one spends £75,000,000?

THE FINANCIAL SECRETARY: I hardly think that was a point of explanation, but I shall answer it. In the earlier part of my speech I pointed out that although you do get a direct return from certain aspects of development, other and very large aspects do not produce an immediate revenue return or even an early one.

THE SPEAKER: Might I, while there is a pause, again point out to hon. members that the fine art of interrupting a member speaking is to get the member speaking to be seated first before uttering the magic "abracadabra" about a point of explanation.

THE FINANCIAL SECRETARY: Now sir, the hon. member's calculation also involved, if I remember rightly, a sinking fund charge of one per cent per annum. Now admittedly, that is the rate we have so far used, but we have used it in respect of a very low public debt. I would remind hon. members that in respect of the 1928 loan of which the Colony's share was only £660,000—the one per cent sinking fund over all those years

produced about £170,000, and it was for that reason that this Council was asked and agreed to vote this year a sum approaching £500,000 representing the shortfall in that sinking fund. Out of a total of £660,000 there was a shortfall at one per cent of £500,000. Now sir, I have not calculated the shortfall which would have to be met from time to time in the annual budgets after the £75,000,000 had been borrowed. Obviously, if a strain is not to be imposed on the Colony's budget in any particular year greater than its capacity to bear it, you would certainly have to have a sinking fund charge considerably in excess of one per cent. The hon. member's arguments are therefore fallacious to this further extent.

Now, sir, the hon. Member for Nairobi South also said that he reposed a much greater confidence in the Member for Finance than he did in the members of the Development and Reconstruction Authority. I do not take that as a personal compliment, because I know he is referring to offices and not to personalities. But where you have the principle of a development fund which is voted right out of the budget, in order that the Authority administering the fund may be free from the "vagaries" of the Treasury and also of the Council, it is inevitable that there is a weakening of financial control in the interest of long-term planning.

I would however remind Council that in regard to criticism of the Planning Committee that Committee has expressed its intentions every year in terms of the Development and Reconstruction Authority estimates. Those estimates have come annually before this Council, and this Council has voted them. It cannot therefore be said that the Planning Committee has gone ahead without any reference to this Council.

Another point raised, an important point and a point which I shall keep very firmly fixed in mind, is the amount of the loan which should be reserved against local subscriptions. I can only assure the Council that I shall have a most careful examination made of the funds available for investment in a loan of this kind, and the optimum proportion which ought to be reserved for local subscriptions will be so reserved.

(The Financial Secretary)

The hon. Member for Kiambu asked me how much interest we pay when we borrow from the Joint Colonial Fund. The answer is two per cent. The two per cent is charged as and when we borrow and so of course over the whole sum on an annual basis the figure is considerably less than two per cent. This I think it will be agreed, is a very favourable rate for borrowing money. The hon. Member for Trans Nzoia wanted to know why this particular instalment was not larger, that is, this particular instalment of our loan borrowing programme. As you know, sir, we are not entirely masters of our own fate in this matter. The amount of money available for investment in capital development on the London market is not unlimited. Secondly, although we may have very big ideas about what and when we want to borrow we have to take our place in the queue of other prospective borrowers with equally big ideas. It is in the light of these considerations, sir, that the loan figure in this part of our programme has been fixed at £6,000,000. I may say that originally the amount allocated was somewhat below this, but H.M. Government has agreed on evidence supplied that £6,000,000 is the minimum amount now needed and ought therefore to be raised.

I think Mr. Mathu said that Africans had received no representation on the Planning Committee. Well in actual fact the Planning Committee is being reconstituted and the hon. Mr. Chemallan has been invited to be a member. Mr. Mathu did not know this at the time of his speech and he has taken the first opportunity of apologizing for this mistake. I take this opportunity of acknowledging that apology. Now, sir, in a few minutes this Bill will come up for the vote of this Council.

MR. HAVELOCK: Would the hon. member touch on the question regarding the effect of local loans on the total ceiling?

THE FINANCIAL SECRETARY: Well, sir, I had made a note of that point but I have crossed it out, because I thought that the Member for Commerce and Industry had dealt with it. I will repeat what I think the hon. Member for Commerce and Industry said: "If you accept the postulate that loan raising capacity is related

to your credit-worthiness, then obviously the amount of credit-worthiness that remains is an arithmetical difference between what you have already borrowed and what your capacity is to borrow." Obviously that calculation must be made whether your loans are raised locally or abroad. It is all public debt.

Now, sir, as I said, in a few minutes this Bill will go before this Council. I understand that the hon. Mr. Patel has expressed his intention of saying "no" because on a point of principle he has registered a protest. I hope, sir, that he will not carry out that intention, and in fact we shall have nothing more than one big chorus of ayes. This loan is an important thing for this Colony and the attitude taken by this Council is under close scrutiny by many people outside this country. Even a small dissent might produce a big undesirable effect.

With those words I commend the Bill to Council.

MR. PATEL: Having received very sympathetic support from my point of view I have decided not to say no.

The question was put and carried.

BILLS

FIRST READING

On the motion of the Attorney General, seconded by the Acting Solicitor General, the following Bills were read a first time and notice given that the subsequent stages would be taken during the present session:—The Native Foodstuffs (Amendment) Bill, the Sales by Auction (Amendment) Bill, the Public Order Bill, the Interpretation and General Clauses (Amendment) Bill, the Diseases of Animals (Amendment) Bill, the Resident Labourers (Amendment) Bill, the Penal Code (Amendment) Bill, the Local Government (District Councils) (Amendment) Bill, the Native Poll Tax (Municipalities) (Amendment) Bill, the Registration of Documents (Amendment) Bill, the Births and Deaths Registration (Amendment) Bill, the Police (Amendment) Bill.

STANDING RULES AND ORDERS SUSPENDED

With the leave of the Speaker, the Attorney General moved: That Standing Rules and Orders be suspended to enable the following Bills to be taken through the second reading and subse-

quent stages without due notice:—The Native Foodstuffs (Amendment) Bill, the Sales by Auction (Amendment) Bill, the Diseases of Animals (Amendment) Bill, the Resident Labourers (Amendment) Bill, the Local Government (District Councils) (Amendment) Bill, the Native Poll Tax (Municipalities) (Amendment) Bill, the Registration of Documents (Amendment) Bill, the Births and Deaths Registration (Amendment) Bill.

The Acting Solicitor General seconded.

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

NATIVE FOODSTUFFS (AMENDMENT) BILL SECOND READING

THE DIRECTOR OF AGRICULTURE: Sir, I beg to move that a Bill entitled "An Ordinance to Amend the Native Foodstuffs Ordinance, 1944" be read a second time.

There are, sir, in this Bill only two minor amendments to the principal Ordinance. The first occurs in section 3 of the principal Ordinance, where, at the present time, the Member for Agriculture confers his powers under this section by issuing a proclamation. It is, however, considered that the power to issue proclamations should only be exercisable by the Governor, and the amendment to this section, therefore, provides that in future the Member for Agriculture should issue an order instead of a proclamation.

The second amendment to section 5 of the principle Ordinance, enables the court to confiscate foodstuffs of any person who acts in contravention of the order. The court, at the moment, confiscates the foodstuffs which have been taken, and I am sure hon. members will agree that such additional powers should be vested in the court, to act as an added deterrent.

THE ACTING SOLICITOR GENERAL seconded.

MR. OHANGA: Mr. Speaker, I rise to support the second reading of this Bill and would say that the amendments that have been proposed seem to be useful, with the exception of one that I feel must be suspect regarding the Africans

in the reserve. If a person had a case over foodstuffs, and he was fined and imprisoned, and then had the whole lot of his food confiscated I think that would be unfortunate for him, and I would like to ask for an assurance that this particular amendment should not go forth without due consideration.

MR. JEREMIAH: Another point against supporting this Bill is that under the proposed amendments it appears the courts are not given discretion to exercise their powers in deciding the seriousness of a case and to impose a fine of less than £50 or six months imprisonment. I give notice that I shall propose an amendment at a later stage.

THE ACTING SOLICITOR GENERAL: On a point of explanation, the Interpretation Ordinance provides that any penalty stated in an Ordinance shall be deemed to be a maximum penalty, and a smaller penalty can always be imposed.

THE DIRECTOR OF AGRICULTURE: Mr. Speaker, my hon. friend the Acting Solicitor General has answered the question raised by the hon. Mr. Jeremiah. As regards the point raised by the hon. Mr. Ohanga, I can assure him that due consideration will be given, but I would like to point out it is not the whole of a man's crops that are going to be confiscated—it is only those he is transporting without permission.

The question was put and carried.

SALES BY AUCTION (AMENDMENT) BILL SECOND READING

THE CHIEF NATIVE COMMISSIONER: Mr. Speaker, I beg to move: That a Bill entitled "An Ordinance to Amend the Sales by Auction Ordinance" be read a second time.

There are two points in this small amending Bill. The first point has to deal with the fact that at present as the law stands, whereas an officer of the Central Government does not have to hold a licence when selling Government property, an officer of a local government has to have such a licence. Under section 2 of this amending Ordinance the officer of a local authority selling the property of such local authority at an auction is exempted from having an auctioneer's licence. For the purposes of the section, a local authority is a mun-

[Chief Native Commissioner] cipal council or municipal board, a district council or an African district council.

The other point in this amending Ordinance arises from the fact that several African district councils are now arranging for the sales of livestock in the African areas. These include Nandi and all the Nyanza district councils, the Kipsigis, the Masai and two or three others. The sales are usually carried out by auctioneers who are employed by the African District Councils, and again, as the law stands, those auctioneers should take out auctioneers' licences at Sh. 150 each. Section 3 of this amendment, however is aimed at taking the auctioneers of livestock in the native areas right out of the scope of this Bill, not only because it will then exempt these auctioneers from taking out licences—and these livestock auctions are something we wish to encourage—but also because there are various other sections in the principal Ordinance, the Sales by Auction Ordinance, which Government does not consider are properly applicable to these kinds of auctions of livestock. Section 3 therefore is designed to take the sales of livestock entirely out of the Sales by Auction Ordinance and these auctions will be regulated by by-laws made by the African District Councils themselves.

Mr. Speaker, I beg to move.

THE ACTING SOLICITOR GENERAL seconded.

MR. ERSKINE: I would like to make one suggestion or ask one question of the hon. mover in regard to this Bill. Is there not possibly an unwarranted assumption that just anybody can do the job of auctioneering goods at a moment's notice? Auctioneers, like lawyers, doctors and dentists are proud people and they take a pride in their profession, and looking at this from the point of view of an auctioneer, although I have never been an auctioneer, I think possibly there is some encroachment on their professional rights. This Bill, if it passes into law, would surely permit of any completely unauthorized, untrained person being told to auction goods, and, sir, I do not know what the ethics or standards of auctioneering are, but this man may know nothing about them. That is

an aspect on which I would appreciate very much if the hon. mover could allay my anxiety.

THE CHIEF NATIVE COMMISSIONER: Mr. Speaker, I can only say that in so far as these auctions are to be carried out by local government officers, those occasions upon which those auctions take place will be very rare, and it is not intended that large auctions of Government or of local government properties should be carried out in centres where normal auctioneers reside. The second point—as far as the African auctioneer is concerned, I can only advise my hon. friend to go and see an African auctioneer at work at a livestock sale and see how extremely efficient he is.

The question was put and carried.

DISEASES OF ANIMALS (AMENDMENT) BILL

SECOND READING

THE DIRECTOR OF AGRICULTURE: Mr. Speaker, I beg to move: That a Bill entitled "An Ordinance to Amend the Diseases of Animals Ordinance" be read a second time.

Sir, when this Ordinance was originally enacted the Governor could delegate his powers of proclamation, and in fact he did delegate them originally to the Director of Agriculture and subsequently to the Director of Veterinary Services. Such action was, however, invalidated by the Amendment to the Interpretation and General Clauses Ordinance in 1948, and in consequence since that date all proclamations under this Ordinance have had to be signed by the Governor in person. Hon. members will appreciate that certain orders for preventing the movement of stock from one area to another must be taken regularly and it is unwise to cause any delay. The amendment to this amending Bill, therefore, makes provision for the powers of proclamation now delegated by the Governor to be handed over to the Director of Veterinary Services, who in future will make orders under sections 4 and 6 of the Ordinance which will be published by notice in the Gazette.

Mr. Speaker, I beg to move.

THE ACTING SOLICITOR GENERAL seconded.

The question was put and carried.

RESIDENT LABOURERS (AMENDMENT) BILL

SECOND READING

SIR CHARLES MORTIMER: Mr. Speaker, I beg to move: That the Resident Labourers (Amendment) Bill be read a second time.

The moving of this second reading has fallen to me in the unfortunate absence of the hon. Member for Agriculture and Natural Resources under doctor's orders. The Resident Labourers Ordinance has been amended many times and now we bring forward further small amendments to make the operation of the law more effective in carrying out the intentions of the legislature.

There are three small amendments now before the Council in the Bill of which I am moving the second reading. Clause 2 covers an amendment of section 7 of the principal Ordinance. The principal Ordinance lays it down that an occupier of land is committing an offence if he allows a native or a Somali to reside on the land in contravention of the Ordinance, or if he allows the native or Somali to cultivate more than half an acre of land or such larger area as may be permitted if the native or Somali is on a contract under section 5 of the Ordinance. It has been found in practice that magistrates are loath to convict an occupier who is charged under this section unless it can be clearly established that the occupier was actively conniving in the offence. There is another weakness in the existing law. It will be noticed that only the occupier of the land is committing an offence. The obvious weakness is that the native or Somali who actually commits the offence is not liable under the law. It is proposed under this new section to make it quite clear that both parties are committing a breach of the law if they offend against the provisions of this section, and that both are liable to punishment.

In clause 3 it is intended to amend section 16 (1) of the principal Ordinance by adding a further sub-section. That section deals with the procedure to be followed when cattle have been seized for trespassing in defiance of the provisions of the law. The Ordinance was amended a little while ago to provide that where such cattle were seized, con-

fiscated by order of the magistrate, they were to be sold by auction and the proceeds of such auction might be distributed according to the magistrate's pleasure in the light of his knowledge of all the circumstances of the case, and either the whole or some part of the proceeds of the auction be handed back to the original owner of the cattle. It has been found that this section does not go quite far enough and it is desirable to add a further sub-section giving the magistrate, when he makes the order for the sale by auction, power to impose such conditions as his local knowledge may suggest, and in particular his knowledge of the circumstances in which the offence was committed. Thus he might order that the cattle, after having been sold, shall be removed completely to another district, to another part of the native land, or he might order that they should be sold only for purposes of slaughter, or he may impose such other conditions as he thinks proper in the circumstances, and anyone who, in defiance of that order does not take such action shall be liable to punishment and shall have committed an offence. Clause 4 removes another small defect in the principal Ordinance. Section 24, subsection (1) of the principal Ordinance lays down that the proceedings on certain sections of the principal Ordinance shall be taken only by a police officer or by such other person as a magistrate may in writing authorize. In a recent case brought before the courts, a labour officer instituted a charge, and it was thrown out on the grounds that he had not received written authority from the magistrate. Now the Labour Department has been entrusted with the responsibility for enforcing this Resident Labourers Ordinance, and it seems only proper that labour officers should, along with police officers, have power to institute proceedings, and it is proposed to introduce the words "or by a labour officer".

Mr. Speaker, I beg to move.

THE ATTORNEY GENERAL seconded.

The debate was adjourned.

Council adjourned at 11 a.m. and resumed at 11.30 a.m.

The debate was resumed.

MR. MACDONOGHIE-WELWOOD (Uasin Gishu): Mr. Speaker, there is one small point in sanctioning the second reading of this Bill I should like to make, and that is section 4 (7) (2), which reads: "the occupier who suffers the cultivation of more than half an acre by the resident labourer will be liable to a penalty", and I would like to ask the opinion of the hon. Attorney General as to whether it would be necessary in law to prove that he knew this to be the case. It seems to me unfair in many cases that an employer who might be quite ignorant of the over-stepping of the half-acre by the employee, was immediately summoned and liable to a fine up to Sh. 150. If, however, it means that he consistently suffers the excessive area knowingly, then I think the clause is right. If for example he left the farm for a weekend and his employee overstepped the limits of his half-acre, and he was immediately summoned, then I think this clause reads badly, and I would like legal opinion from the other side of Council in this matter.

MR. CHEMALLAN: I am afraid I may not be able to support the second reading of this Bill at all.

LADY SHAW (Ukamba): I feel this is really a question of administration. Obviously a clause of this kind, if administered without due regard for common sense, would be an extremely onerous one, but I do see the object of trying to catch out a man who is negligent. Now if it were worked in the spirit and not by the strict letter of the law, the man who perhaps inspected his farm quite frequently, and his native plots, and *shambar*, would be considered as having taken the necessary care, even if an extension of the *shambar* were discovered. If this clause were to be administered without taking due regard for the circumstances, then I would wish to oppose it, but I do not wish to oppose it so long as I can get an assurance that it will be administered with common sense and not administered harshly.

MR. OHANGA: It seems to me that the conditions in which the resident labourers in the country live and work now are steadily getting worse throughout the country. All round you hear of local government authorities imposing amendments or enacting by-laws to enable the

authority to limit the number of stock which each resident labourer is keeping. I think that the purpose behind the whole principle of resident labourship is sound. The farmers who lived far and remote from African lands, without the resident labourers, were quite unable to develop their land. It seems to me that limiting the opportunities of these people for producing food independently while they live as resident labourers on European lands may have quite a serious repercussion on the producing capacity of this country. I am therefore opposing quite entirely the principle of this amending Bill. It does not seem right to me that all persons who legally occupy land should be deprived of all powers of discretion of any kind. It does not seem reasonable that if he finds that it is to his benefit and the benefit of the whole country to allow more than half an acre to one or two labourers, that a general provision of this kind should be allowed to tie his hands completely from doing so. After all he occupies legally, and during the time he occupies he is the owner of that area of land. Now this particular amendment, sir, ties his hands completely. Reading in the Objects and Reasons of this Memorandum I find that clause 2 accordingly amends section 7 of the principal Ordinance, so as to remedy this. I feel particularly sorry, Mr. Speaker, that land used by an African to produce extra food for his family while working for Sh. 15 a month, should be considered land wasted. After all how would you expect a person who has to feed his family on Sh. 15 a month only to do it without trying to help himself on such land as would be available to him. As I say, I am opposed to the principle of the Bill as a whole. It seems to me that it might be better if I could persuade the Authorities to allow an amendment which may help a little. Where it says: "that no resident labourer, while living on the land of the occupier, may be allowed to cultivate more than half an acre", I certainly propose that he should be allowed to do so with the permission of the occupier, because I cannot see anything unreasonable in this if he allows it. I shall reserve my vote until I am sure that that could be done.

THE LABOUR COMMISSIONER: On the question raised regarding administration, I will only ask hon. members to con-

[The Labour Commissioner]
sider that the law has been administered since 1945, evenly and fairly, and I have had no complaints, and can give the hon. member the assurance that we are still continuing to act in that manner.

On the question raised by the hon. Mr. Ohanga I am afraid I ought to have got up at an earlier stage, because he is arguing from a misapprehension of the law in this matter. This amendment does not say, sir, that no resident labourer may have more than half an acre, it says: "no African may have more than half an acre unless he is a resident labourer on a proper contract."

I beg to support.

MR. MATHU: I rise, sir, to support the remarks made by my hon. friend Mr. Ohanga, regarding the second reading of this Bill, and I would like to raise two points, sir, only two points. The first is that I do know that there are employers of resident labourers who would not accept this law, this legislation. They feel they ought to be left alone to treat their labourers as generously as they would like. I do know there are such employers in the Highlands who would not like to be fettered in the way this legislation is going to fetter them, and I think it is right and proper that these people should be given freedom to do it, particularly when we know, sir, that the wages that these people are getting could not support a family, and the only reason why these squatters are where they are is because they were invited to go, or given ample opportunities for tilling the land and keeping stock. Now this Bill, and others that have gone before it, prevent them from earning a living, and it is going to be almost impossible for them under this regulation to live.

MR. COOKE: This Bill does not purport to amend section 7, clause 7 (b) of the principal Bill. It only amends as far as the occupier's duty is concerned, and my hon. friend Mr. Mathu wishes to alter the principal Bill, but he cannot do that in this amending Bill.

THE SPEAKER: As far as I understand it, this is merely an amendment of section 7, that is all, and you cannot in an amendment to section 7 raise an argument against the whole of the principal

Ordinance. All we can deal with is this section of the principal Ordinance which it is proposed to amend.

MR. MATHU: I agree with you, sir, but the point I wanted to emphasize was that even in the amending Ordinance we still see a diminution of liberties to the labourer concerned, and this is the only point we wanted to emphasize.

The second point was, sir, that there is a central board which deals with the resident labourers. As far as I know we have not got direct African representation on that, and we feel that we would like to see direct African representation on that one, so that we can urge the interests of our own people.

Sir, I beg to oppose the second reading of the Bill.

SIR CHARLES MORTIMER: Mr. Speaker, I am sorry that the hon. African members who have spoken have not been able to support this measure, and that in their speeches they have gone far beyond the limits of the Bill before the Council. They have brought into question the whole principle of the Resident Labourers Ordinance, and so far as section 7 is concerned they have expressed views on the sub-sections which it is not proposed to amend. I share the knowledge of the hon. Mr. Mathu that there are many farmers in this country who do allow resident labourers and other occupiers of their land to cultivate very much more land than the law allows. In the interests of land conservation it is not for the good of the country that that kind of thing should be allowed to continue. (Hear, hear.) Wherever a farmer is a law unto himself there must be regulation. The land of the country must be used to its best advantage and hon. members know as well as I do that there are many Africans cultivating land on European farms in this country to the detriment of future generations and to the spoilage of the soil. That cannot be allowed to continue indefinitely. We must preserve the wealth of this country which resides in our land. District councils have by law the power to lay down orders regulating the amount of cultivation allowed to resident labourers in their districts. The district councils take into consideration all the factors in the case. I would also point out, as I have

[Sir Charles Mortimer] done before on several occasions, that this law is not the only measure governing wages, governing the emoluments of the resident labourers and workers on farms. There are other measures in contemplation and some in active operation which counterbalance the increasing tightness of the orders under the Resident Labourers Ordinance, and every endeavour will be made by the central co-ordinating committee to ensure that the labourers get a square deal as well as the employer. (Hear, hear.) I think other hon. members on this side of the Council have answered the various other points that have been raised, and that I have nothing more that I can add with profit.

The question was put and carried.

LOCAL GOVERNMENT (DISTRICT COUNCILS) (AMENDMENT) BILL

SECOND READING

THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT: I beg to move: That a Bill entitled "An Ordinance to Amend the Local Government (District Councils) Ordinance, 1928, be read a second time.

We are, sir, in so far as local government in the district councils in the settled areas is concerned, in what might well be called a developing period. We have seen areas developed with a closer density of settlement than the original district council—in that area visualized. As a result of the closer density of those areas they have developed special needs in the form of higher standards than the general level of the district councils' finance can provide, and it has become obvious that some new or expanded framework is needed, possibly in the form of an urban or rural parish council set-up, in order that the district councils can provide at the wish of the inhabitants of the small denser areas those special services or special standard of services that the inhabitants desire. It is, sir, the intention of Government to bring forward, I hope at a comparatively early date, legislation which will place before this Council the framework on which the next step of local government in district councils in settled areas can develop.

For the intermediate period we have now a proposed framework which will enable district councils to rate at a

special level the inhabitants of those settled areas, in order that more frequent services or a higher standard of services can be provided. That, sir, is the principle of this Bill. In this Bill will be found ample time for those ratepayers concerned to object to the district council imposing a special rate, to ask for a committee of inquiry in order that their case may be fully heard, and in the final issue, if a majority of the ratepayers intimate to the district council concerned that they neither wish to suffer the imposition of a rate or enjoy the benefits of the service that that rate would give, they are at liberty to do so, and the district council cannot act against their wishes. Mr. Speaker, as I said, this is a temporary measure until full Government proposals are ready for submission to the Council on the development of district council and local government framework.

I beg to move it be read a second time.

THE ACTING SOLICITOR GENERAL seconded.

MR. HAVELOCK: Mr. Speaker, I support this Bill in principle, and indeed welcome it as a first step towards further responsibilities being granted to district councils. I am very pleased indeed to hear from the hon. member that Government has in mind the early—I hope, very early introduction into this Council of a Bill to enable district councils even further to increase their responsibilities in local government. I am only sorry that such a Bill has been so long in coming forward.

There are one or two small amendments which I will wish to move in the committee stage, with the intention of protecting the objectors to the rates a little bit further than is visualized in this Bill, and I understand that the amendments suggested will be accepted by Government. That is all there is really to say to this Bill except once again I do welcome it, and I hope we can get the responsibilities of the district councils enlarged as soon as we can. It has been a long time, and it is time they took their responsibilities and in that way developed our country.

MR. PATEL (Eastern Area): Mr. Speaker, I should like to have information from the hon. mover of this Bill if all owners of land in district council

[Mr. Patel] areas would be subject to special rates or only district council electors, and when he said that objections could be made by the people who own the properties, does it mean that objections can only be made by the electors of the district council, or any people who have property within the rateable area? That is a point on which I would like to have information.

THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT: Mr. Speaker, replying to the hon. Member for Eastern Area, Mr. Patel, I think the Bill is perfectly clear. It says: "If any person interested as owner, lessee or occupier of any land which it is proposed shall be specially rated objects . . ." I think, sir, that is a perfectly clear rendering of the position. It is the owner, lessee or occupier of any land which it is proposed shall be specially rated. I hope that meets the hon. member's point. Apart from that, sir, I think there is nothing for me to say.

MR. PATEL: I asked whether it would be the property of electors only which would be rated, or the property of non-electors also.

THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT: It will be taken for granted it will be rateable property, and that is laid down in the Ordinance.

The question was put and carried.

NATIVE POLL TAX (MUNICIPALITIES) (AMENDMENT) BILL

SECOND READING

THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT: Mr. Speaker, I beg to move that a Bill entitled "An Ordinance to Amend the Native Poll Tax (Municipalities) Ordinance, 1948" be read a second time.

Sir, this is a purely formal amendment which enables the Native Trust Fund established under the Native Trust Fund Ordinance, 1942, to be considered as one of the recipients of whatever money is raised under this tax.

I beg to move.

THE ACTING SOLICITOR GENERAL seconded.

The question was put and carried.

REGISTRATION OF DOCUMENTS (AMENDMENT) BILL

SECOND READING

THE ACTING SOLICITOR GENERAL: Mr. Speaker, I beg to move: That a Bill entitled "An Ordinance to Amend the Registration of Documents Ordinance" be read a second time.

The Ordinance, in its present state, while it enables the registrar to refuse the registration of any document, does not contain a provision for the cancellation of the registration once a document has been registered. Therefore if registration has been obtained by fraud, or if a forged document has been registered, it remains registered always. Perhaps an instance of what may happen will enlighten members more than anything else.

If an alien temporarily in this country changed his name without the consent of the Governor, nothing we could do would cancel the registration of it, and although he might be proceeded against for changing his name without consent, nevertheless the document would remain on the register showing the new name.

Clause 2 will, accordingly, insert a new section 15A into the principal Ordinance, which will enable the cancellation of the registration of any document obtained by fraud, mistake or misrepresentation, or if a document is forged or the document or the execution thereof is contrary to law its registration may be cancelled by the registrar.

Each of the other clauses of the Bill make only consequential amendments.

Clause 3 will amend section 18 of the principal Ordinance so as to provide for the keeping of a register of reasons for cancellation. Clause 18 already provides for the keeping of such a register in the case of refusal to register.

Clause 4 will insert a new section 31A which will require the registrar, after he has cancelled the document, to make an order of cancellation and to enter his reasons in the register. Section 31 provides for a similar procedure in relation to a refusal to register. The new section 31A will also require the registrar to endorse on the document itself the words "registration cancelled", and to supply to a person executing or claiming under the document a copy, free of charge.

[The Acting Solicitor General]

Clause 5 will amend section 32 of the principal Ordinance, so as to give, in relation to the cancellation of a document, the same right of appeal as exists in relation to a refusal by the registrar to register.

Clause 6 will similarly amend section 33, so as to enable a person claiming under the document, or his assignee or agent, to institute in the Supreme Court proceedings for a decree directing the re-registration. Such a provision exists in relation to a refusal to register, and it is only proper that a person should have an equal right to go to the highest tribunal where a document which has been registered has been cancelled.

I do not think there is anything else I can usefully add and I beg to move.

THE DIRECTOR OF EDUCATION seconded.

The question was put and carried.

BIRTHS AND DEATHS REGISTRATION (AMENDMENT) BILL

SECOND READING

THE ACTING SOLICITOR GENERAL: Mr. Speaker, I beg to move: That a Bill entitled "An Ordinance to Amend the Births and Deaths Registration Ordinance, 1928" be read a second time.

As hon. members are well aware, climatic conditions in this country demand the speedy burial of dead bodies. Strong representations have been made by the Police, the Medical Department and the Health Department that the provisions of section 17 of the existing Ordinance are unnecessarily cumbersome. Under that section a burial permit can only be issued by the registrar upon production to him of a certificate as to the cause of the death, or of a notice from a doctor that he has signed such a certificate. In the case, which is of very frequent occurrence, where no such medical practitioner has attended the deceased in his illness prior to his death, it is very often impossible for a relative to procure such a certificate. In such a case a relative must go to the registrar and report the death. The registrar takes from him particulars of the deceased and of the circumstances of his death, the registrar notes them on a form which he forwards to the police or to the nearest magistrate, and also sends the relative with them. The police are then required

to make inquiries to satisfy themselves that the provisions of the Criminal Procedure Code, sections 384 and 385, do not apply, that is to say it is not a case in which an inquest ought to be held. This very often necessitates the police taking the relative back to the district where the death occurred and making inquiries there. Having satisfied themselves the police will make a report and the relative will then have to go back to the registrar. Upon production of the report by the police, a burial permit will issue.

The purpose of this Bill is to provide for a third alternative document upon which the registrar may register a death and may issue a burial permit. This document will be known as a "death report". It will contain all the particulars of the deceased and of his antecedents and will contain a statement as to the apparent cause of death. This death report may be filled up and signed by any person, whether medically qualified or not. It is contemplated that in practice it may very well be a person such as the Superintendent of a native location or the local health visitor. After it is so completed it is given direct to the nearest police, that is the police of that district, who make their inquiries and endorse at the foot of the form whether or not it is a case in which they consider an inquest should be held. The registrar is then empowered to issue a burial permit. It is hoped that this addition will, to a large extent, expedite the issue of a burial permit and avoid unnecessary delay caused to the poor relative who has to report the death.

The opportunity has also been taken to amend the definition of "police officer", so as to limit the officers who may make this report, to a police officer in charge of a police station who is of or above the rank of inspector. It is not considered that the somewhat important duty of making this report to the registrar should be entrusted to any policeman of a lower rank than inspector. The only other amendment affected by the Bill is to correct two sectional references of the Criminal Procedure Code which have been erroneous since the revision of the Code in 1930.

Sir, I beg to move.

THE ATTORNEY GENERAL seconded.

The question was put and carried.

IN COMMITTEE

THE ATTORNEY GENERAL moved: That Council do resolve itself into Committee of the whole Council to consider clause by clause the following Bills:—The Development Loan Bill, the Native Foodstuffs (Amendment) Bill, the Sales by Auction (Amendment) Bill, the Diseases of Animals (Amendment) Bill, the Resident Labourers (Amendment) Bill, the Local Government (District Councils) (Amendment) Bill, the Native Poll Tax (Municipalities) (Amendment) Bill, the Registration of Documents (Amendment) Bill, the Births and Deaths Registration (Amendment) Bill.

THE ACTING SOLICITOR GENERAL seconded.

The question was put and carried.

Council in Committee. The Bills were considered clause by clause.

The Development Loan Bill

Clause 3:

THE ATTORNEY GENERAL moved: That clause 3 be deleted and the following substituted therefor—

"(1) Any sums raised to defray the expenses of issue shall be applied only to that purpose.

(2) Save as aforesaid, the money to be borrowed under the authority of this Ordinance shall be appropriated and applied to the purposes specified in the Schedule hereto:

Provided that it shall be lawful for the Governor, with the sanction of the Legislative Council to be signified by resolution, to utilize any money not spent upon any one purpose specified in the said Schedule to meet any excess of expenditure in respect of any other purpose specified in such Schedule."

The question of the amendment was put and carried.

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

The Native Foodstuffs (Amendment) Bill Clause 3:

THE MEMBER FOR AFRICAN INTERESTS (Mr. Jeremiah) moved: That clause 3 be amended by the insertion of the words

"not exceeding" in place of the word "of" in line 18 and the insertion of the words "not exceeding" between "for" and "six months" in line 19.

The amendment was by leave withdrawn.

RESIDENT LABOURERS (AMENDMENT) BILL

MR. OHANGA: Mr. Speaker, I beg to move: That sub-section 3 of section 7, clause 2, line 30, be amended as follows:—Substitute a comma for the full-stop and add the following words: "except with the permission of the occupier".

THE LABOUR COMMISSIONER: Mr. Speaker, this goes to the root of the matter, and I do not think it is right and proper to accept this amendment at the moment. I still do not think the member has fully grasped the point. It says:—"No native or Somali residing on a farm under a contract entered into with the occupier under section 5 of this Ordinance shall cultivate more land than he is permitted to cultivate under his contract."

If his contract is made between him and the occupier, and the occupier himself says he may cultivate one, two or three acres, then it is obvious that the consent of the occupier is given. It seems to be redundant, sir, and I don't think that we should accept it.

SIR CHARLES MORTIMER: I regret on behalf of the Government I cannot accept the proposed amendment for one very important reason. As my hon. friend has just said, it is entirely redundant. There are two parties to a contract, the occupier of the land and the labourer. The occupier of the land is obviously in agreement with the terms of the contract which he signs.

The question was put and negatived.

THE LOCAL GOVERNMENT ORDINANCE

MR. HAVELOCK: I beg to move: That clause 4 be amended as follows:—Paragraph (a) of sub-section (2) of section 91: Substitute for the words "a majority of existing councillors", the words "a two-thirds majority of the councillors present and voting". Substitute for the words

[Mr. Havelock] "fourteen days" the words "twenty-eight days".

Sir, these three amendments which I am moving are designed to protect even further the interests of the ratepayers, should they have any objection to the imposition of rates.

Paragraph (b) of sub-section (2) of section 9: substitute for the words "publish daily in three issues" the words "publish in three consecutive issues".

Sir, I move this amendment because in many districts in this country daily papers are not circulated, and we wish to see that three insertions are made in the papers which will be circulated in such districts, and such papers may be either weekly or monthly.

THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT: Government will not oppose the amendments.

The question of the amendments was put and carried.

THE ATTORNEY GENERAL moved: That the Development Loan Bill, the Native Foodstuffs (Amendment) Bill, the Resident Labourers (Amendment) Bill and the Local Government (District Councils) (Amendment) Bill be reported back to Council with amendment, and the Sales by Auction (Amendment) Bill, the Diseases of Animals (Amendment) Bill, the Native Poll Tax (Municipalities) (Amendment) Bill, the Registration of Documents (Amendment) Bill and the Births and Deaths Registration (Amendment) Bill be reported back without amendment.

Council resumed and the member reported accordingly.

BILLS

THIRD READINGS

THE ATTORNEY GENERAL moved: That the Development Loan Bill be read the third time and passed.

THE ACTING SOLICITOR GENERAL seconded.

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

THE ATTORNEY GENERAL moved: That the Native Foodstuffs (Amendment) Bill be read the third time and passed.

THE ACTING SOLICITOR GENERAL seconded.

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

THE ATTORNEY GENERAL moved: That the Sales by Auction (Amendment) Bill be read the third time and passed.

THE ACTING SOLICITOR GENERAL seconded.

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

THE ATTORNEY GENERAL moved: That the Diseases of Animals (Amendment) Bill be read the third time and passed.

THE ACTING SOLICITOR GENERAL seconded.

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

THE ATTORNEY GENERAL moved: That the Resident Labourers (Amendment) Bill be read the third time and passed.

THE ACTING SOLICITOR GENERAL seconded.

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

THE ATTORNEY GENERAL moved: That the Local Government (District Councils) (Amendment) Bill be read the third time and passed.

THE ACTING SOLICITOR GENERAL seconded.

MR. PATEL: Mr. Speaker, under rule 84 I move that the Bill be rejected. Now, sir, I am doing this in order to obtain certain clarification which I could not obtain at the second reading of the Bill. The hon. Member for Health and Local Government did not tell me whether the non-electors of the District Councils will be called upon under this Bill to pay any rates in regard to properties belonging to them. As I understand the situation the District Councils have jurisdiction over rural areas other than townships and leading centres and therefore they will have no power to rate any properties situated in townships or trading centres, which will in effect mean that no Asian or African will be rated under the law as it stands. If ever the jurisdiction of the district councils is extended to townships or trading

[Mr. Patel] centres, it is, I believe, intended to give Asians and Africans representation on the district councils when that time comes. If I am assured that at present no Asian or African will be affected by rating I shall withdraw my motion—otherwise I shall press for it.

MR. NATHOO (Central Area): I beg to second, reserving the right to speak.

THE SPEAKER: It is proposed that the Local Government (District Councils) (Amendment) Bill be rejected.

THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT: I thought I had covered this point fairly clearly. It is, I think, correct to say that the district councils have not jurisdiction over townships and trading centres. It is obvious the district councils can only rate those people over whom it has jurisdiction, and if anyone owns property, leases property or occupies any land which is actually within the jurisdiction of the district council it will be rated, but only those people over whom the Council has jurisdiction. It would be entirely wrong for me to anticipate the decision of Legislative Council as to whether the district councils will be given jurisdiction over townships in the future, or whether there will be African or Asian representation on the district councils at that date. That will be a matter for this Council to decide when the legislation is placed in front of it.

I would also point out that any owner, lessee or occupier of any land—one owner, lessee or occupier of any land—can indeed apply to the Governor-in-Council to hear any objection, and the district council cannot proceed with that rate until the objection has been heard by the people whom the Governor-in-Council has appointed to hear the objection.

I trust, sir, the explanation I have given will now be sufficient to enable the hon. member to go forward with the Bill. If not, sir, I regret there is nothing further I can promise or say at this stage.

MR. PATEL: What I wanted to know from the hon. Member for Local Government was whether any Asian or

African will be affected as the law stands at present.

THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT: The hon. member on a point of explanation is asking me to say, if there is any African or Asian who owns any land or property, occupies it or leases it, in the land over which the district councils have jurisdiction. I am refusing to say "No" or "Yes", because I will not speak without accurate information, but I have said that anybody who is an owner, lessee or occupier of land within the jurisdiction of the district councils is liable to rating. More than that, sir, I do not wish to say.

The question of the rejection was put and negatived.

The question of the third reading was put and carried.

THE ATTORNEY GENERAL moved: That the Native Poll Tax (Municipalities) (Amendment) Bill be read the third time and passed.

THE ACTING SOLICITOR GENERAL seconded.

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

THE ATTORNEY GENERAL moved: That the Registration of Documents (Amendment) Bill be read the third time and passed.

THE ACTING SOLICITOR GENERAL seconded.

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

THE ATTORNEY GENERAL moved: That the Births and Deaths Registration (Amendment) Bill be read the third time and passed.

THE ACTING SOLICITOR GENERAL seconded.

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

Electric Power (Amendment) Bill

THE ACTING CHIEF SECRETARY: Mr. Speaker, before proceeding to the last item on the Order Paper, the third reading of the Electric Power (Amendment) Bill, I think I should mention that hon. members have this morning had circulated to them a letter which has been received containing a protest against the report of the Select Committee. I

[The Acting Chief Secretary]

think, sir, that it might perhaps, as this letter was only circulated this morning, be the wish of hon. members that they should have a day or two to consider the terms of that letter. I would therefore with your leave, and with the leave of the Council propose that Council do now adjourn, and that the third reading of the Electric Power (Amendment) Bill be postponed to a later date during the present week.

MR. HAVELOCK: On the matter of the postponement of the third reading of the Electric Power (Amendment) Bill, I personally can see no reason at all why it should be postponed. A Select Committee has sat, taken oral evidence, and the whole matter has been put before this Council and the Select Committee report has been accepted by this Council. All the members of this Council when speaking to the Select Committee report stated they considered the report a fair one and a good hearing was given to all interested parties, and I see no reason why the reading should be postponed.

MR. PATEL: I second the motion for an adjournment and would like to say that if there are any new points arising out of that letter I do not see any reason why members should not give consideration to them.

THE SPEAKER: In any event it is just on time now—12.45, and to save any difficulties Council will now adjourn until to-morrow morning at 9.30 a.m.

ADJOURNMENT

Council rose at 12.45 p.m. and adjourned until 9.30 a.m. on Wednesday, the 17th May, 1950.

Wednesday, 17th May, 1950

Council assembled in the Memorial Hall, Nairobi, on Wednesday, 17th May, 1950.

His Honour the Speaker took the Chair at 9.30 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of 16th May, 1950, were confirmed.

THE REGISTRATION OF PERSONS ORDINANCE, 1947

COMMISSION OF INQUIRY

THE ACTING CHIEF SECRETARY: Mr. Speaker, I beg to move: That the Report of the Commission of Inquiry appointed to review the Registration of Persons Ordinance, 1947, and to make recommendations, be adopted.

I think, sir, that it will be helpful to hon. members if I review briefly, before considering the detailed recommendations in the report before us, the circumstances which led up to the appointment of this Commission of Inquiry. Hon. members will remember that the Registration of Persons Ordinance was passed in 1947 but did not come into operation until the 16th May last year. The reason for this gap between the date on which the Ordinance was passed and the date of its coming into force was due to the necessity of setting up the machinery required to operate it before it could be brought into operation. That takes us up to May last year—almost exactly a year ago to the day—when quite a large number of people suddenly appeared to realize that the Ordinance which had been passed very nearly two years earlier, contained certain provisions as to the method of registration to be adopted, which in their view were objectionable. A certain amount of agitation followed, which even penetrated to the fastness of a London club to which I happen to belong, with the result that a motion was moved in this Council last August by my hon. friend the Member for Trans-Nzoia, requesting Government to appoint a Commission of Inquiry to review the Registration of Persons Ordinance, 1947, and to make recommendations for any amendment of the Ordinance as the

[The Acting Chief Secretary]

Commission may consider necessary or desirable. A short debate followed, which showed conclusively that unofficial members of all groups in this Council were in favour of the appointment of a Commission. Speakers in addition to the hon. mover were my hon. friend the Member for Eastern Area—Dr. Rana, my hon. friend the Member for Nairobi South and the hon. Member for African Interests—Mr. Mathu. As I have said, sir, all supported the motion and no single voice was raised in protest.

The hon. the Chief Secretary, speaking for the Government, made the position of the Government in this matter completely clear. He said that so far as the Government was concerned, no reason was seen to take the initiative in making this inquiry. In other words, the Government was perfectly content with the law as it stood. On the other hand, it had been made clear, he said, during the debate, that hon. members opposite, without exception, were in favour of the appointment of the Commission, and Government therefore was not disposed to object. Indeed it was abundantly clear that if Government had opposed that motion it would have been defeated on a division by the unofficial majority which constitutes the Council. Fortunately, sir, for all of us, we were able at that time to obtain the services of Sir Bertrand Glancy to conduct this inquiry, and I do not need to remind members of the long and distinguished record of public service which he has behind him. I would like to take this opportunity, on behalf of the Government, of thanking him very warmly, and publicly, for having undertaken this inquiry for us. (Applause.)

Sir Bertrand lost no time in commencing his inquiry and, as hon. members will have seen in the Report, he travelled widely throughout the Colony and was at pains to give every individual or group of individuals concerned with this matter, an opportunity of placing their views before him. His tours were advertised in advance and invitations extended to all who cared to do so to come and give evidence or to send memoranda to him, and he actually recorded evidence at Mombasa, Kisumu, Nakuru, Eldoret, Nyeri, Kitale, Molo, Kakamega, Kericho, Fort Hall, Nanyuki, Thomson's Falls

and Nairobi; so there was indeed every possible opportunity for anybody to go before him and state their views on this matter.

With your leave, sir, and the permission of the Council, I propose from this point onwards to quote fairly extensively from the Report which is before us. I do not feel any great guilt in taking up the time of Council in this manner, because I feel that it is not only essential that the salient points in this Report, and indeed the recommendations which it contains should go on record in Hansard, but I am also anxious that there shall be no possibility of any misunderstanding concerning these recommendations, or the reasons which have led to their having been put forward, and I hope, sir, that what I have to say will be given the fullest possible publicity so as to avoid, so far as this Report is concerned, the abysmal ignorance of what it is all about, such as seems to me to have been displayed last year in certain quarters, as to what the Ordinance under review was all about, when it was discussed in 1947.

In his Report, sir, the Commissioner has stated that the evidence laid before him principally concerned itself with three main questions—the desirability of a national register, the method of registration and questions relating to certificates (commonly known as *kipanalis*) issued under the Native Registration Ordinance, and he proceeds to deal with these three main questions under separate heads.

On the first question, that of the desirability of having a national register, he stated—and I am now quoting from paragraph 7 of the Report:—

"The vast majority of evidence tendered is very definitely in favour of a national register. It is widely recognized that such a register should be of substantial benefit for purposes of general administration and security."

Later on, under the same heading and under paragraph 10, he writes: of the opposite view:—

"Some witnesses were opposed to the whole idea of a national register. These represented only a small minority."

In the circumstances, he came to the conclusion, with which I am sure all hon.

[The Acting Chief Secretary] members will agree, that it was unnecessary to consider any change so drastic as the abandonment of the entire project of building up a national register. (Hear, hear.) This brought him to the second of these main questions—the method of registration.

On this he writes in paragraph 12 as follows:—

“On this question an impressive volume of evidence has been put forward. Against finger-printing as the sole and compulsory system of registration many voices have been raised in protest. These protests have been by no means confined to any one community; they have been expressed by representatives of all communities concerned. Nor is there any room for doubting the strength of feeling genuinely prevailing in many quarters.”

On the same subject, three paragraphs further down, under paragraph 14, he writes:—

“On the other hand, it has been represented, though by only a very small proportion of witnesses that the Ordinance should stand as it is in this respect and that no alternative should be permitted. One reason expressed for adhering to the present provision of the Ordinance is the contention—which can no doubt be supported by a series of authoritative statements—that of all practicable methods of identification yet devised finger-printing is the most infallible.”

To complete this particular quotation he adds:—

“There is no contesting the truth of this, at least as an abstract proposition.”

I would interject here, sir, that hon. members should understand from this quotation that any alternative to finger-printing as a means of identification, is a second best, whatever may be the views of individuals in this matter, and cannot be expected to be as nearly as infallible a means of identification as finger-prints.

The conclusion reached on this particular question and the recommendations to give effect to it are contained in paragraph 18 of the Report, the main substance of which I propose to quote:—

“After prolonged discussions with a wide variety of witnesses of all communities it appears that a form of alternative, satisfactory for practical purposes and generally acceptable to the public, would be provided if a man, preferring a method of identification other than by finger-printing, were able and willing to fulfil the following requirements:—

- (1) He should appear personally before a registering officer and should be accompanied by a sponsor acceptable to that officer and ready to vouch for the identity of the individual concerned and to certify that the particulars stated are, to the best of the sponsor's knowledge and belief, correct.
- (2) He should not only sign his name but should fill up in English, without assistance, a form giving such particulars regarding his national status, age, place of residence, etc., as are mentioned in section 5 of the Ordinance (sub-section (1) (b) to (j))
- (3) He should supply two copies of his photograph renewable after ten years
- (4) He should be required to inform the registration authorities of any change of his name or place of permanent residence

As a justification, sir, for putting forward these recommendations, he writes a little further down, in paragraph 20:—

“The alternative system of registration as set forth above has been put to a large number of witnesses, including representatives of all communities. From the great majority, both unofficial and official, it has met with approval. It is also now generally considered that there should be no insuperable difficulty in carrying out registration on the lines suggested.”

Clearly, sir, he concluded from the evidence laid before him that this alternative was both desirable and practicable. As regards the third of these headings, on the question of *kipandis*, he states in paragraph 25 as follows:—

“Now it is an undeniable fact that an employer, to whatever race or

[The Acting Chief Secretary] country he may belong and whatever type of labour he may enlist, feels entitled to assure himself, as far as he can do so, of the antecedents of the man whom he proposes to engage. Apart from any question of wages he wants to know whether the man concerned is likely to remain in one employment for a reasonable time or whether he has contracted a habit of moving at short intervals from one engagement to another. It is clearly in the employee's interest therefore, as experience has shown all the world over, to be able to produce something in the nature of a continuous record of employment. The cutting of *kipandis* has undoubtedly proved a serious handicap in this respect.”

In the last sentence of that same paragraph he writes:—

“The cutting of *kipandis* has produced a marked tendency to depress wages rather than to increase them.”

Furthermore, sir, the Commissioner comes to the very definite conclusion that a great many employees now appreciate that in losing their *kipande* they lost a record, the value of which generally had not been apparent to the good worker during the period prior to the introduction of the 1947 Ordinance, when he was required by law to have one. So definite is the Commissioner in his finding on this matter that I am going to quote what he writes concerning it in the last subparagraph of paragraph 26, wherein it is stated that:—

“Inquiries made from a variety of witnesses leave no doubt whatever that the *kipande* record of employment is definitely prized by a high proportion of employees, particularly in rural areas. Men with commendable records are extremely reluctant to part with them, and they are frankly bewildered by the orders that have been passed, which appear to them more designed to benefit the unsatisfactory workman than the honest labourer.”

To deal with this question, therefore, the following recommendations are made in paragraph 28:—

“It is recommended:—

- (1) That the *kipande* where it has not already been separated into two

portions shall be left intact and shall, at the time of registration, be returned intact to the owner, being surcharged with the words ‘Voluntary Record of Employment’—to be filled in only at the employee's request’

- (2) That where a *kipande* has already been cut and its owner asks that he should be given an intact record of employment, this should on application be supplied to him free of charge, provided that he has retained and is willing to surrender the lower half of his *kipande*

- (3) That where a request is made for an employment record, but the owner of the *kipande* is unable to produce the lower half of his certificate, his request should be complied with at the time of registration or as soon thereafter as practicable, subject, as regards payment, to the rules relating to lost *kipandis*.

- (4) That those to whom no *kipande* has hitherto been supplied should, on registration, be offered a new form marked ‘Voluntary Record of Employment, etc.’, free of charge.

- (5) That it should be clearly explained to all concerned that, while they are entirely free to retain or to discard the voluntary record of employment, they would be acting with the greatest imprudence if they failed to preserve, and to make full use of, a document which is designed in their own interest to assist them in securing work at a reasonable wage.

- (6) That it should be made clear to all employers that where they are asked by an employee to fill in the particulars provided for in the voluntary record of employment it is incumbent on them to do so, and that they are thereby exempted from supplying the employee with a copy of the labour card.”

The Commissioner, sir, makes it clear from the last sentence in that paragraph that proposals on these lines have been

[The Acting Chief Secretary]

put to a wide range of witnesses, and have met with almost unanimous approval from all communities concerned. I have tried, sir, to underline in the course of this speech, the precise recommendations which are made in this Report, and the principal reasons which have led the Commissioner to make them. I know that strong views are held on this matter, but whether right or wrong, the Government feels that having entrusted this Inquiry to a distinguished and experienced Commissioner at the unanimous wish of unofficial members of the Council, and having before us, as we now have, such clear evidence of the thorough investigation which he has made into those particular provisions of the 1947 Ordinance on which different views are held, the right thing to do now is to advise this Council to adopt the recommendations which have been made. In proposing this course, the Government is seeking to interpret the wishes of unofficial members opposite in the belief that having submitted, as it were, a case for arbitration, or rather impartial examination by consent, it would be unreasonable not at least to try out the advice which has been given to us. In any case, sir, it will, of course, always be possible, if the real value to this country of an accurate and efficient national register seems to be being impaired by the adoption of this alternative, it will always be possible, I repeat, for the matter to be considered afresh in this Council, and Government would have no hesitation whatsoever, should such a situation at any time become established, in recommending to this Council that a return should be made to universal finger-printing. I do not suggest, sir, that such a situation will necessarily arise, but I think it well to make this point in case any members of Council shall have such doubts in their minds.

In conclusion, sir, I would express the hope that those hon. members who will be speaking in the course of this debate, will keep in mind the essential fact that before submitting his recommendations, the Commissioner has had the opportunity, which they have not, of hearing evidence at first hand from the lips and from the pens of persons of all races in this Colony, who were sufficiently interested in this matter to bring their views before him. Sir, I beg to move.

THE ATTORNEY GENERAL seconded.

MAJOR KEYSER: Mr. Speaker, I rise to support the motion on behalf of the European Elected Members, with the exception of the hon. Member for Nairobi South, who will state his case himself.

Sir, in a debate on the motion last August, moved by myself, requesting Government to appoint a Commission to inquire into the Registration of Persons Ordinance and to make any recommendations that the Commission found necessary, there was, as the hon. mover has said, no opposition to that motion, and indeed it received a very great amount of support. The hon. Member for Nairobi South and the hon. Mr. Mathu made two stipulations in that debate which were that they should be allowed to go before the Commission and to express their views on every aspect of the Registration of Persons Ordinance, and I understand that no obstacles were placed in their way and that they were given the opportunity of carrying out their wishes. Under those circumstances I also felt like the hon. mover that this Council was accepting the Commission rather as a board of arbitrators. In view of the fact that only one Commissioner was appointed and that he was a man with a very distinguished career behind him as an administrator in India—that we were prepared to accept the Commissioner as an arbitrator in this matter—I did feel at that time very strongly that the whole of this Council was accepting the Commission in that way. Therefore, sir, I also felt, and so did my colleagues, that whatever his recommendation over the principal subject of consideration that was put before him—that is, as to whether the registration should be by finger-printing only or by some alternative—I felt, and my colleagues felt also, that whatever his recommendation over that was that we would have to accept it, and we were prepared to do so.

He has recommended that there is an alternative to finger-printing, and therefore I feel that we are bound to accept his decision over that matter.

In that debate, sir, on the motion for the appointment of a Commission, the hon. Mr. Mathu did state that he hoped that the Commission would not start its work feeling it was bound to recommend

[Major Keyser]

an alternative, and reading through the Report of the Commissioner I feel the Commissioner did not feel in the least bit bound to recommend an alternative, and that he has recommended the alternative because he feels that it is practicable.

Now, referring sir, to the second part of the recommendation, that is, the one that deals with the *kipande*, I think most of us have held the opinion for a long time that the *kipande* was of value to the African employee. The Commissioner has appreciated that also, and the recommendation that he has made cannot in any way be considered a hardship on an African employee because it is entirely on a voluntary basis. If he wants to keep the lower half of his *kipande* he can, and if he does not think it is of any value he need not have it. Under those circumstances I cannot see that anybody could interpret his recommendation as in the least bit undesirable.

Sir, I am not going to keep Council waiting, but I would like to say this about the whole of this report. It is in my opinion a report with no racial bias in it of any sort. We have in this Council been inclined in recent years to find a racial bias in almost every question that comes up before this Council, and I do hope that we will be able to keep this debate entirely free of racial matters today. Sir, I beg to support.

MR. MATHU: Mr. Speaker, I rise to oppose this motion as vehemently as I can, and before doing so I should like to say that I cannot see any reason why we should be asked to accept this principle—namely, that when you appoint a committee or a commission with terms of reference, you are automatically bound to accept the committee's or commission's recommendations—because that seems to run through the speeches that have already been made this morning. I made my position very clear in August last year when this debate came up, and my hon. friend the Member for Trans Nzoia has already referred to that. I did say that I supported that motion on the understanding that I did not commit myself or my community to agreeing that the Commission should take it for granted that the Ordinance should be amended. It might find that it was necessary to amend the Ordinance. (Hear,

hear.) Perhaps one person, perhaps the whole Council thought I was right.

Now I am reversing the whole thing. That is the point I want to make quite clear—that in my accepting the appointment of a Commission I did not assume that I was going to accept the recommendations, because I did not know what they were. As they are the recommendations which, from the African point of view and from the point of view of Kenya as a whole, should not be accepted, because they are a setback to the progress of this country, but may I say this is no reflection on the distinguished service of the hon. Commissioner who executed this work. He has been forced into a situation where some people wanted an alternative system of registration and he had to produce one.

The points in paragraph 14 and 16 of the Report before this Council have already been quoted by the hon. mover, and it will be seen that finger-printing is the only infallible basis for registration in any country, but as the Commissioner was forced by a minority to produce an alternative, he had to climb down and produce an alternative which, if it were accepted would be to the detriment of the progress of this country and particularly to the relationship between the races of this land. That is the position, and that is why I say the African people—and I do know, other people as well—are opposed to the recommendations *in toto* in this Report.

Now, sir, going back to what led to the enactment of the Registration of Persons Ordinance, 1947, when the sub-committee of the Labour Advisory Board went through the country taking evidence—I was a member of that Committee—there was no question that the evidence before the Committee at that time was in favour of non-racial registration based on finger-printing. That was accepted by all communities and it was expressed in this Council in 1947 in the second reading of the Registration of Persons Bill, 1947, because it got at any rate almost the unanimous support of this Council. Definitely none of the European elected members voted against the second reading of that Bill—I think one or two Indian members were not quite sure. The Government and the African members supported wholeheartedly this system, but a few months later we had the

(Mr. Mathu)

agitation throughout the country which led to the appointment of this Commission. When the Government and the people knew that the Registration of Persons Bill was to be a law of this land, teams from the Labour Department were sent out throughout the country to explain, particularly to the African people, what the intentions of Government were. They were that they were going to register all the male persons over the age, or the apparent age of sixteen, and that that would be a universal system applicable to all races, finger-printing being the main basis of the registration. It was on that basis that the African community gave a welcome support to the measure at that time, because they saw that Government honoured their promises by the enactment of that law, and they saw in that law—the present law we are recommending to be amended, that at last the British administration in this country were going to show in action that they supported the principle of equality of all men before the law. Now I want to emphasize that—equality of all men before the law—only before the law—and here we have in this law definite discrimination. It is going to be class discrimination, because all those people who can speak and write English will be exempt and those who cannot will have to dirty their fingers with finger-printing. What are the Africans going to say about the promises Government gave to them, when they went round through the Labour Department explaining their intentions to them? Are you going to ruin the very happy relationship now existing between the Africans and the Labour Department? The Africans will definitely accuse the Labour Department and the Government of a breach of faith. That appears in the *East African Standard* of to-day's date—"If Sir Bertrand Glancy's Report is accepted by the Legislative Council the African community would be justified in accusing the Government of breach of faith." They will say that because they definitely promised them throughout the country that the system was going to be acceptable to all races and finger-printing was going to be the means of registration. The Report before us has not criticized adversely the working of the 1947 Registration of Persons Ordinance. In fact it has shown that one-third of the European commu-

ity liable have already been registered and two-thirds of the Asian community liable have already been registered. The percentage of Africans who have been registered is small—only 4 per cent, but this is because temporary arrangements had been made for Africans in the 1947 Ordinance. The African has given the system his wholehearted support. He is going to continue to do so if we are successful in our fight this morning that this Report be not accepted. Now sir, I have already referred to the fact that a small minority in this country have been responsible for the appointment of this Commission. The European members of this Council supported that by taking the lead, suggesting that the Commission should be appointed. It is said that all representatives supported the recommendation with the alternative system. May I say that the African members of Legislative Council who appeared before the Commission opposed any suggestion for an alternative. The African members at the meeting opposed any suggestion of departure from the present law. How many Africans appeared before the Commission—41, and only five Africans sent in the memoranda. Five Asians appeared before the Commission and three sent in memoranda. Forty-six Europeans gave evidence before the Commission and 621 sent in memoranda. I would like to know from the hon. mover how many of the 600 odd memoranda were postcards from the Society for European Civil Liberties. (Laughter.) The recommendations here are not going to be for the good of the country.

Sir, I have referred to the question of the recommendation that finger-printing should be exempted from those people who can pass an educational test. Now the hon. Member for Trans Nzoia and the Commissioner must know that the overwhelming majority of the people in this country are not literate. With regard to finger-printing for registration, there is something of a criminal tint in it, and the agitators who went throughout the country before the appointment of this Commission used the same argument. There are many Africans and Asians who are not criminals and therefore they should not have their finger-prints taken, and it is very, very important to make that point clear.

(Mr. Mathu)

With regard to the educational test in English, you will see that the mover of this motion was the Member for Education. All the Africans throughout the country want to have English teaching so that they can be exempted from this law. I want to make it clear that Government will have to do something, because it is only through the lack of educational facilities that the larger majority of the people are illiterate, and this will be put in for the Member for Education very shortly, as soon as this thing goes through.

Now, sir, hon. European unofficial members of this Council, support this Report. Do they mean what they say, because I cannot see, having supported the 1947 Registration Ordinance, on what grounds other than the ground of supporting a small minority, they have supported this matter. On what other grounds than bowing down to a few who have official responsibility in this law. The fact that they are divided, the unofficial Europeans are divided, shows that all Government benches are not happy about this. The Indian members I think are going to oppose it, and the African members are going to oppose it. We hear so much of European leadership. The non-European leadership also has a place in this land; I think we are for the good government of this country showing the right lead in this matter. I don't want to labour this point, but let me say that it would not be to the dignity of any member of this Council to support the Report before this Council this morning. I think it would be more dignified if the people voted against it.

Now sir, I would just like to refer to the other recommendation, the voluntary record of employment. I would like to say that throughout history it is those people who have the privilege to do all this work, to extend it downwards to those people who are not privileged. We here are called privileged people, we are leaders of the community, and let us extend our privileges to those who are below us. Now Gilbert Murray in his book "Liberalism and Civilization" says:—

"If you take the history of the Liberal movements in Europe during the 19th century you will find consistently the same process: members of

a privileged class working to have their privileges extended to others.

It implied clearly a conquest over mere prejudice, the prejudice of people accustomed to a social system and a way of thinking which they had not the mental energy to criticize. The reforms could not be carried except by a great effort of liberality: an effort by which men made themselves free of self-interest, free of fear, free of prejudice, and were able to see facts and judge policies as free men should."

I claim, sir, that the Europeans in this country are liberal and can exercise liberality.

I have tried to show, sir, that it is unnecessary to change this method of registration. In regard to Part B of the Commissioner's Report, I have shown that finger-printing is only a second best. But why should we have a second best instead of number one. We have a first-class system, surely we should not have a number two. When I have first class I go first class. Since the introduction of this law we have had fewer troubles concerning the *kipande*. Now you are going to alter the thing. How can the African people accept it.

Before I sit down may I appeal to this honourable Council to look at this thing without prejudice, without fear of other people. Let us say as responsible men and women we are going to oppose this recommendation, and as I said earlier this is no reflection on the great man who had to do a very difficult job. He had to create something and he did it.

They say in the paper, the *East African Standard* of this morning that: "The Kenya African Union appeals to all those people both in the Legislature and outside of it who hate racial and discriminatory legislation to stand together and oppose the Glancy Report."

That is the appeal I make now, sir. I do know when it comes to the question to vote the non-Europeans will be united, but they will probably be voted down by the other members, but in order to give another chance I make another suggestion. If we are united and by the majority this Report is adopted, and Government amends the Registration of Persons Ordinance, I suggest this Report may not be acted upon for a

[Mr. Mathu] period of three years, and during the three years the conscientious objectors to the finger-printing should continue to be free from registration, but let the principal registrar go on registering all those people who think it is good, and if there is more than a handful at the end of three years who remain unfinger-printed, let us amend the law. I will get all my people behind me in this matter. I do know the Asian community are quick in obeying the law. Two-thirds have already been registered, and the other third in six months' time will be registered. I request this honourable Council to consider if we are divided in voting that this Report may not be acted upon for a period of three years. Sir, I beg to oppose.

MR. PATEL: Mr. Speaker, I rise to oppose the motion before the Council. In order to make my stand very clear I would like to refer to certain past events in regard to this matter, particularly as far as it concerns me. I was a member of the sub-committee of the Labour Advisory Board which took evidence in the whole country and made a report which led finally to the passing of the 1947 Ordinance. From the very beginning I was against any form of national registration. I also did not find it necessary that the system of identification should be extended to non-Africans and I think at the beginning of the work of that sub-committee even the European members were not satisfied that there was any need to extend the system to non-Africans. But when we heard evidence from the African members that they would support some form of identification provided it was non-racial, the opinion of the members of the committee began to change, and thereafter even the European witnesses who came before the sub-committee accepted that the system of identification should be on a non-racial basis. When it reached that stage I considered in my own mind that if the Africans and Europeans supported some form of identification on a non-racial basis it would not be proper for the Indian community to continue opposition. Therefore I was prepared, in spite of my own feelings against it to support national registration on a non-racial basis. For that reason, when the sub-committee raised the question in this

Council that national registration was necessary in order to prevent evasion of taxation, I got up in this Council and said that if it was necessary for the purpose of preventing evasion of taxation I should be the first to support it. Thereafter it was stated by the then Attorney General that national registration would not be used for a purpose of that nature, so that that argument did not remain valid in favour of national registration. When the deliberations of that sub-committee were over the African members opposed national registration, and it made me free again from the obligation of supporting it, because my argument was that only if the whole population of this country wanted it the Indian community could not stand in the way. Therefore at that stage I opposed the whole system of national registration, but I believed even at that time that if we had national registration the only efficient method of having it was by finger-printing. We had conclusive evidence before us from witnesses as well as experts that if we really wanted to have national registration it could only be based efficiently on finger-printing and on no other method. That was the evidence before the sub-committee and it left no doubt in my mind that if the country accepted registration finger-printing was the only efficient method of doing it. We accepted the principle of a non-racial basis, otherwise there was no need to extend the system to non-Africans. The Indian members felt that as far as the Indian community was concerned there was no need to extend the system of registration to them, but in order to meet African opinion and sentiment it was said that it would be fair to have a system on a non-racial basis. That is how this Council came to the conclusion of having national registration for all.

When the Ordinance was introduced in the Council, having put in a minority report in that sub-committee against national registration, I intended to oppose vehemently that Bill. The Indian members were opposed to the very principle of national registration, but when the African members in the Council supported that Ordinance and when the European members supported that Ordinance, only one Indian member spoke against it in a mild form, whereas we had intended to be very vehemently

[Mr. Patel] against it. I am giving the history in order to show very clearly why I am this morning going to oppose this motion. Thereafter the Asian community, once the law was brought into existence went for registration in a large number. About two-thirds of them have already been registered. The African community was happy to work the Ordinance. However, the agitation started from the European community who had unanimously given evidence before the sub-committee in favour of finger-printing. The agitation started and therefore it was found necessary to appoint a Commissioner.

To me the argument advanced by the hon. mover and the hon. Member for Trans Nzoia sounded rather strange—that one should agree to accept the Commissioner's recommendations and that he should be treated as an arbitrator. In this country in a multi-racial society, we have so many questions on which we have controversies. So many times we disagree with each other. Why not then appoint every time a Commissioner to settle the disputes instead of settling them by votes in this Council? That is a very strange argument in a parliamentary system. It is true we often require investigations and recommendations by experts, but that does not mean this Council is not free to reject any of the recommendations, however respectable and eminent the Commissioner may be.

Having said that I feel that I must voice my opposition to the findings of the Commissioner that national registration is necessary, because that has been my stand from the very beginning. Uganda and Tanganyika have got on very well without any national registration for all these years. Our neighbours do not require it—Uganda and Tanganyika have not suffered on account of that, and I personally oppose it on that ground also—but if the Council thinks that national registration is necessary then they should be honest and say that the only efficient method of carrying out national registration is by finger-printing. Let us have an impartial tribunal from any country where there is national registration in existence, and if you ask them they will tell you without any hesitation that one should adopt the principle of national registration by method of finger-printing. As a member of the sub-committee I

attended once the office of the Labour Commissioner, when an African who was passing on the road had his finger-prints taken, without finding out who he was, and an Asian clerk in four minutes found out full particulars about that person. It would take hours to find out the particulars by any other method. Therefore I think substituting an alternative method as recommended is nothing less than accepting, as the hon. Mr. Mathu stated, the opinion of a small vociferous section. The hon. Mr. Mathu said that all the Indians were against this when the Ordinance was passed into law. But when the sub-committee reported the African members wrote a minority report against the recommendations for national registration and I did likewise. But the African members in the Council supported the Ordinance and that is why the Indian Members had to change their attitude of vehement opposition, otherwise we would have strongly opposed the Ordinance at that time. We had many points to submit to the Council at that time, but we immediately changed because the African members supported the Ordinance and the Indian community could not stand out if the Africans and Europeans both said that registration was required. Personally I have always believed against it.

Finally Sir, I would like to say that we started with the idea of having the system of national registration on a non-racial basis. Once that principle is accepted the method recommended, though in principle non-racial, in practice becomes racial, and if we extend the system of identification to the non-Africans for the purpose of satisfying African opinion and African sentiments there is no reason to depart from that method except to meet the wishes of a few Europeans in this country who, under the name of the Society of Civil Liberties started agitation in the country against finger-printing.

For these reasons I take the opportunity of strongly opposing this motion. Firstly because I am against any form of registration and secondly because once we accept the principle of national registration the only method of doing it efficiently is by finger-printing.

MR. ERSKINE: I feel to-day I have some rather grievous words to speak, and

[Mr. Erskine]

before I launch my barque on the troubled waters I will just say this: the motion before this Council will not be passed—it shall not be passed. I say that, sir, with the greatest possible emphasis, and I feel confident in my mind when this matter comes to be resolved in this Council, that it will be found that this Council will agree to advance the prosperity and welfare of this Colony and Protectorate, as indeed it should do and is pledged to do.

Sir, this matter started a very long time ago. I was first interested in this question of national registration some two years ago. It was one of the planks in my platform at a time when I stood for election to this Council. I said at that time that the new National Registration Bill, which I believe is a good thing, in spite of finger-prints, will be the first step towards ensuring that every Kenyan citizen paid his taxes. I went on to explain how it would help in that particular thing, that was the collection of taxation. Later on I went on to explain how it would help in the control and government of the country and in the protection of the people, and in the preservation of good order throughout the country. Sir, I have never deviated from my views. I have always maintained that this country is a young country, and for reasons we cannot help we are a poor country. For that reason it is necessary that we should take certain steps which are not perhaps so necessary in other countries. In Great Britain, sir, it is a fact that £100 per head of the population is spent in administration. In this country it is something like 29 shillings. It is therefore necessary that we should have certain safeguards that are, perhaps, not so necessary where there is a policeman at every street corner. It has been said that we all agreed to the appointment of this Commission. I suppose it would have been childish at the time for anybody to have refused to agree to the appointment of this Commission. I would say what has already been said here this morning. I never agreed to be bound by the findings of this Commission. Sir, I want to go back a little into the history of how the agitation first started. I would say how I was greatly cheered by two things which I read this morning. As far back as 20 years ago I

[Mr. Erskine]

They would say: "Why should I give evidence. There is the law. I am quite content. I don't have to go and give evidence." It is not a function of ordinary day to day life to go and give evidence—before commissions about something which is already a *fait accompli*. Many, many of my friends came to me and gave their opinions and when I said why don't you go and give your opinions to the Commissioner they said: "Well, you know how it is, I have many things to do." It is understandable. On page 5 of the Report, as has already been said this morning, it is abundantly clear that it is the second-best plan. Now sir, the best is good enough for me and the best is what I require, what I demand for my country. I will not accept the second best. Now sir, I have a large constituency. I think there are just over 50,000 people in my constituency. They are my fellow citizens. They enjoy common citizenship with me, those 50,000 in my constituency. For reasons with which I agree they do not all vote—only a small proportion of them vote—but I take pride in saying that I would like to represent all my fellow citizens in my constituency. They are all kinds and conditions of people in my constituency. Amongst them are one or two hon. gentlemen seated opposite, Sir, I try, as I go about my daily duties, to know what my fellow citizens are thinking, and my fellow citizens, I must insist, shall be allowed to voice their opinion as they wish and I must insist—I must insist they should be allowed to vote as they think. Sir, I want to make that perfectly clear—this motion must be rejected. This motion must be withdrawn. This motion contains something which I consider to be infamous.

It is well known for reasons of finance it has not been possible that all the people of this country shall receive what some claim to be a right to literacy and primary education. I blame nobody for this. This country has only been under proper government for a matter of 50 years, and it has not been possible to make any further progress than we have already made, but it is something a little bit different to turn round to those people that one cannot afford to educate and slap them in the face.

Now, sir, I feel very strongly in this matter that this motion must be rejected.

I feel that there will be the greatest possible trouble in this country for all of us if it is not rejected. As I came down to work this morning I saw the forces of law and order encamped in my city. I am making a charge—an impeachment, if you like—that the reason for a great deal of the trouble that is now worrying us and causing fear and anxiety amongst my fellow citizens was caused by the action of that subversive body, the Society of Civil Libertics. There is not the slightest question about it that those people gave the lead to the subversiveness which always follows exactly the same pattern. I want to make it quite clear that this motion must not be accepted under any circumstances by this Council. I will go further—I have confidence that it will not be accepted, and I think I shall have made my point sufficiently clear when I give you this reason for what I have to say finally—that I could not remain a member of a Council which passed a resolution which a large number of all members of the Council did not believe in. Sir, I oppose this motion and I trust that the good sense of this Council will assert itself, and the honour and dignity of this Council will assert itself and it shall be withdrawn, or a free vote will be allowed on the opposite side and that it will be rejected.

DR. RANA: Generally sir, I can make up my mind on most of the important matters, but I must confess that on this question up to yesterday I did not know exactly what to say on the Glancy Report. On reading this morning a statement by the Kenya African Union, also after hearing some of the speeches by hon. members for and against the case, I am sorry that I will have to oppose the motion as it stands. I may say, sir, I was one of those—whether you call them sheep or goats—who were led to the altar by the hon. Commissioner for Labour. He asked me in the very beginning to come and set the example of putting all ten fingers down and I willingly did so. I may say I am not opposing this issue with any revengeful spirit because I have gone through the finger-printing, and it reminds me when I was very young of the old woman with the humped back whom most of the village boys used to come and tease. She used the most obscene language you ever heard. One day a very old man was passing along, and

[Dr. Rana] when he heard the woman using this very filthy language he said: "Old lady, may I pray for you that your back may become straight?" She said: "No, don't you do that sort of thing. If you want to pray, pray that the mothers of all these bad boys should also become bent." I am in no mood, when I oppose it, of doing it because of what I have gone through. I do it because it is the wish of the majority of the members of this Council and the country and it is in the interests of the peace and order of the country. As my colleague, Mr. Patel, has said, we in a very timid way put up opposition when we knew the African and European members were all in favour of it. Now sir, my only main objection in opposing this is from a practical point of view. I may say, with all due respect for the Commissioner for Labour, for whom I have a high regard as far as his integrity and experience are concerned, there is nothing new in this. This question of a photograph and the question of signature have been discussed, and it was found by the competent authority, and particularly by the Government adviser, that there is no other method of making identification universal except by fingerprinting. Now on the question of the signature, if it was only the signature, that would not matter, nor the question of literacy and knowing the English language, but what I am afraid of is the matter of sponsors, and I warn the Government and those officers who will have to deal with it. On page 5 of the Report under 18 (1) it says: "The presence of a sponsor is clearly a desirable safeguard." That means that myself and my colleagues, as far as Asians are concerned, will be every now and then asked by our people to become a sponsor. We shall have to say on oath that such and such a person was born in Mombasa, and then next day we will be taken to court and put in prison for making a false declaration. (Laughter.) It is not a matter for laughter. One man was fined £25 the other day. The only question is that you must really know a person—you must know the man very well. It is utterly impossible for any human being to know where a person's mother gave birth to him. You have to rely on the word of the person. If a man makes a statement and I countersign it as the doctor, knowing he is a respectable person, and his state-

ment is false, I, according to the law, am supposed to appear before the court as a criminal. This is exactly what would happen under this. You have got thousands of Asians and I think millions of Africans, and out of them there may be ten or twenty per cent going through the education test. First it is impossible for any one to say that people who can sign in English know English—there are some people who can speak rudimentary English. The result would be that nobody would ever be able either to go as a sponsor, nor anyone know whether it is really a proper test. Then there is the question of the photograph. Already the cost of living is increasing, and with due respect to the Member for Health and Local Government, who three years ago became Chairman of the Cost of Living Committee, we have not yet heard anything about it. I intend to bring that matter up later on, sir. There is the question of a photograph, too. An ordinary Asian or African who generally has one pair of trousers and can never even look after them, could never look after a photograph. People going overseas will have to carry one about and every second year or so it will have to be renewed; the photograph will be disfigured and an extra tax will be levied on them.

From those points of view I oppose this Report. I know very well, as has been mentioned by the hon. member this morning, that I did agree to the setting up of a Commission. I did it as we do with many of the Commissions of Inquiry—agree to appoint them in order to see that our voters behind us are satisfied and we members are not heckled too much, and we just want to shelve our responsibilities on to the poor Commissioner. Perhaps, as the hon. Mr. Patel has said, we might, as the Asian members agree to this Ordinance, but I feel from a practical point of view it would mean far more headaches to the Government, and particularly the Commissioner for Labour and also to the country in general, if it was decided to withdraw this legislation which has been passed after very mature and considerable consultation. That must be kept on for at least a few years, and all those who are really peace-loving people should submit to that Ordinance. I can assure them there is no pain or difficulty when you go through that operation. It was very painlessly done in a most comfortable and

[Dr. Rana] respectable way. They gave us soap and towels to clean our fingers and everything was done politely. In those circumstances I think we must stick to our original legislation if the Government agrees it is necessary, and with these few words I beg to oppose.

Mr. BLUNDELL: Mr. Chairman, so far we have had mainly speeches against the motion before the Council. I rise to support it, and in doing so I should like to say that as a Member on this side of the Council I am one of the few members who has had the least biased outlook on the matter from the point of view of my constituency. I have taken a fair census in my constituency and it is quite true to say that there is not, as has been said to-day, a few only who are against fingerprinting. There is in my area a fairly clear-cut division of fifty-fifty for and against finger-printing. I think we have had a great deal of what I call fog thrown over the issue. I think this issue has got very confused because people have felt very strongly about it racially, and I think the real object of the debate to-day, that is to say identification, has tended to get lost in the pros and cons which the Member for African Affairs, Mr. Mathu, made in his speech, especially influenced as he may have been in his background and his race. In my view as asked this Commission to sit to look into the whole question of national registration, and whether finger-prints or an alternative were possible. I make no bones about it. Had this Commission reported that the only method of identification which was desirable was finger-prints, I should have supported it. I absolutely disagree with the hon. Mr. Mathu when he said the Commissioner was forced to give an alternative. I do think it is a reflection on the integrity of the Commissioner. Had there been only one possible method of identification I believe that the Commissioner would have had the integrity and courage to have said so.

Mr. MATHU: May I say that I did make it clear that there was no reflection on the Commissioner, and there is no question of integrity. I think I did make that very clear.

Mr. BLUNDELL: He did make it clear but he also said that in his opinion the Commissioner was forced, and in my

opinion that was a reflection on the integrity of the Commissioner. I am going to support this motion and if, in the light of events we find that this method of identification is not satisfactory, it is always possible to move an alternative method later, and that is a point which must not be lost sight of. If the European elected members at the time had put forward the views of their constituents sincerely and realistically instead of paying tribute to the ideal of racial co-operation and harmony, this would never have happened. The only method by which Europeans can put forward their views is through the European members here, and that is my justification for doing so. Now, sir, many Europeans consider that in a society of different civilizations there is a real danger of their standards being lowered in order to meet the wishes of those who have not been so lucky. They feel that all Europeans are easily identifiable by reason of their status, their habit of living in houses which are constructed for 100 years, their colour and their appearance and for many other reasons. Whereas the same cannot be said of the Africans such as the Ndogobo from Mukogodo or the honey hunter in the forest.

Now I fail to see how accepting this Report is going to be a setback to progress. The Commissioner recommended that this method of identification is perfectly feasible. I fail to see therefore how it is going to send us backwards. Secondly, I am unable to accept that because the vast majority of evidence heard before the Commission came from Europeans that the findings of the Commission are perhaps biased. I am supported by the hon. Member for Nairobi South. He said those who felt strongly on the matter would undoubtedly go before the Commission, and it is therefore significant, I think, that 41 Africans in person and five by memoranda gave evidence before the Commission.

I should also like to deal with the question of the evidence before the Commission. In the Rift Valley very little evidence was given by the Society for Civil Liberties. Far too much attention has been paid to that Society, but there it is, it has been mentioned. I should like to say that in my constituency very little evidence indeed came from that Society. What is far more important is the written

[The Acting Chief Secretary] members will agree, that it was unnecessary to consider any change so drastic as the abandonment of the entire project of building up a national register. (Hear, hear.) This brought him to the second of these main questions—the method of registration.

On this he writes in paragraph 12 as follows:—

"On this question an impressive volume of evidence has been put forward. Against finger-printing as the sole and compulsory system of registration many voices have been raised in protest. These protests have been by no means confined to any one community; they have been expressed by representatives of all communities concerned. Nor is there any room for doubting the strength of feeling genuinely prevailing in many quarters."

On the same subject, three paragraphs further down, under paragraph 14, he writes:—

"On the other hand, it has been represented, though by only a very small proportion of witnesses that the Ordinance should stand as it is in this respect and that no alternative should be permitted. One reason expressed for adhering to the present provision of the Ordinance is the contention which can no doubt be supported by a series of authoritative statements—that of all practicable methods of identification yet devised finger-printing is the most infallible."

To complete this particular quotation he adds:—

"There is no contesting the truth of this, at least as an abstract proposition."

I would interject here, sir, that hon. members should understand from this quotation that any alternative to finger-printing as a means of identification, is a second best, whatever may be the views of individuals in this matter, and cannot be expected to be as nearly as infallible a means of identification as finger-prints.

The conclusion reached on this particular question and the recommendations to give effect to it are contained in paragraph 18 of the Report, the main substance of which I propose to quote:—

"After prolonged discussions with a wide variety of witnesses of all communities it appears that a form of alternative satisfactory for practical purposes and generally acceptable to the public, would be provided if a man, preferring a method of identification other than by finger-printing, were able and willing to fulfil the following requirements:—

- (1) He should appear personally before a registering officer and should be accompanied by a sponsor acceptable to that officer and ready to vouch for the identity of the individual concerned and to certify that the particulars stated are, to the best of the sponsor's knowledge and belief, correct
- (2) He should not only sign his name but should fill up in English, without assistance, a form giving such particulars regarding his national status, age, place of residence, etc., as are mentioned in section 5 of the Ordinance (sub-section (1) (b) to (j))
- (3) He should supply two copies of his photograph renewable after ten years
- (4) He should be required to inform the registration authorities of any change of his name or place of permanent residence

As a justification, sir, for putting forward these recommendations, he writes a little further down, in paragraph 20:—

"The alternative system of registration as set forth above has been put to a large number of witnesses, including representatives of all communities. From the great majority, both unofficial and official, it has met with approval. It is also now generally considered that there should be no insuperable difficulty in carrying out registration on the lines suggested."

Clearly, sir, he concluded from the evidence laid before him that this alternative was both desirable and practicable. As regards the third of these headings, on the question of *kipandis*, he states in paragraph 25 as follows:—

"Now it is an undeniable fact that an employer, to whatever race or

[The Acting Chief Secretary] country he may belong and whatever type of labour he may enlist, feels entitled to assure himself, as far as he can do so, of the antecedents of the man whom he proposes to engage. Apart from any question of wages he wants to know whether the man concerned is likely to remain in one employment for a reasonable time or whether he has contracted a habit of moving at short intervals from one engagement to another. It is clearly in the employer's interest therefore, as experience has shown all the world over, to be able to produce something in the nature of a continuous record of employment. The cutting of *kipandis* has undoubtedly proved a serious handicap in this respect."

In the last sentence of that same paragraph he writes:—

"The cutting of *kipandis* has produced a marked tendency to depress wages rather than to increase them."

Furthermore, sir, the Commissioner comes to the very definite conclusion that a great many employees now appreciate that in losing their *kipande* they lost a record, the value of which generally had not been apparent to the good worker during the period prior to the introduction of the 1947 Ordinance, when he was required by law to have one. So definite is the Commissioner in his finding on this matter that I am going to quote what he writes concerning it in the last subparagraph of paragraph 26, wherein it is stated that:—

"Inquiries made from a variety of witnesses leave no doubt whatever that the *kipande* record of employment is definitely prized by a high proportion of employees, particularly in rural areas. Men with commendable records are extremely reluctant to part with them, and they are frankly bewildered by the orders that have been passed, which appear to them more designed to benefit the unsatisfactory workman than the honest labourer."

To deal with this question, therefore, the following recommendations are made in paragraph 28:—

"It is recommended:—

- (1) That the *kipande* where it has not already been separated into two

portions shall be left intact and shall, at the time of registration, be returned intact to the owner, being surcharged with the words 'Voluntary Record of Employment'—to be filled in only at the employee's request

- (2) That where a *kipande* has already been cut and its owner asks that he should be given an intact record of employment, this should on application be supplied to him free of charge, provided that he has retained and is willing to surrender the lower half of his *kipande*

- (3) That where a request is made for an employment record, but the owner of the *kipande* is unable to produce the lower half of his certificate, his request should be complied with at the time of registration or as soon thereafter as practicable, subject, as regards payment, to the rules relating to lost *kipandis*.

- (4) That those to whom no *kipande* has hitherto been supplied should, on registration, be offered a new form marked 'Voluntary Record of Employment, etc.', free of charge.

- (5) That it should be clearly explained to all concerned that, while they are entirely free to retain or to discard the voluntary record of employment, they would be acting with the greatest imprudence if they failed to preserve, and to make full use of, a document which is designed in their own interest to assist them in securing work at a reasonable wage.

- (6) That it should be made clear to all employers that where they are asked by an employee to fill in the particulars provided for in the voluntary record of employment it is incumbent on them to do so, and that they are thereby exempted from supplying the employee with a copy of the labour card."

The Commissioner, sir, makes it clear from the last sentence in that paragraph that proposals on these lines have been

[The Acting Chief Secretary]

and put to a wide range of witnesses, and have met with almost unanimous approval from all communities concerned. I have tried, sir, to underline in the course of this speech, the precise recommendations which are made in this Report, and the principal reasons which have led the Commissioner to make them. I know that strong views are held on this matter, but whether right or wrong, the Government feels that having entrusted this Inquiry to a distinguished and experienced Commissioner at the unanimous wish of unofficial members of the Council, and having before us, as we now have, such clear evidence of the thorough investigation which he has made into those particular provisions of the 1947 Ordinance on which different views are held, the right thing to do now is to advise this Council to adopt the recommendations which have been made. In proposing this course, the Government is seeking to interpret the wishes of unofficial members opposite in the belief that having submitted, as it were, a case for arbitration, or rather impartial examination by consent, it would be unreasonable not at least to try out the advice which has been given to us. In any case, sir, it will, of course, always be possible, if the real value to this country of an accurate and efficient national register seems to be being impaired by the adoption of this alternative, it will always be possible, I repeat, for the matter to be considered afresh in this Council, and Government would have no hesitation whatsoever, should such a situation at any time become established, in recommending to this Council that a return should be made to universal finger-printing. I do not, suggest, sir, that such a situation will necessarily arise, but I think it well to make this point in case any members of Council shall have such doubts in their minds.

In conclusion, sir, I would express the hope that those hon. members who will be speaking in the course of this debate, will keep in mind the essential fact that before submitting his recommendations, the Commissioner has had the opportunity, which they have not, of hearing evidence at first hand from the lips and from the pens of persons of all races in this Colony, who were sufficiently interested in this matter to bring their views before him. Sir, I beg to move.

THE ATTORNEY GENERAL seconded.

MAJOR KEYSER: Mr. Speaker, I rise to support the motion on behalf of the European Elected Members, with the exception of the hon. Member for Nairobi South, who will state his case himself.

Sir, in a debate on the motion last August, moved by myself, requesting Government to appoint a Commission to inquire into the Registration of Persons Ordinance and to make any recommendations that the Commission found necessary, there was, as the hon. mover has said, no opposition to that motion, and indeed it received a very great amount of support. The hon. Member for Nairobi South and the hon. Mr. Mathu made two stipulations in that debate which were that they should be allowed to go before the Commission and to express their views on every aspect of the Registration of Persons Ordinance, and I understand that no obstacles were placed in their way and that they were given the opportunity of carrying out their wishes. Under those circumstances I also felt like the hon. mover that this Council was accepting the Commission rather as a board of arbitrators. In view of the fact that only one Commissioner was appointed and that he was a man with a very distinguished career behind him as an administrator in India—that we were prepared to accept the Commissioner as an arbitrator in this matter—I did feel at that time very strongly that the whole of this Council was accepting the Commission in that way. Therefore, sir, I also felt, and so did my colleagues, that whatever his recommendation over the principal subject of consideration that was put before him—that is, as to whether the registration should be by finger-printing only or by some alternative—I felt, and my colleagues felt also, that whatever his recommendation over that was that we would have to accept it, and we were prepared to do so.

He has recommended that there is an alternative to finger-printing, and therefore I feel that we are bound to accept his decision over that matter.

In that debate, sir, on the motion for the appointment of a Commission, the hon. Mr. Mathu did state that he hoped that the Commission would not start its work feeling it was bound to recommend

[Major Keyser]

an alternative, and reading through the Report of the Commissioner—I feel the Commissioner did not feel in the least bit bound to recommend an alternative, and that he has recommended the alternative because he feels that it is practicable.

Now, referring sir, to the second part of the recommendation, that is, the one that deals with the *kipande*. I think most of us have held the opinion for a long time that the *kipande* was of value to the African employee. The Commissioner has appreciated that also, and the recommendation that he has made cannot in any way be considered a hardship on an African employee because it is entirely on a voluntary basis. If he wants to keep the lower half of his *kipande* he can, and if he does not think it is of any value he need not have it. Under those circumstances I cannot see that anybody could interpret his recommendation as in the least bit undesirable.

Sir, I am not going to keep Council waiting, but I would like to say this about the whole of this report. It is in my opinion a report with no racial bias in it of any sort. We have in this Council been inclined in recent years to find a racial bias in almost every question that comes up before this Council, and I do hope that we will be able to keep this debate entirely free of racial matters today. Sir, I beg to support.

MR. MATHU: Mr. Speaker, I rise to oppose this motion as vehemently as I can, and before doing so I should like to say that I cannot see any reason why we should be asked to accept this principle—namely, that when you appoint a committee or a commission with terms of reference, you are automatically bound to accept the committee's or commission's recommendations—because that seems to run through the speeches that have already been made this morning. I made my position very clear in August last year when this debate came up, and my hon. friend the Member for Trans Nzoia has already referred to that. I did say that I supported that motion on the understanding that I did not commit myself or my community to agreeing that the Commission should take it for granted that the Ordinance should be amended. It might find that it was necessary to amend the Ordinance. (Hear,

hear.) Perhaps one person, perhaps the whole Council thought—I was right.

Now we are reversing the whole thing. That is the point I want to make quite clear—that in my accepting the appointment of a Commission I did not assume that I was going to accept the recommendations, because I did not know what they were. As they are the recommendations which, from the African point of view and from the point of view of Kenya as a whole, should not be accepted, because they are a setback to the progress of this country, but may I say this is no reflection on the distinguished service of the hon. Commissioner who executed this work. He has been forced into a situation where some people wanted an alternative system of registration and he had to produce one.

The points in paragraph 14 and 16 of the Report before this Council have already been quoted by the hon. mover, and it will be seen that finger-printing is the only inflexible basis for registration in any country, but as the Commissioner was forced by a minority to produce an alternative, he had to climb down and produce an alternative which, if it were accepted would be to the detriment of the progress of this country and particularly to the relationship between the races of this land. That is the position, and that is why I say the African people—and I do know, other people as well—are opposed to the recommendations *in toto* in this Report.

Now sir, going back to what led to the enactment of the Registration of Persons Ordinance, 1947, when the sub-committee of the Labour Advisory Board went through the country taking evidence—I was a member of that Committee—there was no question that the evidence before the Committee at that time was in favour of non-racial registration based on finger-printing. That was accepted by all communities and it was expressed in this Council in 1947 in the second reading of the Registration of Persons Bill, 1947, because it got at any rate almost the unanimous support of this Council. Definitely none of the European elected members voted against the second reading of that Bill—I think one or two Indian members were not quite sure. The Government and the African members supported wholeheartedly this system, but a few months later we had the

[Mr. Mathu] agitation throughout the country which led to the appointment of this Commission. When the Government and the people knew that the Registration of Persons Bill was to be a law of this land, teams from the Labour Department were sent out throughout the country to explain, particularly to the African people, what the intentions of Government were. They were that they were going to register all the male persons over the age, or the apparent age of sixteen, and that that would be a universal system applicable to all races, finger-printing being the main basis of the registration. It was on that basis that the African community gave a welcome support to the measure at that time, because they saw that Government honoured their promises by the enactment of that law, and they saw in that law—the present law we are recommending to be amended, that at last the British administration in this country were going to show in action that they supported the principle of equality of all men before the law. Now I want to emphasize that—equality of all men before the law—only before the law—and here we have in this law definite discrimination. It is going to be class discrimination, because all those people who can speak and write English will be exempt and those who cannot will have to ~~cl-ly~~ their fingers with finger-printing. What are the Africans going to say about the promises Government gave to them, when they went round through the Labour Department explaining their intentions to them? Are you going to ruin the very happy relationship now existing between the Africans and the Labour Department? The Africans will definitely accuse the Labour Department and the Government of a breach of faith. That appears in the *East African Standard* of to-day's date—"If Sir Bertrand Glancy's Report is accepted by the Legislative Council the African community would be justified in accusing the Government of breach of faith." They will say that because they definitely promised them throughout the country that the system was going to be acceptable to all races and finger-printing was going to be the means of registration. The Report before us has not criticized adversely the working of the 1947 Registration of Persons Ordinance. In fact it has shown that one-third of the European commu-

ity liable have already been registered and two-thirds of the Asian community liable have already been registered. The percentage of Africans who have been registered is small—only 4 per cent, but this is because temporary arrangements had been made for Africans in the 1947 Ordinance. The African has given the system his wholehearted support. He is going to continue to do so if we are successful in our fight this morning that this Report be not accepted. Now sir, I have already referred to the fact that a small minority in this country have been responsible for the appointment of this Commission. The European members of this Council supported that by taking the lead, suggesting that the Commission should be appointed. It is said that all representatives supported the recommendation with the alternative system. May I say that the African members of Legislative Council who appeared before the Commission opposed any suggestion for an alternative. The African members at the meeting opposed any suggestion of departure from the present law. How many Africans appeared before the Commission—41, and only five Africans sent in the memoranda. Five Asians appeared before the Commission and three sent in memoranda. Forty-six Europeans gave evidence before the Commission and 621 sent in memoranda. I would like to know from the hon. mover how many of the 600 odd memoranda were postcards from the Society for European Civil Liberties. (Laughter.) The recommendations here are not going to be for the good of the country.

Sir, I have referred to the question of the recommendation that finger-printing should be exempted from those people who can pass an educational test. Now the hon. Member for Trans Nzoia and the Commissioner must know that the overwhelming majority of the people in this country are not literate. With regard to finger-printing for registration, there is something of a criminal taint in it, and the agitators who went throughout the country before the appointment of this Commission used the same argument. There are many Africans and Asians who are not criminals and therefore they should not have their finger-prints taken, and it is very, very important to make that point clear.

[Mr. Mathu]

With regard to the educational test in English, you will see that the mover of this motion was the Member for Education. All the Africans throughout the country want to have English teaching so that they can be exempted from this law. I want to make it clear that Government will have to do something, because it is only through the lack of educational facilities that the larger majority of the people are illiterate, and this will be put in for the Member for Education very shortly, as soon as this thing goes through.

Now, sir, hon. European unofficial members of this Council, support this Report. Do they mean what they say, because I cannot see, having supported the 1947 Registration Ordinance, on what grounds other than the ground of supporting a small minority, they have supported this matter. On what other grounds than bowing down to a few who have official responsibility in this law. The fact that they are divided, the unofficial Europeans are divided, shows that all Government benches are not happy about this. The Indian members I think are going to oppose it, and the African members are going to oppose it. We hear so much of European leadership. The non-European leadership also has a place in this land. I think we are for the good government of this country showing the right lead in this matter. I don't want to labour this point, but let me say that it would not be to the dignity of any member of this Council to support the Report before this Council this morning. I think it would be more dignified if the people voted against it.

Now sir, I would just like to refer to the other recommendation, the voluntary record of employment. I would like to say that throughout history it is those people who have the privilege to do all this work, to extend it downwards to those people who are not privileged. We here are called privileged people, we are leaders of the community, and let us extend our privileges to those who are below us. Now Gilbert Murray in his book "Liberalism and Civilization" says:—

"If you take the history of the Liberal movements in Europe during the 19th century you will find consistently the same process: members of

a privileged class working to have their privileges extended to others.

It implied clearly a conquest over mere prejudice, the prejudice of people accustomed to a social system and a way of thinking which they had not the mental energy to criticize. The reforms could not be carried except by a great effort of liberality: an effort by which men made themselves free of self-interest, free of fear, free of prejudice, and were able to see facts and judge policies as free men should."

I claim, sir, that the Europeans in this country are liberal and can exercise liberality.

I have tried to show, sir, that it is unnecessary to change this method of registration. In regard to Part B of the Commissioner's Report, I have shown that finger-printing is only a second best. But why should we have a second best instead of number one. We have a first-class system, surely we should not have a number two. When I have first class I go first class. Since the introduction of this law we have had fewer troubles concerning the *Kipande*. Now you are going to alter the thing. How can the African people accept it.

Before I sit down may I appeal to this honourable Council to look at this thing without prejudice, without fear of other people. Let us say as responsible men and women we are going to oppose this recommendation, and as I said earlier this is no reflection on the great man who had to do a very difficult job. He had to create something and he did it.

They say in the paper, the *East African Standard* of this morning that: "The Kenyas African Union appeals to all those people both in the Legislature and outside of it who hate racial and discriminatory legislation to stand together and oppose the Glancy Report."

That is the appeal I make now, sir. I do know when it came to the question to vote the non-Europeans will be united, but they will probably be voted down by the other members, but in order to give another chance I make another suggestion. If we are united and by the majority this Report is adopted, and Government amends the Registration of Persons Ordinance, I suggest this Report may not be acted upon for a

[Mr. Mathu] period of three years, and during the three years the conscientious objectors to the finger-printing should continue to be free from registration, but let the principal registrar go on registering all those people who think it is good, and if there is more than a handful at the end of three years who remain unfinger-printed, let us amend the law. I will get all my people behind me in this matter. I do know the Asian community are quick in obeying the law. Two-thirds have already been registered, and the other third in six months' time will be registered. I request this honourable Council to consider if we are divided in voting that this Report may not be acted upon for a period of three years. Sir, I beg to oppose.

MR. PATEL: Mr. Speaker, I rise to oppose the motion before the Council. In order to make my stand very clear I would like to refer to certain past events in regard to this matter, particularly as far as it concerns me. I was a member of the sub-committee of the Labour Advisory Board which took evidence in the whole country and made a report which led finally to the passing of the 1947 Ordinance. From the very beginning I was against any form of national registration. I also did not find it necessary that the system of identification should be extended to non-Africans and I think at the beginning of the work of that sub-committee even the European members were not satisfied that there was any need to extend the system to non-Africans. But when we heard evidence from the African members that they would support some form of identification provided it was non-racial, the opinion of the members of the committee began to change, and thereafter even the European witnesses who came before the sub-committee accepted that the system of identification should be on a non-racial basis. When it reached that stage I considered in my own mind that if the Africans and Europeans supported some form of identification on a non-racial basis it would not be proper for the Indian community to continue opposition. Therefore I was prepared, in spite of my own feelings against it to support national registration on a non-racial basis. For that reason, when the sub-committee raised the question in this

Council that national registration was necessary in order to prevent evasion of taxation, I got up in this Council and said that if it was necessary for the purpose of preventing evasion of taxation I should be the first to support it. Thereafter it was stated by the then Attorney General that national registration would not be used for a purpose of that nature, so that that argument did not remain valid in favour of national registration. When the deliberations of that sub-committee were over the African members opposed national registration, and it made me free again from the obligation of supporting it, because my argument was that only if the whole population of this country wanted it the Indian community could not stand in the way. Therefore at that stage I opposed the whole system of national registration, but I believed even at that time that if we had national registration the only efficient method of having it was by finger-printing. We had conclusive evidence before us from witnesses as well as experts that if we really wanted to have national registration it could only be based efficiently on finger-printing and on no other method. That was the evidence before the sub-committee and it left no doubt in my mind that if the country accepted registration finger-printing was the only efficient method of doing it. We accepted the principle of a non-racial basis, otherwise there was no need to extend the system to non-Africans. The Indian members felt that as far as the Indian community was concerned there was no need to extend the system of registration to them, but in order to meet African opinion and sentiment it was said that it would be fair to have a system on a non-racial basis. That is how this Council came to the conclusion of having national registration for all.

When the Ordinance was introduced in the Council, having put in a minority report in that sub-committee against national registration, I intended to oppose vehemently that Bill. The Indian members were opposed to the very principle of national registration, but when the African members in the Council supported that Ordinance and when the European members supported that Ordinance, only one Indian member spoke against it in a mild form, whereas we had intended to be very vehemently

[Mr. Patel] against it. I am giving the history in order to show very clearly why I am this morning going to oppose this motion. Thereafter the Asian community, once the law was brought into existence went for registration in a large number. About two-thirds of them have already been registered. The African community was happy to work the Ordinance. However, the agitation started from the European community who had unanimously given evidence before the sub-committee in favour of finger-printing. The agitation started and therefore it was found necessary to appoint a Commissioner.

To me the argument advanced by the hon. mover and the hon. Member for Trans Nzoia sounded rather strange—that one should agree to accept the Commissioner's recommendations and that he should be treated as an arbitrator. In this country in a multi-racial society, we have so many questions on which we have controversies. So many times we disagree with each other. Why not then appoint every time a Commissioner to settle the disputes instead of settling them by votes in this Council? That is a very strange argument in a parliamentary system. It is true we often require investigations and recommendations by experts, but that does not mean this Council is not free to reject any of the recommendations, however respectable and eminent the Commissioner may be.

Having said that I feel that I must voice my opposition to the findings of the Commissioner that national registration is necessary, because that has been my stand from the very beginning. Uganda and Tanganyika have got on very well without any national registration for all these years. Our neighbours do not require it—Uganda and Tanganyika have got suffered on account of that, and I personally oppose it on that ground also—but if the Council thinks that national registration is necessary then they should be honest and say that the only efficient method of carrying out national registration is by finger-printing. Let us have an impartial tribunal from any country where there is national registration in existence, and if you ask them they will tell you without any hesitation that one should adopt the principle of national registration by method of finger-printing. As a member of the sub-committee I

attended once the office of the Labour Commissioner, when an African who was passing on the road had his finger-prints taken, without finding out who he was, and an Asian clerk in four minutes found out full particulars about that person. It would take hours to find out the particulars by any other method. Therefore I think substituting an alternative method as recommended is nothing less than accepting, as the hon. Mr. Mathu stated, the opinion of a small vociferous section. The hon. Mr. Mathu said that all the Indians were against this when the Ordinance was passed into law. But when the sub-committee reported the African members wrote a minority report against the recommendations for national registration and I did likewise. But the African members in the Council supported the Ordinance and that is why the Indian Members had to change their attitude of vehement opposition, otherwise we would have strongly opposed the Ordinance at that time. We had many points to submit to the Council at that time, but we immediately changed because the African members supported the Ordinance and the Indian community could not stand out if the Africans and Europeans both said that registration was required. Personally I have always believed against it.

Finally Sir, I would like to say that we started with the idea of having the system of national registration on a non-racial basis. Once that principle is accepted the method recommended, though in principle non-racial, in practice becomes racial, and if we extend the system of identification to the non-Africans for the purpose of satisfying African opinion and African sentiments there is no reason to depart from that method except to meet the wishes of a few Europeans in this country who, under the name of the Society of Civil Liberties started agitation in the country against finger-printing.

For these reasons I take the opportunity of strongly opposing this motion. Firstly because I am against any form of registration and secondly because once we accept the principle of national registration the only method of doing it efficiently is by finger-printing.

MR. ESKINE: I feel to-day I have some rather grievous words to speak and

[Mr. Erskine]
before I launch my barque on these troubled waters I will just say this: the motion before this Council will not be passed—it shall not be passed, I say that, sir, with the greatest possible emphasis, and I feel confident in my mind, when this matter comes to be resolved in this Council, that it will be found that this Council will agree to advance the peace, prosperity and welfare of this Colony and Protectorate, as indeed it should do and is pledged to do.

Sir, this matter started a very long time ago. I was first interested in this question of national registration some two years ago. It was one of the planks in my platform at a time when I stood for election to this Council. I said at that time that the new National Registration Bill, which I believe is a good thing, in spite of finger-prints, will be the first step towards ensuring that every Kenya citizen paid his taxes. I went on to explain how it would help in that particular thing, that was the collection of taxation. Later on I went on to explain how it would help in the control and government of the country and in the protection of the people, and in the preservation of good order throughout the country. Sir, I have never deviated from my views—I have always maintained that this country is a young country, and for reasons we cannot help we are a poor country. For that reason it is necessary that we should take certain steps which are not perhaps so necessary in other countries. In Great Britain, sir, it is a fact that £100 per head of the population is spent in administration. In this country it is something like 29 shillings. It is therefore necessary that we should have certain safeguards that are, perhaps, not so necessary where there is a policeman at every street corner. It has been said that we all agreed to the appointment of this Commission. I suppose it would have been childish at the time for anybody to have refused to agree to the appointment of this Commission, but I would say what has already been said here this morning. I never agreed to be bound by the findings of this Commission. Sir, I want to go back a little bit into the history of how the agitation first started. I would say how I was greatly cheered by two things which I read this morning. As far back as 20 years ago I

note from an article in this morning's *East African Standard* that I did not mind words when I felt strongly about anything, and the other thing which I read was about how, in a town in Greece, Thessalonika, some 1,900 years ago, a certain person believed very strongly in common citizenship, and was going through rather a difficult time with a subversive crowd in this city. These people "took unto them certain lewd fellows of the baser sort, and gathered a company, and set all the city in an uproar." Sir, the man, Paul, at that time, dealt with the situation extremely well. I only hope that it will be possible for this Council to deal with the situation in the same way. It was an obvious thing, this question of finger-prints, an obvious occasion for the demagogue to seize upon. It was a member of my own race and civilization who first took upon himself, here, this role of demagogue. The formation of the Society of Civil Liberties was one of the greatest disasters which ever came to this country. I have here before me a circular sent out by the Society. It is dated 11th April, 1950, it is signed by a man whose name I will forbear to advertise. "It is the intention of the members of the Society to maintain the Society in existence, but as those who can contribute to the essential technical and difficult work are extremely busy people, it has been possible for the Society to deal with only a comparatively few matters as they have arisen, as for example the intense 'finger-printing' campaign, which it may be said has, in view of the Glancy Report, succeeded, and it seems that there is now merely awaited the formal alteration of the existing Ordinance." Sir, how wrong those people are. Sir, I want to emphasize that a very large degree and quantity of the evidence which went before this Commission was organized, carefully organized. It is recorded in the minutes of this Society that the members thereof are required to write letters to the papers, fill in cards and submit evidence to the Commission. Now, sir, the ordinary law-abiding citizen had become aware by the time that Commission started sitting, that for two years there had been a law on the Statute Book, and, sir, only those who wished to have the law repealed would naturally feel inclined—I am speaking of ordinary normal citizens in the streets—would be inclined to go and give evi-

[Mr. Erskine]
dence. They would say: "Why should I give evidence. There is the law. I am quite content. I don't have to go and give evidence." It is not a function of ordinary day to day life to go and give evidence before commissions about something which is already a *fait accompli*. Many, many of my friends came to me and gave their opinions and when I said why don't you go and give your opinions to the Commissioner they said: "Well, you know how it is, I have many things to do." It is understandable. On page 5 of the Report, as has already been said this morning, it is abundantly clear that it is the second-best plan. Now sir, the best is good enough for me and the best is what I require, what I demand for my country. I will not accept the second best. Now sir, I have a large constituency. I think there are just over 50,000 people in my constituency. They are my fellow citizens. They enjoy common citizenship with me, those 50,000 in my constituency. For reasons with which I agree they do not all vote—only a small proportion of them vote—but I take pride in saying that I would like to represent all my fellow citizens in my constituency. They are all kinds and conditions of people in my constituency. Amongst them are one or two hon. gentlemen seated opposite. Sir, I try, as I go about my daily duties, to know what my fellow citizens are thinking, and my fellow citizens, I must insist, shall be allowed to voice their opinion as they wish and I must insist—I must insist they should be allowed to vote as they think. Sir, I want to make that perfectly clear—this motion must be rejected. This motion must be withdrawn. This motion contains something which I consider to be infamous.

It is well known for reasons of finance it has not been possible that all the people of this country shall receive what some claim to be a right to literacy and primary education. I blame nobody for this. This country has only been under proper government for a matter of 50 years, and it has not been possible to make any further progress than we have already made, but it is something a little bit different to turn round to those people that one cannot afford to educate and slap them in the face.

Now, sir, I feel very strongly in this matter that this motion must be rejected.

I feel that there will be the greatest possible trouble in this country for all of us if it is not rejected. As I came down to work this morning I saw the forces of law and order encamped in my city. I am making a charge—an impeachment, if you like—that the reason for a great deal of the trouble that is now worrying us and causing fear and anxiety amongst my fellow citizens was caused by the action of that subversive body, the Society of Civil Liberties. There is not the slightest question about it that those people gave the lead to the subversive which always follows exactly the same pattern. I want to make it quite clear that this motion must not be accepted under any circumstances by this Council. I will go further—I have confidence that it will not be accepted, and I think I shall have made my point sufficiently clear when I give you this reason for what I have to say finally—that I could not remain a member of a Council which passed a resolution which a large number of all members of the Council did not believe in. Sir, I oppose this motion and I trust that the good sense of this Council will assert itself, and the honour and dignity of this Council will assert itself and it shall be withdrawn, or a free vote will be allowed on the opposite side and that it will be rejected.

DR. RANA: Generally sir, I can make up my mind on most of the important matters, but I must confess that on this question up to yesterday I did not know exactly what to say on the Glancy Report. On reading this morning a statement by the Kenya African Union, also after hearing some of the speeches by hon. members for and against the case, I am sorry that I will have to oppose the motion as it stands. I may say, sir, I was one of those—whether you call them sheep or goats—who were led to the altar by the hon. Commissioner for Labour. He asked me in the very beginning to come and set the example of putting all ten fingers down and I willingly did so. I may say I am not opposing this issue with any revengeful spirit because I have gone through the finger-printing, and it reminds me when I was very young of the old woman with the humped back whom most of the village boys used to come and tease. She used the most obscene language you ever heard. One day a very old man was passing along, and

[Dr. Rana] when he heard the woman using this very filthy language he said: "Old lady, may I pray for you that your back may become straight." She said: "No, don't you do that sort of thing. If you want to pray, pray that the mothers of all these bad boys should also become bent." I am in no mood, when I oppose it, of doing it because of what I have gone through. I do it because it is the wish of the majority of the members of this Council and the country and it is in the interests of the peace and order of the country. As my colleague, Mr. Patel, has said, we in a very timid way put up opposition when we knew the African and European members were all in favour of it. Now sir, my only main objection in opposing this is from a practical point of view. I may say, with all due respect for the Commissioner for Labour, for whom I have a high regard as far as his integrity and experience are concerned, there is nothing new in this. This question of a photograph and the question of signature have been discussed, and it was found by the competent authority, and particularly by the Government adviser, that there is no other method of making identification universal except by fingerprinting. Now on the question of the signature, if it was only the signature, that would not matter, nor the question of literacy and knowing the English language, but what I am afraid of is the matter of sponsors, and I warn the Government and those officers who will have to deal with it. On page 5 of the Report under 18 (1) it says: "The presence of a sponsor is clearly a desirable safeguard." That means that myself and my colleagues, as far as Asians are concerned, will be every now and then asked by our people to become a sponsor. We shall have to say on oath that such and such a person was born in Mombasa, and then next day we will be taken to court and put in prison for making a false declaration. (Laughter.) It is not a matter for laughter. One man was fined £25 the other day. The only question is that you must really know a person—you must know the man very well. It is utterly impossible for any human being to know where a person's mother gave birth to him. You have to rely on the word of the person. If a man makes a statement and I countersign it as the doctor, knowing he is a respectable person, and his state-

ment is false, I, according to the law, am supposed to appear before the court as a criminal. This is exactly what would happen under this. You have got thousands of Asians and I think millions of Africans, and out of them there may be ten or twenty per cent going through the education test. First it is impossible for any one to say that people who can sign in English know English—there are some people who can speak soldiers' English. The result would be that nobody would ever be able either to go as a sponsor, nor anyone know whether it is really a proper test. Then there is the question of the photograph: Already the cost of living is increasing, and with due respect to the Member for Health and Local Government, who three years ago became Chairman of the Cost of Living Committee, we have not yet heard anything about it. I intend to bring that matter up later on, sir. There is the question of a photograph, too. An ordinary Asian or African, who generally has one pair of trousers and can never even look after them, could never look after a photograph. People going overseas will have to carry one about and every second year or so it will have to be renewed; the photograph will be disfigured and an extra tax will be levied on them.

From those points of view I oppose this Report. I know very well, as has been mentioned by the hon. member this morning, that I did agree to the setting up of a Commission. I did it as we do with many of the Commissions of Inquiry—agree to appoint them in order to see that our voters behind us are satisfied and we members are not heckled too much, and we just want to shelve our responsibilities on to the poor Commissioner. Perhaps, as the hon. Mr. Patel has said, we might, as the Asian members agree to this Ordinance, but I feel from a practical point of view it would mean far more headaches to the Government, and particularly the Commissioner for Labour and also to the country in general, if it was decided to withdraw this legislation which has been passed after very mature and considerable consultation. That must be kept on for at least a few years, and all those who are really peace-loving people should submit to that Ordinance. I can assure them there is no pain or difficulty when you go through that operation. It was very painlessly done in a most comfortable and

[Dr. Rana] respectable way. They gave us soap and towels to clean our fingers and everything was done politely. In those circumstances I think we must stick to our original legislation if the Government agrees it is necessary, and with these few words I beg to oppose.

MR. BLUNDELL: Mr. Chairman, so far we have had mainly speeches against the motion before the Council. I rise to support it, and in doing so I should like to say that as a Member on this side of the Council I am one of the few members who has had the least biased outlook on the matter from the point of view of my constituency. I have taken a fair census in my constituency and it is quite true to say that there is not, as has been said today, a few only who are against fingerprinting. There is in my area a fairly clear-cut division of fifty-fifty for and against finger-printing. I think we have had a great deal of what I call fog thrown over the issue. I think this issue has got very confused because people have felt very strongly about it racially, and I think the real object of the debate today, that is to say identification, has tended to get lost in the pros and cons which the Member for African Affairs, Mr. Mathu, made in his speech, especially influenced as he may have been in his background and his race. In my view we asked this Commission to sit to look into the whole question of national registration, and whether finger-prints or an alternative were possible. I make no bones about it. Had this Commission reported that the only method of identification which was desirable was fingerprints, I should have supported it. I absolutely disagree with the hon. Mr. Mathu when he said the Commissioner was forced to give an alternative. I do think it is a reflection on the integrity of the Commissioner. Had there been only one possible method of identification I believe that the Commissioner would have had the integrity and courage to have said so.

MR. MATHU: May I say that I did take it clear that there was no reflection on the Commissioner, and there is no question of integrity. I think I did make that very clear.

MR. BLUNDELL: He did make it clear that he also said that in his opinion the Commissioner was forced, and in my

opinion that was a reflection on the integrity of the Commissioner. I am going to support this motion and if, in the light of events we find that this method of identification is not satisfactory, it is always possible to move an alternative method later, and that is a point which must not be lost sight of. If the European elected members at the time had put forward the views of their constituents sincerely and realistically instead of paying tribute to the ideal of racial co-operation and harmony, this would never have happened. The only method by which Europeans can put forward their views is through the European members here, and that is my justification for doing so. Now, sir, many Europeans consider that in a society of different civilizations there is a real danger of their standards being lowered in order to meet the wishes of those who have not been so lucky. They feel that all Europeans are easily identifiable by reason of their status, their habit of living in houses which are constructed for 100 years, their colour and their appearance and for many other reasons. Whereas the same cannot be said of the Africans such as the Ndorobo from Mukogodo or the honey hunter in the forest.

Now I fail to see how accepting this Report is going to be a setback to progress. The Commissioner recommended that this method of identification is perfectly feasible. I fail to see therefore how it is going to send us backwards. Secondly, I am unable to accept that because the vast majority of evidence heard before the Commission came from Europeans that the findings of the Commission are perhaps biased. I am supported by the hon. Member for Nairobi South. He said those who felt strongly on the matter would undoubtedly go before the Commission, and it is therefore significant, I think, that 41 Africans in person and five by memoranda gave evidence before the Commission.

I should also like to deal with the question of the evidence before the Commission. In the Rift Valley very little evidence was given by the Society for Civil Liberties. Far too much attention has been paid to that Society, but there it is, it has been mentioned. I should like to say that in my constituency very little evidence indeed came from that Society. What is far more important is the written

[Mr. Blundell] evidence—74 of the memoranda were in favour of finger-prints and 74 were in favour of an alternative, so it obviously appears that a very clear presentation of the point of view of the people was put before the Commission.

The hon. Member for African Interests, Mr. Mathu, gave a quotation from Sir Gilbert Murray's book, "Liberalism and Civilization", and I should like to deal with it, because I think it is the root of the matter. He said that liberal opinion and liberalism in outlook, roughly must be extended downwards. I think the basic issue upon which many members of the European community differ in this regard is as follows: they are only too happy that liberalism should be extended downwards by raising those below up; what they do object to strongly is that it should be imagined that it is an extension of liberalism to reduce those who are up to those who are down. I must stress that. In my opinion this Report gives every literate African the opportunity to step forward on an equality with every literate European and that is a true extension of what I conceive to be liberalism downwards. I believe it is absolutely wrong to say that because an African is illiterate this Report is a slap in the face. I deny that, and I am surprised that the hon. Member for Nairobi South made that statement, and I assume from it that in the whole of this issue his attitude is, if I may use the word, somewhat distorted. Why I say that is this—if you had to choose, would you rather have a bad literate or a first-class illiterate as a citizen of this country? In other words, literacy or non-literacy is not and cannot be an infallible standard for good citizenship, and to say that to ask illiterate Africans to give their finger-prints is a slap in the face is, I submit, a complete distortion of facts. Nobody would taunt any African with the fact that they were unable to sign their names. There are in this country hundreds of thousands of first-class, decent African citizens who do not know how to use a pen. Now, in their own interests and in the interest of the community, it is fair to say to those men, "It is necessary that you should prove your identity". As they are unable to write, the only method by which they can prove their identity is by finger-printing, but to suggest that that is a degradation

is not only ridiculous but, to use a word very much favoured by the hon. Member for the Coast, it is nearly monstrous.

As I said, in my opinion this Report gives every literate African the opportunity of stepping forward on an equal basis with every literate European, and I fail to see why one should point a finger of scorn at those who are not so lucky as to be literate.

Lastly on this issue, it is my belief that this would never have arisen when the original *kipande* was in existence, had a more liberal and tolerant exemption been used for those Africans who had come up the rung of civilization to a higher step. Had we given greater exemption to Africans of that nature, I believe that the bitterness which they felt about the *kipande* would have been eliminated.

Now I want to deal with certain provisions in the Report on the *kipande*. Here again, I think the hon. Member for African Interests who, quite rightly, presented the African case, looked at it entirely from the angle of the African, and I want to put the opposite point of view. I do not believe that it is wrong. I do not think it is wicked, for an employer to ask a man seeking employment to give him a record of his former employment. In effect the African—the employee—I would like to eliminate the word "African" because in other countries where we have a more homogeneous population, skin pigmentation does not loom so large—it is quite normal for a man seeking to exchange labour for cash, quite normal for him to prove to his employer that his labour is worth the cash he is asking, and the method by which he does that is by presenting some form of character. I think in all these issues—and I say this advisedly, and stress to the hon. African members that I do not wish to hurt their feelings or raise their anger—we are apt, in our desire and our excitement at spreading the ideas of the western world to a portion of the world which has been left rather as a backwater, I think in pursuit of that ideal we are rather apt to forget realism. What are the facts? The fact are that we have in this community an extremely difficult situation. We have advanced members of all races, and especially advanced members of the African community, who are fully equipped

[Mr. Blundell] to take their part in the development of the country, and from that we run right down the scale to the primitive man in the desert who has not yet given up his arrow and spear. The difficulty in which we find ourselves is in assimilating those great changes in the social structure of our communities, and I think it is quite wrong to imagine that because the African leaders are anxious, desirous to take their place in the world and to advance in equality with other races—it is wrong to assume every African is as yet so fitted, and I must put it to this Council: just as the African who is largely the employee out here—just as he has rights as an employee and is entitled to raise them, so the employer, in my submission, has a right to a certain amount of protection as to the character of the employee, in exchanging wages, and I do not believe any man who is a good man—any such man, will object to handing to his employer a voluntary record of his employment. In regard to the hon. Member for African Interests' contention that of necessity it will be a forced voluntary record, it would have done him good to come round with me in my constituency and to have listened to the opinions of employers, because the general consensus of opinion is that it will not be a forced record, and that Africans, because of their nature, will in many cases not bother to get this voluntary record and will secure employment anyway, so I do not think a great deal of attention need be paid to that. What I think is vital is that the good African who has not seen the advantages of many Africans here, who has not had the advantages of the Asian and the European communities in education, outlook and background—I believe it is essential that the poor, honest but backward African should be looked after in his own interests, because very often he is too inarticulate to put them forward.

To close—it is a curious role in which I find myself, speaking on a racial issue of this kind, but may I ask hon. members to try and eliminate from their minds the racial issue and may I go back to what I said to begin with. The essence of the thing is not whether people are Europeans, Asians or Africans—the real objective is identification, and if the communities and the various sections of

each community have reached a standard by which identification is easy without finger-prints I see no reason for passions to be raised and I see no reason for vehemence and aggressive remarks. It seems to me a perfectly simple issue. Provided that the Commission has satisfied itself there is an alternative and feasible method of identification I think that alternative method can be applied to any section of the community, and I deny that because some members use finger-prints that that is a degradation or a matter of scorn. Like the hon. Dr. Rana I also went and gave my finger-prints. If this is passed I do not intend to ask for them back. Personally I consider that in either case—whether you like to have an alternative or whether you like to have finger-prints, much ado is being made about nothing. (Hear, hear.)

Lastly, may I stress one point. Whatever may be the decision of this Council, that decision must be acted upon at once. At the present time in this matter we are drifting. There is complete confusion in the up-country districts in regard to what should be the proper method of identification for Africans and the proper method of the use of the *kipande*. There are Africans at the moment, rightly or wrongly, some of whom are going about with the bottoms of their *kipande*, some with tops, some with the bottoms of other fellows' tops and some with the tops of other fellows' bottoms. I submit to this Council that that is a matter which should be put right at once, whatever may be our decision. Mr. Speaker, I beg to support.

MR. OJANGA: I should like to make a few remarks at this rather late stage in the debate. To begin with I should like to pay the highest credit possible to the Commissioner who produced the Report under discussion. I think he did a worthy job and we cannot help admiring it, but at the same time it is a fact that the total sum of his labours amount to nothing but this: he had to find reasons for arguments that had already been put forward by a certain Society in this country, representing a very small section of the European community. I think that is a fact, and whatever we do we cannot run away from it, because there is nothing new in this Report. All it has done is to provide explanations, reasons for those arguments or demands which were

(Mr. Ohanga) made by this Society. That being so, I should like to support my hon. friend, Mr. Mathu, whole-heartedly on the point which he made—that the Commissioner had a very hard task, because he was asked to justify something which had already been put forward—in that way he did not have much opportunity of exercising discretion. I think that is a point with which we cannot disagree, if we regard facts as facts. In a country like this one, where you not only have mixed races, but also mixed cultures and standards of education, it is only necessary to come down to what would be a fair common denominator in all matters of general policy, and it seems to me that on this particular point under discussion and the recommendations that have been put forward with regard to the use of different types of identification and so on, it has not come down to a common denominator. When literacy in English becomes the standard at which we may be exempt from giving our finger-prints, it should be realized that English as a language, or English as a standard of education, cannot be regarded in Kenya to-day as a common denominator for all communities. I am speaking for five million people, not one per cent of whom can speak English, and this particular issue is claimed to be for the good of the majority. I say it cannot be, because it only records, so far as the recommendations go, the opinions which have been voiced, and sometimes voiced in a heated manner in public everywhere, by a very small minority. We notice that by far the largest number of people who gave evidence before this Commission were non-Africans. We are also told that of these people who gave evidence a large number would favour the alternative that has been provided. We are not told how many Africans who gave evidence were in favour or not in favour of the recommendations before us. I think that is a particularly important point to have before us. I was not able myself to give evidence, but I am sure those who did were of the opinion there should be no change in the Registration of Persons Ordinance, 1947. That point must be made clear when we are speaking for the majority. The principle of finger-printing is now in practice. The people who advised the appointment of this Commission—all of us in Council

here—rejected the idea of finger-printing for human beings. In principle they said it was not good enough for a man who was not a criminal to be finger-printed. But, instead of supporting its removal for all, the recommendation before Council now favours the idea of perpetuating it for the majority, and exempting only a negligible minority, composed mainly of immigrants. An alternative to finger-printing cannot be anything but discriminatory so long as Africans are allowed to remain illiterate.

Africans in this country have suffered the indignities of the *kipande* system, including finger-printing for nearly 30 years. It was exactly a year yesterday since the Registration of Persons Ordinance, 1947, came into force. A few Europeans objected to being finger-printed as soon as the law came into force. The Council is now asked to amend the law. What the African people had suffered for nearly 30 years, the whole community cannot bear for one year, although it is now on a very mild form!

Although the hon. Member for Rift Valley has said there is nothing racial in this Report, I am afraid I cannot be persuaded to think like he does. There is no other way of looking at it, and I feel that although the English is a qualifying standard, it is an English standard and not an African standard. Somebody has to come down and somebody has to go up. At the time when this law was coming into force Government said they would see to it that it affected all communities alike. I should like to hear from the hon. mover whether that was true or not.

The hon. Member for Trans Nzoia did put forward a statement that whatever recommendations were put forward by the Commissioner, we were bound to accept. I thought that was a bit unfortunate on principle because whatever is the use of appointing a Commissioner to make recommendations, and then feel bound to accept such without consideration.

MAJOR KEYSER: On a point of order, sir, I did not say that we were bound at all. I said that it was my view.

MR. OHANGA: I think it is not correct on principle. This Council should be free to reject or accept any recommendations made to it! That point is not one that would persuade me to feel in

(Mr. Ohanga) in favour of the Report that we have before us. The *kipande* has been recommended to continue as a voluntary record of employment. The *kipande* itself has been a burden to the African for 30 years. An employment record is a good idea but it must not be a compulsorily continuous record. We are called upon to repeal a measure without giving it a fair trial. The Africans are called upon to keep the record of employment in the form of the old *kipande* from which they fought for so long to be freed.

ACTING CHIEF SECRETARY: On a point of explanation, sir, Mr. Ohanga keeps talking about being called upon to accept the record of employment. They are not being called upon to do anything, they may do so if they wish.

MR. OHANGA: It will amount to that in practice. We accept the present law which requires a person to be registered under the common system of finger-prints. Any departure from that, we are not prepared to accept. Sir, I beg to oppose.

MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: Mr. Speaker, we have heard very divergent views from the opposite side of the house. Suggestions have even been made that it would be reasonable to have a free vote. Now sir, I would like to take upon myself full responsibility, as an official member, for having advised Government to put forward the motion accepting the Commissioner's Report. In a country which is advancing at the pace which this country is advancing, we have reached a very difficult stage in which Government is in the minority in our consequential attempt to try and devise a more progressive form of constitution; the majority is composed of persons of various races who hold very strong views sometimes of a very divergent nature, and thus on occasions such as this a crisis often arises on a subject that is not really worth the fuss that is made about it. On such occasions, if Government does not take a strong line, and does not know what it wants, we should very soon have a form of Government which we find in countries such as France, about 14 different parties all fighting like cats and dogs, no issue ever brought to conclusion, and matters drifting from year to year as this one seems to be doing.

Now sir, it was made perfectly clear in 1947, when the original Ordinance on which the Commission has reported was introduced, that there was a very wide divergence of opinion on a number of matters referred to in the Ordinance, such as finger-printing, *kipandis*, and so forth, and those divergencies were settled in 1947 as a result of a very long and acrimonious debate. As the leader of the Government side this morning drew attention to, the Government was quite content to let that Ordinance rest as it was; but last year a resolution was passed unanimously by the unofficial members in this Council that a Commission should be appointed to make certain recommendations in regard to that 1947 Ordinance. That was a unanimous resolution, and as a result of the recommendations now received the whole of the debate in 1947 has been started again.

If, as was said by the last speaker, persons are not prepared to accept any recommendations altering the law as it stands to-day, then why did they support the motion for a Commission of Inquiry? I submit from Government's point of view it looks as though certain members who feel strongly on these matters, on the unofficial side of Council, in matters of this kind, like to play the game of "Heads, I win—Tails, you lose." In other words, had the Commissioner reported that no change in the law was possible they would have applauded his finding. But as he has reported that in his opinion it is possible and might indeed be advisable to introduce certain changes, they refuse to accept the Report.

My view, and the reason which prompted me to give the advice I did to Government was this: that Government last year might have said, "We refuse to have any further inquiry, the law has been passed, there it stands". The attitude would have been logical, and we could have taken that point of view, but, persuaded by the unanimous opinion of the unofficial members of this House, we gave way to their request for a Commission and appointed a single Commissioner who was entirely unbiased—a man, incidentally, who is fully aware of the difficulties of compiling a register, who has been Governor of the Punjab, I believe, where he did not talk in terms of a population of four or five million people, but probably had eighty or ninety

[Member for Agriculture and Natural Resources]

million people under him, a man of great responsibility. He has reported and he has made suggestions for certain improvements to certain provisions in this Ordinance—and just because there are divergencies of opinion on the other side of Council, that Government at this stage shilly shally, waffle and be frightened and not press the adoption of the Report to a division, I think would be merely making the Government machine look foolish. For that reason I believe Government is absolutely right in introducing this motion this morning and declaring its intention of voting for it. It has been suggested that the present "amending measure" does this, that or the other. There is no "present amending measure". All we have before Council is a Report making certain suggestions that will have to be gone into in very great detail before they could possibly appear before this Council in the form of an "amending measure". All Government is asking is that these suggestions, which are the result of a very careful investigation by a very experienced man, should be gone into and should be presented to this Council in the form of a concrete proposal, which can then be debated in the form of a Bill. I believe that is the proper procedure and the proper course for Government to take.

We have heard a good deal about discrimination, I may say straight away that I personally have no feelings whatever about finger-prints. I do not care whether people have finger-prints as a method of registration or not. I have never taken any part in these discussions and can honestly say I have no feelings about it whatever, but when I am told it is discrimination to allow a person whose whereabouts can always be established, who is a perfectly well-known person, who can be vouched for by means of sponsors to be registered in one way as against persons who for various reasons are a floating population, difficult to identify, being registered in another way, I really cannot see that there is an awful lot in the argument. These different measures would not be peculiar to this country.

I do not want to get involved in the rights or wrongs of the recommendations made, beyond just pointing out one

thing—that it has been suggested that the Commissioner stated that any alternative to finger-prints would be a poor second. He does not say that. What he says is, there can be no denying the fact that finger-printing is the most infallible of all practicable methods of identification, it therefore follows that any alternative must involve elaboration. Now what were the elaborations which he was suggesting? One was a system of sponsors and the other was a system of a rather expensive fee. On this very question of discrimination he turned down the fee proposal because there might be something to be said in regard to discrimination as applicable to a fee. But when it comes to providing sponsors, plus an educational qualification, that qualification surely is open to all.

I did not really mean to intervene in this debate—although that is nearly always said in this Council—but I do hope that this will not blow up into a sort of inter-racial deadlock and lack of co-operation, on a Report which we have all asked for. The Report is put forward with all honesty, making certain suggestions. The Commissioner making that Report was fully aware of the difficulties of dealing with these questions in a country of mixed races. He was fully aware of them when he made his Report, and I do suggest the only common sense viewpoint Government can take is, you have asked for a Report, you have named the Commissioner you want. We did not press this inquiry on you—on the contrary, we said we were quite happy with the law as it stood, but having allowed you to have this inquiry the least we can do now is to see what there is in the recommendations made by the Commissioner and give them a trial. If we find he is mistaken and his recommendations do not work, then would be the time to go back to what has been suggested by certain members on the other side, and go back to the law as it stands to-day. (Applause.)

MR. NATHOO: Mr. Speaker, I agree entirely with the hon. Member for Rift Valley when he says that we are making much ado about nothing. I personally had an open mind this morning when I came to this Council as to how I was voting about the matter. I am among the few who, from force of circumstances, have not been able to go and give my

[Mr. Nathoo] finger-prints and that is why I am perhaps not in the same position as the hon. Dr. Rana is, but I think we ought to look at this matter not from one point of view or the other, but from what is in the best interests of the country.

Mr. Speaker, I place the first blame of the whole matter on the European elected members who, when they agreed to the law, did not think far enough ahead, or perhaps had not the pulse of their constituents under their fingers. They should have thought twice before agreeing to any legislation which was likely to cause so much controversy, and if I may say so, racial bickering. I, sir, feel like the hon. Member for Agriculture and Natural Resources, that there is nothing in this of discrimination, as such. I am convinced about that. But we have to look at the point of view of the majority of African people who are not so enlightened, and who are living in conditions where it is so difficult to get at them. After having got at them through the Labour officers, having given them an assurance that this was going to be the law and it was going to be enforced on all sections of the community, if we are going back on that, whatever may be the reasons, I am convinced in my mind that the repercussions will be very serious indeed, and I appeal to the Government and to the unofficial European members that before they adopt this Report they must look to the practical side of the thing and not at what should be done just because we have appointed a Commissioner.

I want to pay tribute to the hon. Member for Rift Valley for having shown to the members of this Council a mind which is impartial and free from racial discrimination in a question such as this. I would also like to pay tribute to the hon. Member for Nairobi South who, in spite of the wholesale opposition of his colleagues, has the courage of his convictions, to feel that if this Report is adopted it is going to cause serious repercussions. I therefore, sir, confine myself and content myself with only this appeal to this Council—that before the Report is adopted the only consideration we should have in mind is what will be the effect upon the majority feeling of the African population. Since I have no

doubt in my mind that the repercussions will be very bad with very great regret I beg to oppose.

MR. MACDONOCHIE-WELWOOD: Mr. Speaker, I rise to support this motion, and mainly for one reason. We happen to live in a country where the divisions are generally in racial groups. In other countries where systems of democracy and parliamentary practice go on the divisions are divisions of class, of money, of occupation, and what not. Now in this Report, for the first time I see a chance of getting away from this racial division which is continually cropping up. This will make the only division which I believe is possible in this country, which is the division of achievement and the division of education. Unfortunately the whole debate has been brought down to this unfortunate level of racialism once again, which seems to me extremely unfair to the Commissioner who made the Report—for his was an honest attempt to solve that problem about one type of division, replacing it by another, I submit with the fullest support of this Council.

The hon. Mr. Mathu said earlier that parliamentary government must be a failure if, when we do not agree, we submit to arbitration.

It seems to me that that is inevitable for whenever a matter of this sort is discussed, it becomes racial, however hard people who produce reports try to avoid it. Incidentally, on this question of parliamentary government I am interested to notice that the hon. Member for Nairobi South has developed an entirely new parliamentary technique, in which he suggests that if this Council does not agree with him he will resign from it.

As regards the general principle of this Report, I think we are again wrong, as in 1947. The whole *kipande* system at that time, in my opinion, was wrong, and had been wrong for years, because it was compulsory on the African to carry his *kipande*, and I think most Africans bitterly resented the fact that, wherever they were, whatever they were doing, they were expected to carry their *kipande*. This controversy would never have arisen if the African had simply been told that the *kipande* was something like a motor licence, to be produced within three days or a week when they were asked for it. However, that was not done.

[Mr. Macnochie-Welwood]
Another thing, those representatives of the Africans seem always to be speaking entirely for one very small section of the community. Throughout the Inquiry the evidence given by the illiterate African was that he wished to keep his *kipande*, and the African members on this side of Council think that this is an imposition. Upcountry, away from the Central area, I do not believe there is a controversy at all except the original one of having to carry the *kipande* at all times. That is perhaps the tragedy of literacy for a very few of the African race, the rest are illiterate and cannot speak for themselves, and their literate representatives are so anxious to push them forward that they ignore their real interests. Throughout this controversy, both of the European side and on the African side, stress has always been laid upon clamour, there was clamour about the *kipande*, clamour about finger-prints. That seems to happen in every country where eventually the rural population become dominated by the urban viewpoint. Whether I am finger-printed or not is a matter of complete indifference to me, but I do say this, finger-printing is only of value where a signature or other means of identification cannot be done. The European, in particular, is identifiable, he can be identified by a photograph. It so happens in this country that the European race have to administer the law, and to those people who administer the law their own race is very much easier to identify. That is what is at the bottom of the whole of this difficulty and trouble. The European can readily be identified by those who administer the law, and the African is not identifiable. Mr. Speaker, I beg to support.

MEMBER FOR COMMERCE AND INDUSTRY: Since listening to the speech of the hon. Member for Nairobi South, I have had the intention to intervene. I do not question the hon. member's motives. I admire his courage, I admire the spirit which prompted him to make the speech he did. I want to make it quite clear in this instance that my advice in this matter has been that this motion should be fully supported by Government and should be put and carried. Now, sir, my motive in saying this is to make it clear that I have not given

this advice on racial grounds. If this were a racial matter I personally would find it extremely difficult indeed to support the motion, but I would remind hon. members who have made this question into a racial issue that there are certain tests and standards which are open to everybody to meet. There are very many Africans in this country who understand English, who can read in English and write in English. Many of them will not want to go to the trouble of getting photographs and sponsors, any more than I would myself. Finger-printing was very simple as the hon. Dr. Rana said. There was nothing humiliating about it, it took a matter of two or three minutes, and everybody was extremely polite. I cannot imagine how anybody is going to take the trouble of getting photographs which, owing to the rise in the cost of living, they might not be able to afford. Sir, I cannot believe that the hon. members on the other side of Council look upon this motion as racial in character. I think some may be a little frightened to take an honest course on what, it has been freely admitted is a Report without bias based on the integrity of a Commissioner to whom every member has paid tribute. With these words, sir, I beg to support.

MR. JEREMIAH: I wish to oppose the motion. The fact, sir, that it has been proved there is no other infallible way of proving identification than finger-printing makes me definite in my opposition, because if there is no other way and we really mean identification, I do not see why there should have been recommended an alternative. May we assume that those who prefer the alternative were trying not to be identified because otherwise the only way is by giving finger-prints. I support very strongly the plea made by my hon. friend, Mr. Mathu, that the law should remain as it is at present, and the motion to adopt this Report be rejected. It appears to me that the argument put forward about this matter actually does not appear to be, I should say, strong enough. I am led to believe that the registration of persons is not at all necessary, but perhaps it was for a purpose better known by those who introduced it. I remember actually the controversy which started—the *kipande* was mainly for the convenience of the employers and that it was

[Mr. Jeremiah]
only to be applied to the African, but as it was so bad it was decided to abolish it and in place of it, in order that some registration should remain, a common registration should be introduced. Now, sir, to come back in such a short time and say that that was not the only method and give an alternative is to show actually that the intention is not for identification.

Now, sir, when it was decided that something should be done about the *kipande*, Government sent their Labour officers throughout the country to preach to the African specially how finger-printing was the only infallible way of proving identification. They toured the country. They explained how the finger-printing worked and said it would be applied to everyone because it was necessary for everyone to be registered. Even photographs were proved to be not as good as finger-prints. For the good administration of this country we have got to think what is going to happen in the future. It is proposed that Government and the people in authority should, according to the Report, start propagating the idea that there is still an alternative to finger-printing. If we have to have the habit of believing what Government said it is going to be very difficult for the administration of the country. Another point, sir, which I fail to understand is the fact that the Commissioner, after recommending an alternative to finger-printing, that is by literacy in English, a photograph and a sponsor, they still say that those alternatives should be only given, say, to British people but not to aliens. I wonder whether that was a sop.

Thursday, 18th May, 1950

Council assembled in the Memorial Hall, Nairobi, on Thursday, 18th May, 1950.

His Honour the Speaker took the Chair at 9.40 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of the 17th May were confirmed.

ORAL ANSWERS TO QUESTIONS

QUESTION No. 29

By MR. MACNOCHIE-WELWOOD (Uasin Gishu):

(1) Will Government give an assurance that after the present negotiations for purchase of the leases of certain farms in the Kipkarren and Kaimosi areas are completed no further purchases or acquisition of leases of farms in these two areas for the benefit of the Nandi tribe will be entertained?

(2) Will the leases so acquired be put into a trust for the benefit of the Nandi tribe and only controlled and supervised settlement therein by them be allowed?

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: The past history and circumstances attending the discussion and negotiations in regard to the areas referred to by the hon. member are within the cognizance of the majority if not all the members of this Council. The past history is fully dealt with in the report of the Carter Commission whose recommendations were explicit.

(1) The answer to the first part of the hon. member's question is in the affirmative.

In this connexion I can perhaps best satisfy the hon. member by quoting part of the statement made by His Excellency the Governor to certain chiefs and counsellors of the Nandi tribe on 11th April:—

"I have come here to tell you that Government has bought the leases of a portion of the land in the Kipkarren salient and is also making arrangements to buy the leases of farms in the Kaimosi area to the north of the Yala River. The land which has been bought by the Government for your benefit has

[Member for Agriculture and Natural Resources]

cost a great deal of money and I must make it quite clear to you that the leases of these lands have only been bought by Government to be used for your benefit on the strict understanding that from this time onwards the Government will not listen to any claim which the Nandi may raise for any of the remaining farms in Kipkarren or Kaimosi. This is an agreement I have made with the Europeans on your behalf, and they and you and I, as men of honour and trustworthy men, have to see that we keep that agreement.

I will explain again: the Government has spent a great deal of money on buying the leases of this land to be used for your benefit, and a number of European farmers have had to give up their established homes. In return there can be no question of Government ever considering any claims by the Nandi for the remainder of the Kipkarren and Kaimosi farms until they revert to the Nandi at the end of the leases. But the Government, the Europeans and the Nandi, as men of honour will keep this agreement until its years are fulfilled and live in friendship together."

(2) The reply to the second portion of the hon. member's question is also in the affirmative, and in this connexion I would again quote from His Excellency's statement:—

"You will no doubt wish to know in what way this land which has been bought for your benefit will be used. I have no intention of allowing it to be ruined by over-grazing or uncontrolled settlement. This land will be put into a trust, and I have asked your District Commissioner, together with the Agricultural and Veterinary Departments, to prepare, in consultation with your chiefs and councillors, plans for the use of these areas. Among other things I had in mind that part of the area might be used for a bigger and better animal improvement centre on the lines of Baraton. It will also probably be possible to use part of the area for control grazing."

These statements were made by His Excellency the Governor in public, and in reply to the hon. member's question I would, on behalf of Government, reiterate these assurances.

MR. CHEMALLAN: Mr. Speaker, arising out of the answer to the second part of the question, would Government please realize that the question of the clearing of land in the Kipkarren and Kaimosi areas will have to be a question between the Nandi tribe and Government, allowing no one else to interfere?

MR. PRESTON (Nyanza): Mr. Speaker, arising out of the answer would the hon. member please state the land registration numbers in respect of which negotiations have taken place and are taking place?

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: There are two supplementary questions. Mr. Chemallan, I think, wanted some assurance that the use to which this land may be put was a question between the Nandi tribe and Government, and no one else should interfere. I think the Governor's statement is explicit. He said that he was preparing, in conjunction with the District Commissioner, on behalf of the Nandi, the settlement of this land, and I think that answers the hon. member's question.

As regards the question by the hon. Member for Nyanza, the land registration numbers of Kipkarren farms are as follows: L.R. Nos. 3147, 3148, 3149, 3150, 3151, 3152, 3159, 3161, 3160, 4187, 3158, 4362, 7138, 7411, 7140, 4570, 7489, 7146, 6957, and 7410, which is unalienated land and known as the Sarora Township and the rest of the Sarora Crown land.

As far as Kaimosi is concerned, the land registration numbers of the farms which are subject to negotiation are: L.R. Nos. 1900/2, 1906, 1901, 1904, 1902, 6734, 6735 and 6736/2.

MR. MACONOCHE-WELWOOD: Arising out of this, can the hon. member give an assurance that the boundaries of the European areas would be adequately fenced.

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: Mr. Speaker, in reply, the answer is in the affirmative. As far as Kipkarren is concerned His Excellency the Governor made the following statement:—

"There is one other matter which I should bring to your notice, and that is that it is intended to make sure that there is a continuous fence constructed between the boundaries of the land which

[Member for Agriculture and Natural Resources]

has been purchased and the European farms. I feel that it is only right that the Nandi should pay for half the cost of this fence: the Government will pay the other half."

As regards Kaimosi—adequate protective fencing will be constructed, but price details still remain to be settled.

STANDING FINANCE COMMITTEE REPORT ON SCHEDULES OF ADDITIONAL PROVISION

THE FINANCIAL SECRETARY: Mr. Speaker, I beg to move: That the Standing Finance Committee Report on Schedules of Additional Provision Nos. 6 of 1948, 2 of 1949, 3 of 1949, and 4 of 1949 be adopted.

This is a purely formal motion and does not entail any explanation.

I beg to move.

THE ACTING CHIEF SECRETARY seconded.

The question was put and carried.

UPLANDS BACON FACTORY (KENYA), LIMITED

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: I beg to move the very lengthy motion which is before members, regarding the Uplands Bacon Factory, Limited, but I think it will be hardly necessary for me to read it out.

The motion was in the following terms:—

"That whereas the Uplands Bacon Factory (Kenya), Limited, has requested the issue of a Crown grant to implement and evidence the vesting in the company of the real property referred to in section 7 of the Uplands Bacon Factory (Kenya), Limited (Constitution) Ordinance, 1945 (No. 20 of 1945):

—And whereas the aforesaid section does not specify the term of years and other conditions subject to which it was intended to vest the real property in the company:

And whereas it was intended that such real property should be vested in the company for a term of years equal to the unexpired residue of the term for which the aforesaid real property had been granted to the previous Crown grantees:

And whereas the Governor has approved the issue of a special grant under Part V of the Crown Lands Ordinance (Cap. 140) for the period and at the rent and upon the conditions set forth in the draft special grant, a copy of which is tabled herewith:

Now therefore be it resolved that this Council approves the terms and conditions of the aforementioned special grant under the Crown Lands Ordinance (Cap. 140) whereby there is granted to the Uplands Bacon Factory, (Kenya), Limited (herein referred to as "the company"), the real property so vested in the company by section 7 of the Uplands Bacon Factory (Kenya), Limited (Constitution), Ordinance, 1945, for a term equal to the unexpired residue of the term of 999 years previously granted to and held by the previous Crown grantee, Messrs. the British Colonial Provision Company, by whom the said real property was surrendered to the Crown for the purpose and with the intent that it should in due course be vested in the company."

The purpose of this proposal is really formal. It is within the knowledge of a number of hon. members that at one time Government purchased quite a large area of land from the then occupiers for the purpose of Uplands Bacon Factory, and the whole of this considerable area of land was subject to a 999 years' agricultural lease. A large proportion of that land, the bulk of it, was subsequently resold by Government to private individuals who farmed it, and it is now known as Lari Farm. The remaining comparatively small portion which was required for the actual factory site and houses and so forth was then handed over to the Uplands Bacon Factory, but in the Ordinance which set up the Uplands Bacon Factory (Kenya), Limited (Constitution), Ordinance, 1945, it did not stipulate what term of years the lease of this particular portion of land was subject to. Since then the directors of Uplands have for some time considered the possibility of having to move from this site and naturally they want to know what title they have got to this land, and they want us to make it perfectly clear that the original intention was that they should hold it on a 999-year lease.

Sir, I beg to move.

THE ACTING CHIEF SECRETARY
seconded.

The question was put and carried.

HIDE AND SKIN TRADE (IMPOSITION OF CESS) (AMENDMENT) RULES, 1950

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: I beg to move: That Rule No. 1 of the Hide and Skin Trade (Imposition of Cess) (Amendment) Rules, 1950, be amended by the addition of the following words: "and shall come into operation on the 1st day of July, 1950".

Sir, in the Hide and Skin Trade Ordinance, 1948, section 21, it is stated that "Any rules made under the provisions of paragraph (g) of sub-section (1) of this section shall be laid before the Legislative Council of the Colony, and shall, subject to the terms of any resolution that may be passed thereon, come into operation 30 days after they have been so laid".

As hon. members are aware, it is our intention to alter the cess that is imposed on hides and skins in order to provide money for the development of this very important industry. They are also aware, I think, that the Board of Trade agreement came to an end on 1st May, but before we encourage wholesale export elsewhere we want to make sure that the Board of Trade agreement has, in fact, been fulfilled, and ones thereafter bring in this new rate of cess. This, sir, not only affects this Colony but it affects all the three colonies, all the three East African territories, and we have agreed amongst the three East African territories to bring these new rates of cess in as from 1st July. Well, sir, our files were laid on the table the day before yesterday, I think, and as we cannot so arrange the timing as to ensure that the laying before Legislative Council conforms to the required 30 days and prior to the agreed date, we have got over the difficulty by proposing this addition to the Rules.

The object, sir, is that we are legally entitled to bring this new rate of cess into operation as from 1st July, 1950, in Tanganyika and Uganda are doing.

THE ACTING CHIEF SECRETARY
seconded.

The question was put and carried.

PUBLIC ORDER BILL

SECOND READING

THE ATTORNEY GENERAL: Mr. Speaker, I beg to move: That the Public Order Bill be read a second time. The provisions of this Bill follow provisions of law which have been familiar law in England since 1st January, 1937. Those provisions are fully explained and set out in the "Memorandum of Objects and Reasons" which is before hon. members, and I do not propose to deal with them at length.

First, the Bill will make it an offence to be a member of, or to take part in the control or management of, an association organized, trained or equipped to usurp the functions of the police or of the armed forces of the Crown, or organized, trained or equipped either for the display of physical force in promoting any political object, or in such manner as to arouse reasonable apprehension that it is organized and either trained or equipped for that purpose.

Secondly, it will be an offence to carry offensive weapons at public meetings.

Thirdly, the Bill will enable the Governor in Council to prohibit the wearing of uniforms in connexion with political objects.

As I have said, sir, the provisions are familiar law in England and have been widely adopted in other colonial territories. They are put forward for the public's benefit and I hope that they will be generally recognized.

Sir, I beg to move.

THE ACTING SOLICITOR GENERAL
seconded.

MR. JEREMIAH: I am afraid, sir, that the hon. the mover did not try, in his "Memorandum of Objects and Reasons", to explain clause 2. In clause 2, sir, especially when we refer to "private premises". I assume that it is proposed that people should not meet anywhere at all except with permission.

I strongly object, sir.

THE ATTORNEY GENERAL: Sir, I think that the hon. member who has just spoken is under a complete misapprehension as to the scope of this Bill. There is nothing in it that prohibits meetings that I am aware of. If I under-

[The Attorney General]
stood him aright, he was suggesting that meetings on private premises are prohibited by this Bill. That I do not find in the Bill. There is, as I have explained, a prohibition of organizations equipped to usurp the functions of the police, prohibition of offensive weapons at public meetings and processions, prohibition of offensive conduct conducive to breaches of the peace, prohibition of uniforms in connexion with political objects and a clause making the offences cognizable. Those are the contents of the Bill—not a prohibition of meetings on private premises.

The question was put and carried.

INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL

SECOND READING

THE ATTORNEY GENERAL: Mr. Speaker, I beg to move the second reading of the Interpretation and General Clauses (Amendment) Bill.

With the development of the membership system the practice of imposing statutory duties upon members is increasing. They already have a great number of duties imposed upon them and it has really become essential for the efficient conduct of those duties that they should be empowered to delegate some of them to subordinates, subject, of course, to the general supervision—the responsibility of the member. It is not intended that that power should be exercised to delegate anything but comparatively unimportant administrative or ordinary routine duties. I think that it would be advisable to make it plain in the Bill that that power shall not be exercised—the power of delegation shall not be exercised—in respect of any rule-making power which is conferred by an Ordinance upon a member, and therefore, sir, I shall move in the committee stage to add a proviso to the new clause to this effect: "Provided that nothing in this section shall empower the Chief Secretary, the Attorney General, the Financial Secretary or a member to depute to any person any power to make rules".

Sir, I beg to move.

THE ACTING SOLICITOR GENERAL
seconded.

MR. HAVELOCK (Kiambu): Mr. Speaker, I rise to support the Bill and especially I am glad to hear from the hon. mover that rule-making powers will not be allowed to be delegated by members. It was a fear that I had that has now been cleared up—but there is one other thing, sir. I would like an assurance from the hon. mover that there will be some check somewhere, and I would suggest it should be in Executive Council, as regards what powers are delegated by members and to whom. I quite understand that normally a member would only delegate to a senior officer, but as this Bill stands at the moment any power of a member could be delegated to almost anybody, and I would like an assurance from the hon. Member if it is impossible to include some proviso in this Bill—I think it would be rather complicated to include such a proviso. I therefore ask for an assurance from the hon. mover that Executive Council will be consulted when any delegation, serious delegation, important delegation of power is made by a member to a junior in his department.

I beg to support.

THE SPEAKER: If no other member wishes to speak I will ask the hon. mover to reply.

THE ATTORNEY GENERAL: Mr. Speaker, in reply to the point made by the hon. Member for Kiambu, I should have no personal objection at all to laying before the Executive Council any delegation which was made by a member. There may be some little difficulty in that the statutory power is with the member; but, if the hon. member will be content with this I will assure him that his suggestion will be considered and administrative effect will be given to it in so far as it is possible to do so without interfering with the statutory position.

The question was put and carried.

PENAL CODE (AMENDMENT) BILL

SECOND READING

THE ATTORNEY GENERAL: Mr. Speaker, I beg to move: That the Penal Code (Amendment) Bill be read a second time. This Bill really makes three amendments to the law. In the first place it adds the words "any of the territories" in various places to the definition of the expression "sedition" which is

[The Attorney General] contained in section 57 of the Penal Code. The territories are defined in the Bill as the territories of Uganda, Tanganyika and Zanzibar. The effect will be to make it an offence to print, publish or distribute in Kenya documents, publications with an intention to bring into hatred or contempt or to excite disaffection against the Government not only of this Colony but of any of the territories as defined, or to raise discontent or disaffection, or to promote feelings of ill will and hostility between different classes, not only of the inhabitants of the Colony but also of the inhabitants of any of the territories. That would penalize the publication of seditious documents here in Kenya which relate to other territories.

Now, in order to be of benefit to Kenya, other territories must enact similar legislation. I am informed that Uganda has already passed a Bill containing similar provisions and that Tanganyika intends to introduce such a Bill. I have not yet heard from Zanzibar. There have been cases in Kenya of publications clearly showing a seditious intention towards the Government of Uganda and tending to promote feelings of ill-will and hostility among different classes of the population there, hostility which could hardly fail to have repercussions here in Kenya, and yet nothing under this section could be done in either territory. That is a position which, it is suggested, should be remedied. It is thought that these High Commission territories, and Zanzibar, with whom we have close and cordial ties, might well exercise mutualism in this respect. The tide of hatred and ill will which can be caused by seditious publications is not stopped by frontiers; neither, I suggest, should the feet of pursuing justice be so stopped.

I have been pressed to take an opportunity of attending the definition of seditious intention, of altering it so as not only to extend its scope to other territories but to make its provisions applicable to certain types of seditious publications, to make prosecution of those publications easier. I know that there are a lot of people, many sections of the public, who think that that might well be done. But the freedom of the press is a precious heritage, although one for

which we sometimes pay a very high price, and my own feeling is that it should not lightly be interfered with. The existing definition of "seditious intention" has been worked out over a great number of years. Every paragraph of the first part of that definition, or almost every paragraph, is guarded, modified and explained by the paragraphs in the second part of the definition. I do not think that the time has come to upset that careful balance or to curtail the legitimate acts, speech and publications referred to in the second part of the definition. There is no desire whatever to interfere with calm, balanced and factual reporting or with editorial comment, and there is certainly no desire to stifle criticism of Government. Criticism is good for all governments. (Hear, hear.)

The difficulty arises from this—that the free nations of the world have now to counter a calculated campaign of virulent vituperation, of mendacity, of misrepresentation and cold hate, conducted by persons whose object it is to exploit our liberal institutions for their own ends. (Applause.) Their aim is to use our freedoms to enable them to flourish in an enlightened atmosphere which they could never enjoy at home: They hope, in that atmosphere, to grow strong enough to make interference with them impossible. Their ultimate aim is to clamp down their species of tyranny upon us. One of their weapons is to gain control of certain organs of the Press, then, by a campaign of misrepresentation, of distortion of facts, of half-truths and downright lying on the one side, and illusory but attractive promises of everything for everybody on the other they attempt to raise a following of dupes and malcontents sufficient to gain their ends. In countries where that object has been achieved the dupes have had clamped down on them a tyranny beside which their former under-privileged state was bliss indeed. Any attempt to forestall these tactics is hailed as an attack upon the liberty, on the freedom of the Press and so on, and many people are foolish enough to heed those cries. These methods, however, are no longer in doubt. They have been, if I may use the phrase, "rumbled" all over the world. It is necessary to have powers to combat them. That is the reason for the amendment embodied in clause 3 of this Bill.

[The Attorney General]

The power to confiscate machinery is a drastic power, and I do not expect that it would be exercised except in grave and serious cases or repeated flouting of the law or where a campaign had been carried on of long standing; but it is very necessary to have that power, for in this country, certain not very well-educated persons and Africans are being seduced from their own way of life by an Asian brand of Communism. They remind me of an animal confronted by the glare of a snake. Mesmerized and bemused, they sway to the rhythm of the snake, unaware that, when they have swayed sufficiently, the result will be an agonizing paralysis and consumption alive. Snakes, however, can be killed by blows intelligently applied. It is better to do that with a stick than with one's bare hands, and it is better to do that with a heavy stick than a light one. I am asking the Council this morning, sir, to increase the weight of the stick.

I should like to make it clear that there is no attack upon the conditions of the workers. Government has sympathy with the conditions of the workers and intends very shortly to produce to this Council a Bill dealing with wages and conditions of employment.

Clause 4 of this Bill extends the limitation period of six months for the prosecution of a person who leaves the Colony after committing an offence. I shall move in committee a redraft of that clause which will omit paragraph (a). Paragraph (a) might be thought to be an attempt to confer some extra territorial jurisdiction. That is not the intention, and it is probably better to omit it.

The opportunity will also be taken in committee to repeal sub-section 4 of clause 72 of the Penal Code. That is suggested for the reasons given in the note which has been circulated to hon. members, and I do not think that I need refer to them at length.

Before I sit down, sir, I should like to refer for a moment again to the definition of "seditious intention" in paragraph (a) of section 57 (1). I am not going to attempt to give a legal exposition of that precise meanings and implications of that section; but, to my mind, there is a difference between a primary intention whether actual or presumed under sub-section (2)) to promote feelings of ill will

and hostility and a case where such feelings are caused incidentally. The former is an offence, the latter may or may not be.

Quite apart, however, from the question of an offence, I hope that I may, without irrelevance, make a plea for more tolerance in speech and writing. I wonder if people always realize the bitter resentment which can be caused, and the feelings of ill will and hostility which can be raised by rudeness, unwarranted rudeness, between the different classes of the population. When we are grossly intolerant—conscious as we are of each other's imperfections—when we are grossly intolerant, we do raise up a wall of resentment which it is very hard to knock down afterwards. I am not speaking of any particular class, but when, for instance, different sections of Indian opinion attack each other violently in the papers, or when Europeans and Africans do the same, that does create a condition of hostility and ill feeling which, to my mind at least, is very unfortunate. All these races are here in Kenya. The task before us surely is to weld them into one nation, one community of which all can be proud. If the United States of America can do it, why cannot we? Each of our sections has its part to play and its contribution to offer. Must we for ever be talking about Europeans, Asians and Africans? Could we not work, slowly perhaps, but surely, towards a conception of one loyalty to His Gracious Majesty and to Kenya. (Applause.) If we continue to believe, and to tell, lies about each other, then surely we are working against that object and not for it. It is fear of each other that is the cause. I trust hon. members will forgive me if I repeat a very few words which are very well known: they were written by G. K. Chesterton:—

"From all that terror teaches,
From lies of tongue and pen,
From all the easy speeches
That comfort cruel men,
From safe and profanation
Of honour and the sword,
From sleep and from damnation,
Deliver us, good Lord."

Sir, I beg to move. (Applause.)

THE ACTING SOLICITOR GENERAL
seconded.

MR. MATHU: I should like to congratulate the hon. Member for a very able speech. I agree with him, but not wholly. I agree with him on the question of "seditious intention" and his plea for the mutuality of this matter, but my difficulty, sir, is the drastic powers, as he called them, of forfeiture of the printing machinery and in addition to the penalties in the clause No. 3 of the "Memorandum of Objects and Reasons": "The penalties at present for printing, publishing or distributing a seditious publication are, for a first offence, imprisonment for two years or a fine not exceeding £100 or both, and, for a subsequent offence, imprisonment for three years and the forfeiture of the seditious publication".

Now, sir, he calls that a light stick and he wants a heavier one, and the heavier one I would not agree with at this stage. I think the present method of dealing with seditious publications and the rest of it is strong enough. I personally would vote against the whole Bill. If I could not get satisfaction on that score, he has not given us instances to justify the demand for a heavier stick than the one he has at the moment, and pending an explanation on that point, sir, I think I had better reserve my voting for or against the second reading of this Bill.

MR. PATEL (Eastern Area): I am in entire agreement with the object of the Bill before the Council. I also wholeheartedly support the various statements made by the hon. mover in support of the Bill, but I have one uneasy feeling about this. The situation which has arisen in several parts of the world on account of what my hon. and learned friend stated was "an Asian brand of Communism" which I would like to state is the "brand of Communism" which has been created by several European writers and does demand dealing with. At the same time I feel that we have been altering the ordinary law during the last three or four years in order to deal with a few people who have attempted to go against the best interests of this country. I have often wondered whether it would not be more straightforward and honest to pass some legislation which will deal with the Communists and their activities only instead of changing generally the law which has

stood good for all classes of people other than Communists, because once we alter the law it could be used against everybody. It could be used against every class of newspaper. That is why I have an uneasy feeling which I think I must express. I am in entire agreement with taking even a heavier stick than this to deal with Communism and Communist activities in this country. At the same time I cannot feel happy that we have altered one or two other laws in this country during the last two or three years and we are now altering this law in order to deal with that class of people only and which altered laws will be applicable to everyone. In a multi-racial society we may on many occasions have differences of opinion which we may express on occasions in a manner which may not be pleasing to each other and in a manner which will not be acceptable to everyone concerned. We have for all these years before had to face this danger of Communism carried on with the ordinary law which is in existence, and now we have to apply this altered law to everyone else. That is the only uneasy feeling I have. Even the best newspapers who may not have offended against the law may be put into difficulty at any time on certain grounds under the proposed law.

The other uneasy feeling I have is about taking steps to confiscate machinery on mere suspicion before the person is convicted. There, I think, sometimes the authorities are likely to err and the proprietors may suffer very heavy financial loss. Supposing a paper is suspected of making a seditious publication, suspected on information which may not be correct, and the machinery of a paper like that is taken over until the trial is over, then if they are acquitted and found innocent they will unnecessarily suffer heavy financial loss. Therefore it appears to me to be rather going too far. With these observations I personally would like to make clear that I shall always stand behind any steps taken to suppress Communism in this part of the world. (Applause.)

MR. JEREMIAH: Sir, one point I would like to know from the hon. mover—that is, sedition is a very serious offence, and it is also an offence which cannot be confined to one section of the community. I would like to know in a case

[Mr. Jeremiah] of sedition where it is a European who is charged whether he will be prosecuted and judged and sentenced by a court or whether he will have a jury, because in my view when cases come up concerning Europeans against other races and the jury are given the chance to give a decision, the decision has not been quite satisfactory, but if it is not going to rest with a jury I would agree.

LADY SHAW (Ukamba): Mr. Speaker, I would like to support this Bill. I feel that a little additional discretion and restraint in the Press would do none of us any harm. I entirely agree with the hon. member who has spoken, when he said it is regrettable—he wished that one could attack the bogey of Communism more directly. In the meantime, while we cannot attack it directly I think we have got to use such means as lie to our hands and make the stick as heavy as we can under the circumstances—the heavier the better. At the moment we cannot make it as heavy as we should like, but at least we can increase its strength as far as is possible to do so.

If I may say so, I listened with the greatest interest to I think, the most admirable speech I have heard in this Council, which was made by the hon. Attorney General. (Applause.) I think if we are honest we have to admit that on the subject of discretion he has probably held up a glass to us in which we can see most of us, if we are truly honest, see our own reflection, and I hope, sir, in going away from this Council we will not entirely forget what I think he has so truly said, so admirably said.

I beg to support.

MR. NATHOO (Central Area): Mr. Speaker, fears are expressed in some quarters that these days there is a tendency on the part of Government to acquire more and more power to curb the liberty of the people. At first sight this may appear to be true, but if we go a bit deeper into the matter I feel, and am sure all right-thinking people will agree, that it is necessary to surrender some of our liberties to protect others which are more desirable. (Applause.) Sir, at the same time I should like a definite assurance from the hon. mover who made such a wonderful and excellent speech whilst moving this motion,

to allay any fears that may exist, that the powers of confiscation will not be lightly exercised.

There is also one other observation I would like to make at the risk of being unpopular in some quarters. That is, whilst we promulgate so many laws and regulations there is a marked tendency on the part of the Government not to enforce them immediately, and when circumstances demand it I do hope that Government will take measures to see that the law is strictly enforced.

Sir, I beg to support.

THE ATTORNEY GENERAL: Mr. Speaker, the hon. Member for African Affairs, Mr. Mathu, had fears lest the stick which this Bill provides should be too heavy. I do not think that that is the opinion of the rest of the Council. It is not my opinion. I think we need a heavy stick—(hear, hear)—not only for application as and when needed, but because the fact that that stick is there may act as a deterrent, and it is to prevent this kind of thing, even more than punish it, that is important in these days.

The hon. Mr. Patel hastened to disclaim an implication which I did not seek to make—that Communism was a purely Asian growth. I fully realize that unfortunately it is not, and that it is much more widely spread than that. He asked whether we could not attack that evil more directly and expressed some anxiety at changing the law, which would affect everybody. Well, it may be possible to attack that evil more directly, but it is an extremely difficult thing to do, because as soon as you proscribe something under one name the same thing crops up under another, and so on; and really I feel that the hon. Mr. Nathoo was on the right lines when he said that the community must be prepared to surrender some of its liberties in order to protect others.

The hon. Mr. Jeremiah asked whether there would be a jury in dealing with these offences. It was not my intention, and the Bill does nothing, to interfere with the procedure for trial which is laid down in the Code.

I should like to express my gratitude to the hon. lady, the Member for Ukamba, for the very kind words which she has said about my speech. If I re-

[The Attorney General] member rightly, she has not always been so kind about my remarks, and I am very grateful indeed for what she has said on this occasion.

The hon. Mr. Nathoo hoped that the powers of confiscation would not be lightly exercised. Well, as I indicated in my speech in moving the second reading, there is no intention that they should be lightly exercised, and I think that that is a matter which we must leave to the good sense and discretion of the court, realizing that there is from this section, as from other sections, a right of appeal.

With regard to the point of the possibility of seizing machinery and bringing the person responsible before a court, one can only say that every effort would be made to obtain an order as quickly as possible, but I think that that is a necessary provision to have in the Bill.

Finally, the hon. Mr. Nathoo expressed the hope that Government would enforce its power strictly. I share that hope.

Mr. Speaker, I do not think that there was any other point to which I ought to reply, and I therefore again beg to move.

The question was put and carried

POLICE (AMENDMENT) BILL SECOND READING

THE ATTORNEY GENERAL: Mr. Speaker, I beg to move: That a Bill entitled "An Ordinance to amend the Police Ordinance, 1948," be read a second time.

There is nothing, I think, of very great importance in this Bill except, perhaps, in one respect, which I will point out.

Clause 2 will amend section 24 of the principal Ordinance by deleting the words "which have been issued to him". As the section stands, it is open to the construction that, in preventing an escape, a police officer may only use arms which have been issued to him personally. Well, I should imagine that that was not the intention of the legislature which passed this Bill, and the action is taken to remedy that and make the original intention plain.

Clause 3 corrects a printing error and I do not think I need deal with it further.

Clause 4 amends the proviso to the principal Ordinance so as to enable a magistrate to order unclaimed firearms to be disposed of at the discretion of the Commissioner. That will enable firearms to be destroyed if the Commissioner so wishes.

Clause 5 restricts the right of "police officers" to take finger-prints to "police officers of or over the rank of assistant inspector or any police officer in charge of a police station".

Clause 9 inserts a new section, 50A, and there is an amendment to that clause which will be moved in committee. The object is to render it unlawful for a police officer to become a member of a trade union, or any association the objects of or one of the objects of which is to control or influence the pay, pensions or conditions of service of the force, except one constituted by regulations made under the principal Ordinance. The amendment will read: "Any police officer who contravenes the provisions of this section shall be liable to be dismissed from the force and to forfeit all rights to pension or gratuity". That is thought to be less complex drafting than the provision which appears in the Bill.

Clause 10 amends section 60 of the principal Ordinance so as to make it an offence to wear the dress or assume the name, designation or description of a police officer, or to act as, or personate, a police officer.

Clause 12 makes it an offence to attempt, to cause disaffection amongst police officers or induce or attempt to induce any police officer to withhold his services or to commit a breach of discipline. It is a question of whether the penalty provided by that clause is sufficient, and I may move an amendment in committee to increase it.

There is one other matter to which I should draw attention. Clause 6 (d). As the clause at present reads it is an offence to "strike or use or offer violence to any person in his custody". It is proposed to amend that to make it read "unlawfully strikes or uses, or offers unlawful violence to any person in his custody". The previous draft was in error, because it may be necessary and lawful for a police officer to use violence to a person in his custody, for instance, if

[The Attorney General] a person is trying to escape. The provision of the previous wording was too wide.

Sir, with that explanation, I beg to move.

THE ACTING SOLICITOR GENERAL seconded.

Mr. MATHU: One point to which I would refer is section 9, where the police force are not allowed to be members of trade unions. Now does not the hon. member think that it is time to form a police federation, because I do. The members must have from time to time a feeling of frustration when they have not got a forum where they can discuss their terms of service and so on. I think there is a staff association or something of that kind, but I think a police federation should be started as quickly as possible. I am only making the suggestion not to delay it as the hon. member did suggest.

THE ATTORNEY GENERAL: Mr. Speaker, I think the point that has been made is whether it would not be desirable to form a police federation at once. May I assure the hon. Mr. Mathu that I will convey his suggestion to the Commissioner of Police? I know that he has the matter under consideration, and I will undertake to convey to him the views of the hon. member as to the desirability of forming such a federation at once.

The question was put and carried.

Council adjourned at 10.55 a.m. and resumed at 11.15 a.m.

BILLS

IN COMMITTEE

THE ACTING SOLICITOR GENERAL moved: That Council do resolve itself into committee of the whole Council to consider clause by clause the following Bills: The Public Order Bill, the Interpretation and General Clauses (Amendment) Bill, the Penal Code (Amendment) Bill, the Police (Amendment) Bill.

THE LABOUR COMMISSIONER seconded.

The question was put and carried. Council in committee.

The Bills were considered clause by clause.

The Public Order Bill

Mr. PATEL: In clause 3, sub-clause 6, I would like to move an amendment in the fourth line, where it is stated "at any public meeting held upon private premises". My amendment is to delete the words "held upon private premises" and to substitute the words "or public processions". Why I desire to move an amendment is that where there are peaceful public processions or even meetings held in public places they are so far allowed stewards to maintain the peace and order, and I do not see why that procedure should be granted only for public meetings held upon private premises. Therefore I beg to move that the words "or public processions" be substituted in place of "held upon private premises".

THE ATTORNEY GENERAL: Mr. Chairman, Government cannot accept this motion. The words used in the Bill are the words ordinarily used, and I think they are used with intention. The duty of controlling public processions is a duty which falls to the police and should be kept to the police. Therefore, sir, I cannot agree, on behalf of Government, not to oppose the motion.

Mr. PATEL: Sir, I have seen several public processions in Nairobi and Mombasa, and I never saw any police officer nearby or attending them. I have taken part several times in public processions during the last 20 years and have never noticed police coming near them. Order was always maintained by the volunteers who helped in taking the procession in an orderly manner, and I do not think it will be advisable merely to rely on the police because they may not be there every time.

THE ATTORNEY GENERAL: Sir, in reply to the hon. and learned member, this merely says that nothing in this section shall be construed as prohibiting—and so on. There is provision under the Police Ordinance by which the police can attach conditions to the right to hold public processions and that is not interfered with. As I have said, I cannot agree to this, which might be in some way thought to be limiting the authority given by the other Ordinance.

The question of the amendment was put and negatived.

The question that the clause do stand part of the Bill was put and carried.

The Public Order Bill

MR. PATEL: In clause 7 I would like to move an amendment, that between the words "officer" and "may" in the first line the words be added "not below the rank of assistant inspector". My reason for suggesting this amendment is that that clause should be read along with clause No. 5, that when a meeting is in progress any person who in any public place or at any public meeting uses abusive or insulting words shall be guilty of an offence. To give an ordinary usakari who is near a meeting power to arrest anyone because he thinks someone at the meeting has used threatening and insulting words will, in my opinion, be giving power to a person who will not be able to exercise his discretion properly. Therefore I suggest that such power should not be in the hands of a police officer, but a police officer not below the rank of assistant inspector. That is why I move that the words "not below the rank of assistant inspector" be added between the words "police officer" and "may" in the first line of clause 7.

THE ATTORNEY GENERAL: On behalf of Government I have great pleasure in saying that Government will not oppose that amendment.

The question of the amendment was put and carried.

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

The Interpretation and General Clauses (Amendment) Bill**Clause 3.**

THE ATTORNEY GENERAL moved: That clause 3 be amended by the substitution of a semicolon for the full stop at the end of the proposed new section 23A and the addition of the following words: "Provided that nothing in this section shall empower the Chief Secretary, the Attorney General, the Financial Secretary or a Member to depute to any person any power to make rules".

The question of the amendment was put and carried.

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

The Penal Code (Amendment) Bill
Clause 4.

THE ATTORNEY GENERAL moved: That clause 4 be deleted and the following substituted therefor: "4. Section 59 of the principal Ordinance is amended by substituting a colon for the full stop at the end of sub-section (1) thereof and adding a proviso as follows: 'Provided that where a person leaves the Colony within six months of committing such offence the prosecution for such offence may be begun within six months from the date when such person returns to the Colony after leaving it'".

The question of the amendment was put and carried.

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

THE ATTORNEY GENERAL: I beg to move an amendment to the Bill involving section 72 of the principal Ordinance.

This amendment is rendered necessary by a recent decision of the Supreme Court to the effect that the words "insignia, banners, arms, books, papers, documents or other property belonging to an unlawful society" in the existing sub-section (4) of section 72 make it necessary to prove that the insignia, documents, etc., are still the actual property of the unlawful society before any presumption can be raised from their possession. Thus, if a member has paid for his badge or his membership card, or has even been given it so that the property in it has passed to him, no presumption from its possession arises. This has, to a great extent, defeated the object of the section. To remedy this, it is proposed to substitute the words "of or relating to" for the words "belonging to". The opportunity is taken to insert a sub-section (taken from other colonial legislation) dealing with the presumption to be drawn (until the contrary is proved) from possession of the books, accounts, lists of members, seals, minutes or correspondence of an unlawful society.

I beg to move that the following new clause be added to the Bill:—

"5. Sub-section (4) of section 72 of the principal Ordinance is repealed and the following two sub-sections are substituted therefor:—

[The Attorney General]

(4) When any books, accounts, writings, papers, documents, banners or insignia of, or relating to, an unlawful society are found in the possession or under the control of any person, or when any person wears any of the insignia of, or is marked with any mark of, an unlawful society, it shall be presumed, until the contrary is proved, that such person is a member of the unlawful society.

(5) When any books, accounts, lists of members, seals, minutes or correspondence of, or relating to, an unlawful society are found in the possession or under the control of any person, it shall further be presumed, until the contrary is proved, that such person assists in the management of the unlawful society.

The question was put and carried.

The Police (Amendment) Bill

THE ATTORNEY GENERAL: Mr. Chairman, I beg to move: That clause 6 be amended as follows: paragraph (a), line 16, substituting for the words "strikes or uses or offers violence to any person in his custody" the words "unlawfully strikes or uses or offers unlawful violence to any person in his custody".

Mr. Chairman, I beg to move that this clause be further amended by substituting in paragraph (c), line 20, the word "lawfully" for the word "unlawfully". That is a typographical error.

The question of the amendment was put and carried.

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

THE ATTORNEY GENERAL: Mr. Chairman, I beg to move: That clause 9 be amended by substituting for sub-clause (2): "Any police officer who contravenes the provisions of this section shall be liable to be dismissed from the force and to forfeit all rights to pension or gratuity".

The question of the amendment was put and carried.

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

THE ATTORNEY GENERAL moved: That the Bills be reported back to Council with amendment.

Council resumed and the report was adopted.

THIRD READINGS

THE ATTORNEY GENERAL moved: That the Public Order Bill be read the third time and passed.

THE ACTING SOLICITOR GENERAL seconded.

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

THE ATTORNEY GENERAL moved: That the Interpretation and General Clauses (Amendment) Bill be read the third time and passed.

THE ACTING SOLICITOR GENERAL seconded.

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

THE ATTORNEY GENERAL moved: That the Penal Code (Amendment) Bill be read the third time and passed.

THE ACTING SOLICITOR GENERAL seconded.

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

THE ATTORNEY GENERAL moved: That the Police (Amendment) Bill be read the third time and passed.

THE ACTING SOLICITOR GENERAL seconded.

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

FIRST READING

THE ATTORNEY GENERAL moved: That the Pensions Bill be read a first time.

THE ACTING SOLICITOR GENERAL seconded.

The question was put and carried.

Notice was given that all subsequent stages of the Bill would be taken during the present session.

ADJOURNMENT

Council rose at 11.45 p.m. and adjourned until 10 a.m. on Tuesday, 23rd May, 1950.

Tuesday, 23rd May, 1950

Council assembled in the Memorial Hall, Nairobi, on Tuesday, 23rd May, 1950.

His Honour the Speaker took the Chair at 10 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of the 18th May were confirmed.

PAPERS LAID

The following paper was laid:

By THE ACTING CHIEF SECRETARY:

The Annual Report of the East African Statistical Department for the year 1949.

REVISION OF SALARY SCALES FOR MEDICAL OFFICERS

The motion was in the following terms:—

(1) Be it resolved that, subject to the terms of (2) hereinafter, this Council approves the proposals for revision of salary scales for officers of the rank of Medical Officer and above serving in the Medical and Labour Departments, possessing qualifications recognized by the General Medical Council and registrable in the United Kingdom, shown on the following schedule with effect from the 1st July, 1950.

SCHEDULE

Post	Present Salary or Salary Scale	Proposed Salary or Salary Scale
MEDICAL DEPARTMENT		
<i>Administration and General Division:—</i>		
Director of Medical Services	£1,950	£2,050
Deputy Director of Medical Services	£1,635	£1,800
Asst. Directors of Medical Services	£1,485	£1,700
<i>Medical Division:—</i>		
Senior Medical Officers	£1,335-50-£1,435	£1,650
Medical Officers	£865; £865; £935-35-1,005 (EB)-45-1,140 (PB)-45-£1,320	£865; £865; £935-35-1,005 (EB)-45-1,140 (PB)-45-1,320 (EB)-45-£1,590
Medical Officers (Asian)	£500-25-650 (EB)-25-800	£500-25-600 (EB)-25-675 (PB)-25-800 (EB)-25-950
<i>Laboratory Division:—</i>		
Asst. Director (Laboratory Services)	£1,485	£1,700
Pathologists	£865; £865; £935-35-1,005 (EB)-45-1,140 (PB)-45-£1,320	£865; £865; £935-35-1,005 (EB)-45-1,140 (PB)-45-1,320 (EB)-45-£1,590
Bio-Chemist	£865; £865; £935-35-1,005 (EB)-45-1,140 (PB)-45-£1,320	(If possessing full medical qualifications) £865; £865; £935-35-1,005 (EB)-45-1,140 (PB)-45-1,320 (EB)-45-£1,590
<i>Insect-Borne Diseases Section:—</i>		
Parasitologist	£865; £865; £935-35-1,005 (EB)-45-1,140 (PB)-45-£1,320	£865; £865; £935-35-1,005 (EB)-45-1,140 (PB)-45-1,320 (EB)-45-£1,590
LABOUR DEPARTMENT		
Senior Medical Officer	£1,335-50-£1,435	£1,650

(2) Be it further resolved that this Council approves—

(a) that all serving officers of the rank of Medical Officer and above recruited prior to the 17th January, 1946, shall be given the option of either retaining their present salary scales and the right or privilege (as the case may be) of private practice, or accepting the proposed new scales and relinquishing the right or privilege (as the case may be) of private practice;

(b) that in respect of officers recruited after 17th January, 1946, such new salary scales shall apply;

(c) that all such officers whether recruited before or after the 17th January, 1946, shall, if so required by the Member for Health, attend and treat members of the general public;

(d) that any fees accruing from such private practice arising under (c) of this Resolution shall be retained by the officer concerned

(e) that as regards operations performed by such officers, whether they are recruited prior to or after the 17th January, 1946, one-third of any fees charged shall be paid to the Government and two-thirds may be retained by the officers concerned;

(f) that the Member for Health, at his discretion, may permit any such officer to engage in consulting practice.

THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT: Mr. Speaker, in moving the motion which deals with the question of the revision of salary scales for Medical Officers and above serving in the Medical and Labour Departments, I would draw the attention of the Council to the fact that the hon. Sir Charles Mortimer, when he was Member for Health and Local Government, twice gave this Council a warning that the time might soon arrive when we should have to consider a motion similar to that which is now presented to the Council. As far back as July of last year the then Member for Health and Local Govern-

ment said, "We have reached the stage at which, unless recruits can be obtained in the very near future, it will be necessary to restrict medical services by closing some of the smaller hospitals and depriving certain areas of the services of District Medical Officers. The Director of Medical Services and I are, of course, most reluctant to take this step, but I think it will be inevitable unless these recruits can be obtained very soon".

Again, sir, in his Budget speech in January, the hon. Member reminded Council again, "All is not well with the Government medical services in Kenya. There is a very serious shortage of doctors. We are 22 or 23 short of the establishment at the present moment and we are likely to be more short. Recruitment overseas is almost at a standstill. There is a variety of reasons for that, but I think from my study of the situation that the main reason is a financial one. Our salary scales and our terms of service here are not attractive enough to induce recruits to leave the congenial atmosphere of Great Britain to come out here to an unknown Colony. The plain fact of the matter is, to put it bluntly, that the market price of doctors has gone up and if we want doctors we shall have to pay the market price". Because of that, sir, and because right throughout the Colonial Medical Service there has been evident this shortage of new recruits entering the medical service, the Colonial Office and the British Medical Association in Great Britain have been negotiating to see what could be done to lift the rate of intake into the Colonial Medical Service.

It is perhaps wise just to glance quickly at the reasons for that lack of intake of recruits. There was of course the war hiatus, when few men entered the medical service as compared with the normal intake. There was the introduction of the National Health Service in Great Britain and that period of waiting amongst medical men until their position under that service became clear. There was the fact too, sir, that before the National Health Service was established—and it is an important factor—the young doctor who had just qualified had to buy a practice or a partnership, or put up a brass plate and hopefully wait for patients. With the introduction of the National Health Service, the sale of practices was prohibited and the young doctor in Britain now starts under the

[The Member for Health and Local Government]

National Health scheme with a basic salary which provides security for his initial period of professional life. That, sir, has obviously altered the attitude of a large number of medical men to seeking their fortunes abroad. (MAJOR KEYSER (Trans Nzoia): Shame!) There was recently published in Britain a document bearing on this position called the "Spens Report". It advocated an almost overall increase for medical salaries in the United Kingdom on considerably higher scales than had previously been in force, and those recommendations have in the main been adopted.

It is obvious that because of conditions beyond the control of this Government, or of any Colonial government, that the intake of recruits into the Colonial Medical Service had fallen away to a very serious point. At the present moment in our own medical service we have some twenty vacancies and we are by no means among the most unfortunate in the range of Colonial Governments.

After long negotiation the Colonial Governments and the British Medical Association have arrived at an agreed basis of remuneration which both sides think represents a comparable salary to that which could be enjoyed in Great Britain and I would say—and the Director of Medical Services will elaborate this point if required—that all things that could be taken into consideration have been taken into consideration in arriving at the present scale. That is the question of leave, the question of a lower rate of income tax and all those balancing factors have been considered. It is therefore, sir, my duty to ask this Council to accept the present suggested revised scales in the belief that they will provide some incentive for a greater intake into that service.

At this point I would like to repeat almost word for word what my hon. friend, Sir Charles Mortimer said at the time of the Budget. It is in our opinion essential that the medical service shall be maintained at a British standard, that the administrative and public health side of the medical service shall be maintained at the highest possible standard and in accordance with British ethical standards, and that the training section—that applies particularly of course to the training of Africans—shall be main-

tained and carried out by people who have that British tradition.

In sub-section 2 of the motion members will see the various conditions on which it is suggested these new revised salary scales shall be applied. They will notice in (a) that serving officers recruited prior to the 17th January, 1946, shall be given the option of either retaining their present salary scales and the right or privilege as the case may be of private practice. That, sir, is an attempt to iron out a situation which has been somewhat anomalous in the past. They will notice that in respect of officers recruited after 17th January, 1946, no such option is given and the new salary scales shall apply. It is, however, obvious, that in certain areas or districts of a scattered Colony as is ours, there will not be private practitioners able to maintain practices on a remunerative scale, and because of that factor there will indeed be no private service available in that area. It is obvious that under those circumstances the Government doctors must be able to treat or must be able to be called upon by the public of that area to treat those cases that are urgently necessary. That is the reason for (c) "that all such officers whether recruited before or after the 17th January, 1946, shall, if so required by the Member for Health, attend and treat members of the general public". It is so that some type of medical service shall be available in every area where there is need. (d) I think, sir, is a matter of common justice—that if you require or order a man to do a certain act any remuneration or profit deriving therefrom shall accrue to the man concerned. (e) I think is self-explanatory. The operations concerned are performed in Government time, and for that Government feels that at least one-third of the fee accruing should go to Government; the other two-thirds is obviously the reward of the officer's skill. (f) is in itself, too, explanatory. The Government Medical Service has in its ranks a number of men of high specialized skill who should be available for consulting practice. It will, if this is adopted, be within the realm of the Member for Health at his discretion to permit any such officer to engage in consulting practice. I think, sir, I should point out that these improvements are mainly "scale" improvements. They are not in most cases a question of an immediate cash increase. The cost estimated

[The Member for Health and Local Government]

to the public, if this resolution is adopted, is in 1950 about £1,600 and in 1951 about £2,775, and I am informed that the peak increase when the new intake is in operation will be about £4,000 to £4,500. (MAJOR KEYSER: Shame!) The hon. member says "Shame", but I imagine a shortage of doctors in this country would be even more shameful.

I would, sir, in conclusion, repeat the opinion of Government, that it is essential that the highest efficient medical service which the Colony can afford should be maintained in the interests of the people of the Colony; that it is essential that that service shall be maintained on a British standard with qualifications recognized and registrable in the United Kingdom from whence so much of the quality of the medical profession has sprung. Sir, I beg to move.

THE DIRECTOR OF MEDICAL SERVICES seconded, reserving the right to speak later.

DR. RANA: Mr. Speaker, I beg to move an amendment to the resolution on the motion moved by the hon. Member for Health and Local Government, and the amendment is, sir, that the words "Medical Officers (Asian)" and the figures standing opposite them in the Schedule, be deleted.

Sir, I am sorry I came in a few minutes late. I did not actually hear the first sentences by the hon. member, but I feel I must express my mind freely as to the salary scales. I am not against the increase in the salaries of the medical officers. I think I would be failing in my duty to my professional colleagues if I stood in any way against the increase in salary. During the past five years, sir, I have always tried to avoid discrimination on this question being discussed in this Council, but I must state that this motion depicts naked racial discrimination.

THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT: Mr. Speaker, before the hon. member goes much further can I point out to him that the result of the amendment that he has put in would be to wipe out the Medical Asian Officers from any benefit and any increase at all, and merely to leave them in the present position. I cannot believe that that is his intention.

DR. RANA: If the hon. member will allow me to go on, Sir, the medical profession is supposed to ally suffering, sickness and disease of the individual, irrespective of caste, creed and colour. In that standard, which I agree with the hon. member is the British standard, there is a very high efficiency. Now may I submit, sir, in this part of the world there are Asians who are going to England to get British qualifications, learning under the British professor and expert man, and when they come back here the salary that is given to them is £500 in comparison with the Europeans £850. Sir, I have been myself to England and I am one of those who admit that the British standard of education is far higher, or at least it was far higher in years past, than in India, and when one comes back this is the salary that is given to Asians. The hon. Member for Law and Order was appealing that East Africa should be made a U.S.A. He was asking for the loyalty of the people who had made this country as a home. I am sorry to say, sir, this is to put a high premium on one's loyalty. We have to learn in the English language, we have to pass our examinations in English, we have to pay more than the English boy would in England. As a person who has lived permanently in this country I would request this Council not to leave this item on the Statute of this country. Here is a question on the efficiency, on the British standard in the British University. I fail to see any reason for making this distinction in the salaries. Why do you put this brand over the people that they will be given these salaries. Sir, if I am an Asian Medical Officer and give a little bigger dose by mistake or by misunderstanding to a patient, the judges are not going to say because you are an Asian we will leave you.

I want to make it perfectly clear, I am not pleading for people below the British standard. What I am pleading for is what this country is doing for the people who have made it home, at least for the medical profession. I fail to realize any wisdom in making this distinction. I think it would be a block as far as this country is concerned. Moreover, as I say, this is the only profession which knows no race, creed or distinctions. The diseases are one and the same, the treatment is one

(Dr. Rana) same with the exception of certain specialists, and those people are practically the same. Then why do we have this distinction? Under these circumstances I hope that the hon. members on my right will support me in rejecting this. Let the word *Asian* remain but put it in clear words that a man with the same qualifications will be given some salary but not—if he happens to be white he will be given £850 while a man who is brown or black will be given merely £500. I don't want to start a racial question, but I feel there is no worse form of racialism as there is in this proposal, and with these few words, sir, I would like to move my amendment, and I hope that the hon. members will accept it. If I remember there were one or two people in the service with English qualifications. They have got dissatisfied and have left Government Service. It is putting a stricture on them and a thing like that will not be accepted in any part of the world. With these few words, sir, I move my amendment.

MR. PRITAM (Western Area):

THE GOVERNMENT have proposed to delete the words "Medical Officers (Asian)" and the figures opposite those words in the schedule. Is there any member wishing to speak to the amendment?

MR. PATEL (Eastern Area): Mr. Speaker, I rise to support the amendment moved by my hon. friend Dr. Rana. I think when he moved the deletion concerning Asian Doctors, it is understood he opposes any kind of discrimination in regard to medical officers, whether they are Europeans or non-Europeans, and I think he has said this so very well it is not necessary for me to add anything. I would certainly like to say that when a person gets a British University degree and is employed in the Medical Department, I do not see any reason why there should be distinction in salaries. If it is found that a non-European is not fit to be employed in the Department, then he should not be employed, but if it is found, on account of his qualifications, he is fit to be employed, I do not see why there should be any difference in the salaries. It is within my knowledge that in the East African territories, several Kenya Indian Medical officers joined the department and left within a certain num-

ber of years on account of these differences in salaries. Mr. Speaker, I think one of the discriminations which it is high time to remove is the difference in payment of salaries to these officers, and I strongly support the amendment moved by my hon. friend.

MR. MATHU: I rise to support the amendment and to say that I think this country would benefit a great deal if encouragement were given to medical men and women with British qualifications to work with Government. As a matter of fact if this discrimination suggests unfitness or lack of capability to deal with the patients, then the same persons who are discriminated against should be disallowed to have private practices, because actually they have contact with the public, when they go into private practice, as they do in most towns, serving the community in that way. As that is not the case I see no reason why Government should not feel free to make use of well-qualified men for the service that we need very badly throughout this country, and I can see no reason for this thing. I therefore support the remarks made by the hon. Dr. Rana who put up the case both from his professional knowledge and from other points of view.

THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT: Mr. Speaker, speaking to the amendment, I deeply regret that Government could not possibly accept this amendment. Whatever, sir, may be understood by the people who moved this amendment, let us have due regard to the effect. The effect of this amendment being accepted would indeed be to remove the whole of the medical officers (Asian) from any participation in the benefits which we are now suggesting should be bestowed upon our medical officers, inasmuch as in the estimates which were passed for this year the medical officers (Asian) appeared at the figure of £500 to £800, as is shown in the present salary or salary scale, and to delete them from this amendment would merely be to leave them in the present estimate position with a top level of £800; so that whoever sympathized with the motives of the mover and the seconder of the amendment would agree nevertheless that this would be entirely the wrong way of going about achieving their particular objective.

[The Member for Health and Local Government]

On the general principal, this Council accepted the Salaries Commission and it accepted the proportion which that Salaries Commission laid down. Those principles were put into operation again in the 1950 estimates and I suggest that it would be wrong of this Government to put forward something in direct contradiction of that policy, which was accepted by the Council in a motion of this kind.

One other point remains, and that is the question of private practice. It is correct to say that these Asian medical officers, no less than any other officer who was recruited prior to 1946, will be deprived of private practice, but I think that the hon. members who have spoken to this amendment have forgotten one thing—that the great burden of the work of a Government medical officer is an administrative burden. The needed qualification is administrative ability. However, I have no desire in my turn to deal with racial aspects of any kind and I merely reiterate that Government cannot accept this amendment, because it would be in direct contradiction to a policy already established by this Council, which Government is carrying out.

MR. NATHOO (Central Area): I regret to say, sir, that the hon. Member for Health and Local Government, whilst replying to some of the points raised by the hon. mover of this motion has not given us any reason, or has not given us any arguments to refute the statement of the hon. Dr. Rana as regards the expenses incurred by such people with higher qualifications, nor has he given any reason why this discrimination is being persisted in, except the fact that the salary scales were accepted by this Council.

The other point he has raised is that by the acceptance of this amendment the benefit accruing to Asian medical officers would be removed. As far as I can see the only benefit these people are likely to have is a matter of £150 a year after the present maximum, and I am quite prepared to say that a man who has got these qualifications and who is worth his salt will not in the first place, as conditions are at present and as conditions are going to be, accept a job in this Government at these salaries. I am sure the hon. Director of Medical Services will back me when I

say that during the last few months one or two very good officers, who have been recommended for extra pay in the department, and whose work has been strongly recommended by their superiors, have had to leave the service because Government refused to budge from their policy of discrimination. Under such conditions I am afraid the Asian members will press for the amendment. Sir, I beg to support.

MR. COOKE (Coast): I feel this whole question—and I am looking upon this whole matter as I look upon the motion itself—is a question of supply and demand. We would not be putting up the salaries of the European medical officers were it not impossible to get them on the present salaries. If it is found in later years that you cannot get Indian medical officers on this particular scale, perhaps we might revise our ideas, but at the present moment, as I said, I am supporting the principal motion because I regard it as a question of supply and demand and I look upon it in the same way in respect of Asian doctors.

The question of the amendment was put and negatived on a division by 25 votes to 7:—Ayes—Messrs. Jeremiah, Mathu, Nathoo, Ohanga, Patel, Pritam and Rana. 7. Noes—Messrs. Anderson, Blundell, Cavendish-Bentlock, Cooke, Davies, Erskine, Gherie, Gillett, Hartwell, Havelock, Hope-Jones, Hopkins, Hyde-Clarke, Keyser, Matthews, Mortimer, O'Hagan, Patrick, Pike, Preston, Rhodes, Lady Shaw, Messrs. Thornley, Usher and Vasey, 25.

MR. HOPKINS (Aberdare): Mr. Speaker, I think that the hon. mover of this motion has put up a good case in support of it, but there is one aspect on which I and my colleagues would like to have further information. It seems to me that if this motion is passed there will then be a case for veterinary officers also to demand improved terms of service. They are also most essential to the progress of this Colony, their training is a long and expensive one and they are actually also in rather short supply. The same arguments which have been put up in support of improved terms of service for medical officers could be advanced for better terms of service for veterinary officers. It seems to me that all other professional and technical officers could also

[Mr. Hopkins] urge that, in equity, they should be treated in the same way as medical officers. It seems to me we may be finally pushed into another complete revision of salaries. During the debate on the Salaries Report hon. members on the other side gave us assurances that Government would not in a couple of years' time put up demands for another revision of salaries. The fact that this motion is now before us shows that in so far as medical officers are concerned, they have not been able to stand by this undertaking. As Government servants constitute such a large proportion of the population of this country, the European and Asian population, it is clear, I think, that any general revision in the salaries of Government servants must once again be followed by a general rise in salaries in all walks of life. That this should happen at a time when there are clear indications that a trade depression is well on its way I think would be a disaster.

I realize if we do not pass this motion that we will have to do with very many fewer doctors, just as we had to up to a few years ago. I do not think this is desirable, but I feel it might be even less desirable that there should be a general increase in the salaries and standards of living right throughout this country. I would ask therefore, sir, that the hon. member in his reply, or some other Government speaker, will tell us that Government has gone carefully into this aspect of the question and there are not really grounds for my fears. With these words I beg to support the motion.

MR. USHER (Mombasa): Mr. Speaker, I appreciate very thoroughly the unfortunate position in which the hon. Member for Health finds himself, but I am afraid I cannot lend my support to the remedy which he has proposed to us. The least of my reasons against the motion which is before us is the increased expenditure. Perhaps first of all one ought to direct one's mind to the unfortunate effect of bringing one section of the Civil Service out of line with the rest, and I do not think it will be easy to resist demands such as have been adumbrated by my friend the hon. Member for Aberdare. I doubt whether those demands will be immediate, for the other professional officers in the Civil Service are not

not a part of an organization such as the National Health Service, nor have they the protection of that very powerful association which promotes the interests of the medical profession. I myself remember that the Government took a decision many years ago that the officers of the Medical Service in this country should devote their whole time to that service and should not be allowed private practice. What was the result? The result was a boycott by the British Medical Association. Now my friend the hon. Member for the Coast has spoken on the whole question as if it were a matter of supply and demand. If this is so, sir, then I believe it to be a temporary matter, and it should be met by temporary expedient, either by contracts or by some other means which do not permanently alter the salary structure of the Department.

As it is, however, we are told that we must accept the terms of the British Medical Association or go without. Now nobody more than myself appreciates, deeply appreciates, the fine tradition of the British Medical Service, but I have myself seen medical practitioners of other nations in action and I have suffered them in action upon my person. I was not impressed with any lack of professional tradition and I must say I found their services most efficient. Therefore I feel, sir, it is to a wider field we should look in the present emergency and in conscience and in reason I must oppose the motion.

MR. PATEL: I oppose the motion. My first reason in opposing it is that in a provision like this it makes a discrimination in payment of salaries, in spite of their having the same qualifications. Secondly, sir, when the matter of the amendment was discussed we were told that the Salaries Commission had recently gone into the whole question, and therefore the amendment could not be accepted. That was one of the reasons advanced and I think it was advanced by the hon. the mover.

THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT: On a point of explanation, sir, I did not say that. I said the proportion, sir.

MR. PATEL: Well, the hon. mover cannot disturb the proportion because the Salaries Commission had recommended it. I think then it is too early for the hon. member to disturb the scales of salaries

[Mr. Patel] recommended by the Salaries Commission. Now, sir, for these two reasons I would like to oppose the motion. There was one reason advanced by one of the speakers, that it was a question of supply and demand. Now I don't think that argument appealed to me, because if it had been a question of supply and demand, the supply is much less as regards the Asian because of his scale of salary.

Sir, I beg to oppose the motion.

MR. MATHU: I rise to oppose the motion. In doing so there is one question, which has already been put, which I would like to put to the hon. the mover, and that is if this goes through by the majority what argument would the hon. mover put forward to the African medical officers trained at Makerere when they come to him next week and say that their salaries should be revised upwards. Now what argument can be produced. I can see the agricultural officers arguing the case that they have been through this training, to analyse the soils and plants and so on. Now the African medical officers trained at Makerere who are working for the Government, there are very few; I know them all personally, are doing a very good job of work and I should like to take this opportunity of paying a tribute to them. They are working in very trying conditions. Firstly I have not seen any profession that requires such a high standard of living as the medical profession. I see them all immaculately dressed everywhere. The Indians and Africans are not up to that standard because their salary is so inadequate and they cannot afford to appear so immaculately dressed as they go through the wards. As I say our men cannot keep up to that because of the salary position. I would like to say, sir, in opposing this motion and anticipating a vote of the minority that I think the men are right in this case. As far as the African doctors are concerned they will have our support in making representation to Government that their conditions of service should be revised.

Sir, I beg to oppose.

MR. BLUNDELL (Rift Valley): I just want to say a few words. I should like the hon. member opposite to say whether it is going to be Government's policy

now to allow salary scales through the various profession to be dictated by supply and demand, because that is, in effect, what this Council is being asked to do. There is at the present time a shortage of hydraulic engineers. I think I am correct in saying that the last one has recently left us, because the salaries for hydraulic engineers are not in relation to the supply and demand position. Now it seems to me, as I tried to put forward in the budget debate, we are too apt to put our minds on such things as the medical and education votes. I would like to know, before I vote one way or the other, whether Government intends, in the way of hydraulic engineers, to apply the same principles as are applied to the members of the medical profession.

MR. COOKE: I understand that the point of view is that unless medical officers obtain this enhanced salary scale there will be a shortage. Now I have none of the doubts which my hon. friend has expressed. If it is a question of supply and demand, well then it is quite logical. If we want a hydraulic engineer then we must pay him a higher salary. It is not justifiable for a member of another department to say just because the medical officers are getting a higher salary why cannot he get one. I noticed the hon. Member for Commerce and Industry said "Hear, hear" when certain arguments had developed on this side of the Council. I do not see how he is in any way damaged, if I might use the expression, because my hon. friend the Director of Medical Services gets £150 a year more. I do not see how his position is in any way affected. I think one or two members have been a little bit irrelevant. I am going to talk in general terms about the Medical Department. I hope I do not get out of order! I agree that the time is overdue when we should concentrate on the training of more African medical men. I think it is a grave reflection on this country, on Kenya, as it is a grave reflection on Tanganyika and Uganda, that the Union of South Africa has already provided something like 20 trained African medical men, while I don't think any of these three territories has produced a fully qualified medical officer. Therefore I think it is absolutely essential that we should concentrate on training African medical officers. I have no qualms whatsoever about supporting this motion.

THE FINANCIAL SECRETARY: Mr. Speaker, I would refer to a few remarks which have been made by hon. members opposite, and in particular by the hon. Member for Aberdare. Now the hon. member opened with a complaint that, notwithstanding that Government undertook not to come back to this Council for a revision of salaries under four years (I refer, of course, to the resolution on the 3rd September, 1948), he complains that notwithstanding that undertaking, we are again within two years of that resolution talking of revision in respect of medical officers. I would remind him, sir, that the general revision to which that resolution refers was in respect of quite a different matter. It related, in fact, to a revision necessitated by a rise in cost of living and had no relation to the difficulties of recruiting medical officers. The bringing of the present resolution before this Council cannot therefore be properly deemed a breach of the undertaking.

On the question of repercussions, naturally the effect that this proposed revision might have on other services was very much to the forefront of Government's mind when considering the proposal. But what is the alternative for those other services who might look with envy upon this revision? Government has not only a responsibility in medical matters to the general public of this country but it also has a specific and contractual obligation to the services, and unless this revision is to go through, unless we get medical officers, the alternative is no medical attention and no medical treatment for the services concerned.

There is also the vexed question of other professional services. I must admit that that is a very difficult question. It is clear that if the interest of the State demands it, and the existing scales do not attract the minimum number of officers necessary, then in the interest of the State we shall have to consider whether a revision in other cases should be effected. But I do say this—there is no question of introducing any revision of scales in respect of any particular class of officers without reference to this Council.

I think the hon. Member for Mombasa raised the interesting point as to why it was not possible to recruit officers

on contract so as to avoid a permanent revision upwards of the scale of medical officers. I can assure the hon. member that this possibility was very carefully investigated by Government but during the negotiations which led to this proposed revision it became quite clear that such contract terms without the proposed general revision would not be acceptable, consequently a system of contracts was not possible as an alternative to the revision now before this Council. I would also point out that just as we are faced with a critical need to recruit new officers so we are faced with considerable difficulty in retaining existing members of the service, and I would suggest that contract terms for new officers offer no solution in respect of those officers already in the service.

Sir, I beg to support the motion.

The debate was adjourned.

Council adjourned at 11.05 a.m. and resumed at 11.20 a.m.

The debate was resumed.

THE DIRECTOR OF MEDICAL SERVICES: In rising to support the motion before the Council I should like to elaborate a few of the points that have been made by my hon. friend the Member for Health. What I think we have to realize is that the whole structure of emoluments for medical practitioners has been completely altered by the introduction at home of the National Health Service.

The hon. member has referred to the fact that doctors no longer have to buy practices. That is one potent cause which used to induce doctors to go abroad, which has now been removed. The avenue for the young doctor has been opened up at home, to the extent that a young general practitioner can in the course of a few years earn a salary which is comparable to the salaries earned by the senior members of the medical department who have spent their lives in the service of this country. The avenue opened up for specialists at home also has been very greatly improved. Whereas formerly a young doctor who wanted to become a specialist had to resign himself to many years at a minimum wage, now a young specialist can go forward with a certain hope of adequate remuneration from the start. Furthermore, the salaries which are offered to doctors

(The Director of Medical Services) abroad to induce them to go abroad by commercial companies and so forth are very much higher than anything that the Colonial Service has to offer. This is the reason why we are now 20 medical officers short.

Now, sir, some 18 months ago the British Medical Association sent out a representative to this country to inquire into terms of service and as a result of his inquiries certain salary scales were recommended. These salary scales were not altogether acceptable to Colonial Governments so that it was decided that a very careful investigation should be made jointly by officials of the British Medical Association and the Colonial Office, with the assistance of officials from the Ministry of Health. They had at their disposal expert actuarial advice and they entered into very great detail in investigating the whole field of the terms of service of doctors in the colonies. They went into details as to the certain advantages and disadvantages which are not usually given a monetary factor. Amongst the disadvantages of a colonial career which were listed they included difficulties of education with separation from children, separation from home surroundings and the abnormally heavy load of professional responsibility which, of course, applies particularly to the district medical officer. Amongst the advantages they listed low taxation—comparatively low taxation, generous retirement benefits, cheap housing—comparatively cheap housing—long leave, study leave, and so forth. An attempt was made wherever possible to evaluate these factors financially, and it was found that some of them could be so impossible, so they set off such factors as long leave against adverse climate, facilities for study leave against professional isolation and so on. As a result of this very careful study and this very thorough investigation it was mutually agreed that the scale of salaries which was offered by the Colonial Medical Service in West Africa and in such far eastern countries as Malaya, Singapore and Hong Kong, were in fact adequate and did in fact bear a close relation to the recommendations of the Spens Report for the emoluments of the medical profession in Great Britain, but

they also came to the conclusion that in Eastern and Central Africa where salaries have always been lower this relationship did not exist, and so there was drawn up by mutual agreement this salary scale which is now before the Council.

Now, sir, if these salary scales are passed by the Council this morning, then I have every reason to hope that we may once again be able to start the flow of recruits to the Colonial medical service in this country. If, however, it is not accepted, then I feel that a difficult situation will arise, because these salary scales, as I have pointed out, have been very carefully considered indeed—and particularly if they are accepted by adjoining territories and not accepted here then I feel that the British Medical Association might withdraw their support and the supply of doctors would indeed dry up.

Hon. members will notice that specialists have not been included in this salary scale. The reason for that is that the terms of service for specialists have been under further consideration and they have only just been received and there has not been time to incorporate them in this solution.

Now, sir, we have heard quite a lot to do with supply and demand. The fact is that we are at the moment 20 medical officers short in the medical service of this country. On the other hand, on the medical officer (Asian) scale, there is in fact no shortage. All vacancies have now been filled or are about to be filled, and consequently the shortage of medical officers on the medical officer scale is very much greater.

Now, sir, the hon. Member for Mombasa raised the question of practitioners from other European nations, and I think he suggested that we should try and fill up the service with practitioners from these countries. I entirely agree with him that practitioners from Central European countries are very often very eminent people in their profession. I personally have the greatest admiration for the clinical skill and for the professional ability of a great many of them, but, as has already been mentioned by the hon. Member for Health, the duties of a district medical officer do not only include duties at the bedside. I think

[The Director of Medical Services] that is too often forgotten. The district medical officer in this country, who is after all the backbone of the service, has many and varied duties to perform. He has to administer his hospital; he has to administer and visit a chain of dispensaries in connexion with that hospital; he has to initiate schemes for public health and for the prevention of disease in his district; he has to maintain very close liaison with the district commissioner and with the officers of other departments in his district; he has to maintain close and cordial relations with the chiefs and elders in the district; he has to go out into the districts and address *harazas* of the people on public health subjects and so forth. Now all these things I submit require special qualities, and I submit again that these qualities are best obtained in British doctors who have been trained at home. If this medical service of ours has a duty to perform—and I believe it is a very important one during the next few formative years—it is to lead, to guide and to train the African to take a greater share in the medical service for his own people. I believe, and I believe strongly that we cannot afford to have anything but the best for this purpose, and I believe that if we are to obtain the best we must get men from the medical schools of Great Britain, where the traditions of leadership, ethics and so on are so much emphasized.

Sir, I beg to support.

MR. OHANOA: Mr. Speaker, the terms of the motion before Council this morning preclude the African medical officers, and naturally my interests as such are curtailed a great deal, but I should very much like to endorse and emphasize the point which was made by the hon. Member for the Coast, Mr. Cooke, that it is a reflection upon the Government of this country that after, say, fifty years of education, it has not been possible to qualify one African medical officer from the universities. This is not a reflection on the ability of the African. From the beginning it has not been possible for the Government to arrange to provide such opportunities. I would very much like to endorse that point and to emphasize that this is a bad reflection.

The second point I should like to make is with regard to the present arrange-

ments at Makerere. I understand that the medical students who go into Makerere will not work for degrees, they will only be regarded as local men and cannot be university graduates. This is a point which needs attention right now. If no other facilities are available, Makerere ought to be directed towards providing degrees for students who train as doctors, I agree with the mover that the highest standards are those which we must aim at. I should very much like to endorse what he has said that British standards should be maintained, only I should like to plead further that not only should those standards be maintained, but they should also be extended to cover a wider ground than they do at the moment.

MR. HAVELock (Kiambu): There are one or two points I would like to underline, sir, which have been brought up in this debate. Hon. members on this side of the Council asked for an assurance that Government would see to it that the raising of medical officers' salaries would not result in demands from other professional men in Government for increases in their scales, and the hon. Member for the Coast put the argument, I thought, extremely clearly. The hon. Member for Finance was, I think, supposed to have answered that and give Government assurance, and I am not satisfied with the assurance that was given by the hon. Member. He said if scales were to be increased in other departments then they would have to come first before this Council. The assurance I would like is to the effect that Government will not consider any requests for increased scales from other professional members of Government except, and only except, on the principle which the hon. Member for the Coast stated so clearly, that of supply and demand, and not on any other excuse at all, not because they consider they are being unfairly treated. That is the assurance I would like from the hon. members opposite. I don't think this Council should be bothered with any requests unless they are securely based on that one fundamental principle. Sir, there is one unsatisfactory aspect of this motion—it does seem to me that the supply and demand position, or shall we say the shortage of doctors, has been very much exaggerated, or has been very

[Mr. Havelock]

much increased by—the attitude of the British Medical Association, and I would like to see it on record that I personally appreciate very strongly the attitude of the British Medical Association towards this matter. I understand from the hon. Director of Medical Services that this Council will be faced with another request as regards specialists for an increase in salaries. I think they may be in a different position and it might be possible to appoint them on contract. We were told that it was impossible to employ ordinary medical officers on contract because the British Medical Association had refused to agree to such terms. Naturally, if it is a matter of supply and demand, from our point of view the logical step to take would be to put medical men on contract so that this country is not saddled with extra expense for years to come, when the position regarding the availability of medical officers might be eased, but we cannot do that because the British Medical Association will not agree. Therefore, sir, I would like an assurance that if the position should be eased and medical officers are more easily available in the comparatively near future, say in four or five years' time, Government will come back to this Council with a motion reviving downwards the salaries of these medical officers. It is only fair if we cannot put them on temporary terms now they should accede to this request, because the whole point is supply and demand, and if the supply increases then this Council should have the opportunity to save public funds.

Sir, I beg to support.

MR. NATHOO: One point I would like to deal with in a statement made by the hon. Director of Medical Services, in his very excellent speech, that is, sir, a statement about having been able to recruit a number of new medical officers recently. I think I am right in saying that not one of these medical practitioners has English qualifications, and I once again wish to reiterate that unless and until better terms than those proposed by this amendment are offered to people with English qualifications, no Asian officer will be coming forward to take the job.

With these remarks I wish to oppose the motion.

THE ACTING CHIEF SECRETARY: I was not intending to intervene in this debate, but I ought, I think, to reply to the point made by the hon. Member for Kiambu when he made it clear that he was not entirely satisfied with the assurance given by my hon. friend the Member for Finance, on what the attitude of Government would be should applications be received from members of other departments to be treated in like manner to the medical officers. I give him, sir, a categorical assurance that no consideration will be given to any such applications which might be submitted simply on the ground that because this improvement has been effected in the conditions of medical officers, so a like improvement should be introduced in the case of other officers. I cannot naturally, without being able to see very clearly into the future, go further than that, but I think it will be correct to record here that Government stands firm on a resolution which was passed in this Council at the time when we were discussing the recommendations contained in the Salaries Commission Report some two years ago, and with your leave, sir, and with that of the Council, I think I should read out the terms of that resolution:—

"That the conclusions now arrived at by the committee of the whole Council shall, if adopted by the Council, be reviewed at the end of a 4-year period or earlier should (a) the cost of living index figure vary by 25 points from that existing on 1st July, 1948, or (b) a financial emergency arise."

We stand firm, sir, on that resolution.

THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT: Mr. Speaker, this motion has brought forward, if I might say so, a very interesting debate. If I may, I would for a moment return to a somewhat lighter tone in answering the hon. Member for Aberdare, who chose the question of veterinary officers as a comparison. If you do not provide adequate services for the people of the country they, as voters, have a way of reminding you that you are not carrying out your duty. The complaints of animals are not so effective. Now, sir, on one point, if I may clear the position, first with regard to specialists. The negotiations were not concluded. It has been impossible to include any provision for specialists in this

[The Member for Health and Local Government]

particular motion. I would suggest that unless hon. members opposite disagree that that particular matter should be referred to the Standing Finance Committee rather than have another debate in this Council on exactly the same lines, and in Standing Finance Committee, sir, I know from past experience, it will have a very close examination before it is allowed to escape through the net into actual operation. Sir, the hon. Mr. Nalho referred, and so did one other member, to the question of African medical officers. Now, sir, I think that when the hon. Mr. Ohanga spoke about the negligence of Government and said it was a bad reflection on Government, it is the Government stated exactly what it has done. Within a period of 14 years the public of this Colony will have paid some £140,000 to the subsidization of Makerere Medical College in order to have African medical officers produced, and the sum total that the Director of Medical Services will have enjoyed as a result is 14 African medical officers.

MR. COOKE: On a point of explanation we talked about qualified medical officers.

THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT: With all due respect I will deal with the hon. Member for the Coast in a moment. It was entirely different from the point raised by the hon. member at the other end of the Council.

I think it may well be argued that if you subsidize to that extent a medical college and therefore subsidize the training of the people who emerge from that college that you may expect from them an element of public service, and I consider that there must be some due regard paid to the fact that there is a difference between those people who pay for their own training in order that they may step into the world and earn remuneration from their own profession, and those people who emerge as a result of a very heavy element of subsidization.

The hon. Member for African Interests Mr. Ohanga also raised another point—the question of Makerere and a medical degree. He will, I am sure, understand that the question of when Makerere can have a medical degree recognized and

registrable in the United Kingdom is not a matter for this Government. It is a matter for the professional authorities concerned, and all that I can say in so far as that is concerned is that if and when Makerere is given a qualified degree which can be registered in and is recognizable in the United Kingdom, then a proportionate arrangement of African medical officers' salaries will have to be made.

The hon. Member for the Coast dealt with the question of qualified medical officers. I would say that is something to which Government will continue to give consideration, but I think he will agree that a sum total of £140,000 is not a bad effort to make towards starting people on a qualification ladder.

With regard to the hon. Member for Mombasa and the hon. Member for Kiambu and their suggestion with regard to contracts, I think we should make one point particularly clear, and that is that the British Medical Association has merely warned us that if we wish to get doctors in order to maintain a reasonable medical service in this country, we shall not get them unless we offer terms as laid down in this motion. The question of contracts was considered. There is one point to be considered also, sir, with regard to contracts, and that is if you rely for the basis of your medical service on a contract period of four years you will be faced with a series of recurring crises like the one you have had to-day, and that each period at the end of a contract will bring you face to face with a problem on which supply and demand will have to operate. (MR. HAVELOCK: A staggered contract.) We have at the present moment, sir, a number of medical officers on contract in order to try and meet a temporary, we hope temporary situation.

I think that covers all the points that were raised which can be dealt with. Now I would like to read from a speech made by a very eminent doctor at a meeting of the British Medical Association at Harrogate towards the end of last year:—"The institution of a comprehensive occupational health service at the present time would be doomed to failure on the grounds of lack of sufficiently trained medical manpower." So let us not delude ourselves that we can get over this

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by any temporary palliative. This shortage of medical manpower, of sufficiently trained medical manpower, is something which exists generally, and it is something which not only the Government of this Colony but the Legislative Council of this Colony must face.

Certain hon. members have said that they are going to oppose this—on what grounds? On the grounds of racial discrimination, on the grounds that we are not altering a policy which has already been accepted by this Council? I would like to say this to them, sir. If this motion is defeated in this Council the whole train of negotiation must start again, and I, as Member for Health and Local Government, could accept no responsibility for the provision of an adequate health service in this country. I would ask hon. members opposite to think seriously. Is this a matter to be thrown out on racial grounds? Does not the public health service and do not the medical officers who are shown in this list treat all races? Is our medical service, our public health service at the present moment adequate or is it inadequate? (MR. PATEL: Most inadequate.) Most inadequate—yet we are asking a service which, because of conditions is at present 20 under strength, to carry out a public health service for this Colony, the results of the failure of which would be disastrous to every race.

Now, sir, I think this is a matter where this Council and members of this Council should show some sense of responsibility. Can we tamper with the health of the people of this country merely because we are dissatisfied with one detail or the other? It is a matter of principle. We must accept that there is a need for an adequate public health service in this country, a continually expanding service which it is difficult to achieve with the present level of money which is granted to us. Or are we to say that we are prepared because of this, or because of that to jeopardize the main responsibility which every member of this Council sitting on that side of the Council or sitting on this side of the Council has to the public of the country? Sir, I beg to move.

The question was put and carried.

ROAD AUTHORITY REPORT

THE ACTING CHIEF SECRETARY: Mr. Speaker, I beg to move the following resolution standing in my name:—

Be it resolved that this Council accepts the principle of a Road Authority as set out in the report of the Road Authority Committee and recommends that such an authority should be set up. Furthermore, this Council is of opinion that there should be established a road fund within the available finance, such fund to be administered by the said Road Authority. This Council further recommends that there should be annually transferred to the road fund the proceeds from vehicle licences and motor drivers' licences issued under the Traffic Ordinance and of the petrol consumption tax levied under the Dangerous Petroleum Tax Ordinance.

Hon. members will remember that the proposal that a Road Authority should be set up and a road fund established was made in the Plewman Report which was submitted for the consideration of Government in 1947. In the consideration of the Report which followed, while the proposal was recognized as one having merit, serious doubts were also felt as to the wisdom of accepting it as the future policy of the Government. In the first place it was felt that the hypothecation of special sources of revenue for special purposes was itself wrong in principle, and secondly, that what was really wrong with our roads was lack of money rather than any particular defect in organization. However, as the financial advice tendered to Government at that time was to the effect that the advantages of a proposal of this kind outweighed the disadvantages and was strongly in support of the proposal, and as the objections I have mentioned were mainly of a financial nature, the decision was made to appoint the Road Authority Committee, whose report is before us to-day.

I should like, sir, to take this opportunity of congratulating the Chairman and members of that Committee for the very thorough and comprehensive manner in which they have done their work. Again in this report that we have before us now, the proposal to set up an Authority and establish a fund is strongly endorsed and developed in greater detail. The report goes so far as to include the recommendation, as to the particular sources of revenue which should be ear-

[The Acting Chief Secretary] marked for the fund. So far so good. But on this occasion my hon. friend the Member for Finance has underlined the objections to the proposal rather than the advantages, and is not so favourably disposed towards it as was his predecessor. He will be speaking himself in the course of this debate, and I will leave it to him to state the principal financial arguments for and against acceptance of the proposal as they appear to him. But there are certain other considerations to which I think I should refer in moving this motion.

One consequence of earmarking particular revenues for particular purposes is, of course, that it affords a strong stimulus to expenditure for those purposes. The Government fully and frankly admits that the better the roads the better it is for the country, and that the better roads we can have the more tourists are likely to be attracted to come and pay us visits. Nevertheless, there is manifestly a limit to what a developing country such as this can afford in the way of roads, and it is a matter of grave importance to try to decide at what point it is justified to carry the roads to a higher standard than is necessary for the movement of heavy commercial traffic. Given sufficiently strong bridges, heavy slow-moving diesel lorries can travel over gravel roads, if they are sufficiently consolidated and carry very heavy loads on them. If proof is needed, I am told that the Masindi-Butlaba road is an example. There, I understand, that 15-ton trucks with 6-ton trailers have operated for many years on a murrum road. Nobody questions that rapid travel in small private cars is much more agreeable if the roads are bituminized; but that does not answer the question as to the extent to which we should bitumenize roads at a cost of something approaching £10,000 a mile when such cannot be said to be essential from an economic point of view.

The plain fact of the matter is, however, that the road problem of the Colony is a purely fiscal one. If there is enough money, and hon. members are prepared to vote it, then good roads can be made. If there is not enough money, or if Council is not prepared to vote a sufficient amount of it for the purpose, then the roads that can be made will be, *pro tanto*, less good.

I should also, I think, mention that there is already special taxation in this Colony of one section of the community for hospitals and as hon. members know there is a proposal before Council that further special taxation should be levied to meet the ever-increasing costs of education. I mention this point, sir, because Government has had, very seriously, to ask itself the question as to what point this process of hypothecation of revenues for special purposes is to stop.

That is all I think that I need say of the difficulties which Government has seen in the way of accepting this proposal. The case in favour of setting up the Authority and establishing a fund has been so fully made both in the Plewman Report and in the Road Authority Committee's Report, that I do not think that I need take up the time of Council in restating it. That does not, however, mean that Government has by any means been blind to the other side of the case.

Hon. members will, I am sure, appreciate that the emphasis now placed by its financial adviser on the objections rather than the advantages of the proposal has placed the Government in a somewhat difficult position. On the one hand, on the financial advice then available to us we accepted the proposal in principle as recommended in the Plewman Report, and have gone to such lengths in arranging for its implementation that it could be argued that we were committed; on the other hand, the arguments against the proposal which have now been put forward, and which will be developed by my hon. friend sitting on my right, appear to us to be so cogent that they ought not to be neglected.

One thing, however, is abundantly clear—and that is that in a financial matter of such importance, the principle as to whether such a Road Fund should be created and a special Authority set up to administer it should be debated on the floor of this Council where hon. members can hear for themselves at first hand both the advantages and disadvantages of accepting such a course. It is for this reason that this motion has been introduced, detached from all detail as regards the constitution of the Authority, and as regards the action which should be taken on certain of the other recommendations in the report.

[The Acting Chief Secretary] What Council is being asked to decide to-day is the question of principle involved as to whether a Road Authority should be set up and a Road Fund created with certain specified sources of revenue earmarked annually for allocation to it. If the answer to these questions given in the course of this debate is clearly in the affirmative the Government will come forward as soon as possible with the necessary legislation to implement the proposals. If on the other hand it should transpire during the course of this debate that there is substantial opposition to the proposal in the report, then, sir, I would in such circumstances ask your leave and the leave of hon. members to withdraw the motion. I hope, sir, that I have made the Government's position in this matter quite clear.

I beg to move.

SIR CHARLES MORTIMER seconded and reserved his right to speak later on in the debate.

THE FINANCIAL SECRETARY: Mr. Speaker, in rising to speak to this motion I would refer to a principle which I have had occasion to mention several times of late. I have been at pains to point out that the supreme financial authority of the country in matters of this kind is the Legislature. The Member for Finance may be the chief financial executive and indeed the Government's financial adviser, but that is as far as it goes. The supreme authority is the Legislature. Now, sir, in the light of those remarks and in the capacity of adviser I offer the following comments on the resolution now before the Council. There is no doubt whatever that the earmarking of revenue in the manner contemplated by the resolution for specific purposes of this kind offends deeply against financial orthodoxy. It is a fundamental principle of sound financial control that all revenue should be paid into one fund and all expenditure met therefrom. This principle leads not only to good financial control but also to sound accountancy arrangements. The most notorious breach of that principle which has occurred in the United Kingdom was when the Road Act of 1920 was passed in accordance with which the proceeds from the horse-power tax were earmarked for the Road Fund.

Now earmarking in this way led to two consequences. In the first place the road users were in a position to demand that the money in the fund should be spent upon the roads, irrespective of whether the roads really required that expenditure. This led to wasteful expenditure on roads at a time when money was sorely needed for other things such as rearmament and capital investment. Those things had to go by the board, notwithstanding the availability of money in other parts of the Government's exchequer.

The second consequence was that the road users were in a position to insist that the tax was kept at a level, no more than was sufficient to keep the roads in the state that the motorists or the road users considered proper. Therefore a very important source of revenue, which might have been used as a source of general revenue, was in that way lost to the exchequer. As everybody knows, the system was in due course abandoned.

That then is the objection in the terms of pure financial orthodoxy. There are, however, in this particular case also practical objections. It has been stated more than once what is a very obvious truth—but it can bear repetition—that the creation of a fund will not produce more money. As my hon. friend the Chief Secretary has said, the problem really is not one of policy but one of money. Had the money been forthcoming the roads would have been there.

I have on previous occasions in this Council referred to the difficulties and limitations that exist in regard to our capital funds. It is true that certain funds have been earmarked by the Development and Reconstruction Authority for roads, but I cannot foresee at the moment anything like the sum of money being available for capital expenditure on roads that the report contemplates. It is true that we may one day see a source of revenue or a source of finance which now is not apparent, but at the moment, certainly, it is not apparent to me. I have already indicated the present limitation upon the loan-raising capacity of this country. I will repeat that although we have been working to a limiting borrowing figure, that figure is flexible, and there is no doubt that within the years to come our capacity to borrow will increase over and above what it is at the moment.

[The Financial Secretary]

(MR. HAVELOCK: £75-million.) But I would point out that parallel with the increased capacity to raise loans there will arise many other demands besides roads clamouring for attention, and even if roads do secure a portion it is still questionable whether they will secure finance of the order contemplated by the report. In other words, if we are to earmark capital sums of the order that the report has suggested, this can only be done at the expense of other aspects of essential development in this country. (MR. COOKE: That is true.)

On the revenue side I have not so much practical objection, I have indicated the theoretical objections. But on the practical side matters are not so difficult. The report suggests that there shall be paid into the fund every year the Services' contribution in respect of the use of roads by the armed forces. That figure, I think, is put at about £75,000. Inasmuch as we are not yet receiving any contribution from the Services—(MR. HAVELOCK: Why not?)—I shall explain in a moment why not—inasmuch as we are not receiving any such contribution, it is clear that earmarking that money for the Fund will not be at the expense of some activity already in being. To that extent the revenue would bear that reduction, or rather the non-accrual. With regard to the suggestion that the first loan charges should be borne by revenue, that is to say, the service charges in respect of the first loan which the Road Authority hopes to raise, I will say again that inasmuch as the revenue had contemplated bearing the charge in respect of our total borrowing, that proposition again can be accepted without any particular difficulty. With regard to the contribution from the specific taxes I will say this—that notwithstanding that the Authority will take over financial responsibility for the maintenance of roads— notwithstanding that fact, the earmarking of the revenue from the two taxes specified in the resolution will involve a very considerable deduction indeed from the revenue, and it might well be—I will not say that this is certain—it might well be impossible in those circumstances to maintain our revenue contribution to the Development and Reconstruction Authority at its present level. I do repeat that it may not be possible in those

circumstances to maintain our revenue contribution to the Development and Reconstruction Authority at its present level. Everything will depend on how things turn out.

These are my views on the matter, and if I may say so, some of these objections were appreciated by the Plewman Committee. With your permission, sir, and the permission of this Council (so that this extract goes into Hansard), I should like to read the objections that the Plewman Committee had in mind. Indeed, sir, this quotation finds a place in the Road Authority Report itself. This is what the Plewman Committee said:—

"There is always an element of danger in diverting tax revenue from general public services to a particular public service. It tends to make the scheme of revenue finance less flexible, adds to the difficulty of financial control, complicates accounting arrangements and may, in some instances, increase the cost of administration. Moreover, a precedent once established may lead to unwise disintegration of central administration in other directions."

I have stated as I see them—(MR. HAVELOCK: Read on.)—both the theoretical and practical objections. I do wish, however, to say this, in conformity with what my hon. friend the Chief Secretary has stated, that should it be the wish of this Council that the Authority should be set up and the Fund created, then that wish and decision will be honoured in spirit as well as in letter, and provision for the embodying of that concept will be made in the financial structure of the country.

MR. ERSKINE (Nairobi South): I think I am reluctantly coming to a conclusion that we in this matter of fiscal orthodoxy shall have to learn by experience. Sir, I rather agree with the hon. Member for Finance that no good can come from this fragmentation of the fiscal structure of the country. I hope very much that when the lesson is at long last learnt, perhaps in, say, 20 years, that I may be here to move a motion for the co-ordination of financial control once again. We on this side of the Council, in fact all hon. members of Council, must have realized that for the last three years the Development and Reconstruction Authority was bound to breed. I

[Mr. Erskine]

think I must accept this first of the Development and Reconstruction Authority's babies, the Road Authority, but only on one condition, and that is, sir, that any future kittens go straight into the bucket. (Laughter.)

MR. HAVELOCK: Mr. Speaker, I understand, sir, that the motion which we have before us is only asking us to accept the principles as laid down in that motion—the principle of a Road Authority and the principle of a Road Fund, supplied with revenue from the licences and taxes as detailed, in which case I certainly will not deal with any details of the report, and I hope hon. members will not either.

The hon. Acting Chief Secretary stated that the fact that we had not got good roads was really rather through a lack of money than through lack of a detailed organization. To some extent I agree, sir, but I believe that a Road Authority which will act as a centralizing body, co-ordinating all the facts that are required in order to plan roads, is entirely necessary before we can build up in this country a framework of a main road system at least, and I believe that the first job of the Authority will be to do that—to collect all the facts they can get from the different departments and put them all together and then have an overall Colony-wide plan. At the moment we are tackling the problem of roads piecemeal. As one problem comes up we consider it and reject it or not, and then the next week or so another problem comes up, and so it goes on, and I do not think we have ever yet had a really clear overall picture of the Colony's needs, which I believe this Authority will supply.

Sir, the hon. Financial Secretary mentioned the Road Act in Britain in 1920, and pointed out that many disadvantages accrued from having that Act passed, but I would like to point out there was one very good advantage, and that was that through the Road Act Britain was supplied with good roads, through the organization set up under that Act. I think the same would apply here. There have been and there are very genuine objections to hypothecation of revenue, and as regards the hypothecation of revenue for roads there is, I think, some fear that it might lead to

financial disorganization, but on the other hand I think that this country requires a good system of roads so badly—it is so badly required, so important we should get it before the country can properly develop—that at least we should try through this method to build up a framework, and if we have done that, later we might be able to revise our opinion and go back to central finance. I believe it is essential in order to build up that framework that we should have a Road Authority and a Road Fund. I would point out to the hon. Member for Finance that good roads—a good road system will surely increase the traffic, will surely increase the vehicle users, and in that way will increase the revenue, apart from the income from tourists and so on. The actual customs duties on the requirements of the road users, vehicles, tyres, the customs on petrol which the Committee did not suggest should be hypothecated and put to the Fund—all that will accrue to central revenue, and surely will be bound to increase as the roads are improved.

I stated, sir, when I started to speak that I did not want to enter into the details of this report, and indeed we were not discussing it, therefore I suggest that by accepting this motion we are not accepting the suggestion of the committee that £74-million shall be spent on roads. We are merely accepting the principle of a Road Authority and a Road Fund. The final control of the capital money to be spent on roads must always—as has been visualized by the committee and recommended by them—rest with this Council and nowhere else, and therefore by accepting this motion we are not committing ourselves to the expenditure suggested by the committee. Another suggestion I would make, and I believe it would have the support of the hon. Member for Finance, and that is that the expenditure of the Road Authority, especially on contracts, for the construction of new roads, might certainly be under the eye of the hon. Member for Finance himself, as the adviser of Government, to see that no extravagance took place, and that in fact he should have some control over the contracts which are let out for the construction of new roads. I believe that would be essential to stop extravagant expenditure.

[Mr. Havelock]

It was interesting to hear from the hon. Member for Finance that if the licence fees and tax on petrol, as suggested in this motion, were paid directly into the Road Fund, the central revenue might not be able to make its £300,000 annual contribution to the Development and Reconstruction Authority. I say it was interesting because it seems to mean that for many years the road user has been paying very much more into the central revenue of the country than he has been getting out of it. I believe that in spite of difficulties visualized by the Plewman Committee, they did recommend that a Road Fund should be established, and the hon. Member for Finance did not continue his quotation on that point. Sir, this matter has been discussed by hon. members on this side of the Council, and in principle I think I can say that the great majority accept it. I know there are some members who would like to make some comment, but in principle I think I can assure Government that members on this side of the Council accept the motion.

MR. OIHANGA: Mr. Speaker, I rise to support the motion before Council. I myself believe that "roads" is a major issue in our programme, and will remain so for many years to come. Any effort or any money which is spent on them, I think, will never be regarded as a waste. They are an integral part of the whole development because upon them so many other things depend, and it would be impossible to do without them. I was also a member of the committee, and earlier on we submitted what was called an Interim report, to which I added a small minority note. That minority note of mine did nothing except to point out one small thing in regard to the way that it was proposed to distribute the money given to the Authority. There were to be spending agents in the country. A great deal has been done to meet it, but it seems to me that a temporary development programme had been drawn up which gave large sums to European district councils, in themselves small, but very little to the local native councils.

THE SPEAKER: I would point out to the hon. member that we are not debating the motion on the report, but simply a motion that confines itself to three

matters: (1) an authority should be set up; (2) there should be established a Road Fund; (3) specific taxes should be allocated to that Fund. We do not want to go into everything that the committee have done.

MR. OIHANGA: I accept that, sir, and will withdraw my remarks on the report.

I beg to support.

MR. BLUNDELL: There is just one matter to which I wish to refer. It is, in my opinion, an important one. I wish to stress, in supporting this motion, it must be quite clear that the actual detailed figures of capital moneys mentioned in the report must be reviewed in the light of the general overall borrowing capacity of the Colony. I think the hon. Member for Finance touched on that, but it is rather important to stress that in supporting this motion, I must make this reservation, that any capital moneys spent on roads must be taken into consideration with the general loan programme and the general needs of the Colony. Whatever happens it is essential that the moneys given to the Road Authority are assessed within the general needs of the Colony.

MR. COOKE: As a member of the committee I wish to make it clear that so far as I am concerned, and so far as I think other members of the committee are concerned, the whole proposal of the setting up of a Road Fund is fundamental to the whole report, and if this suggestion is cut out, so far as I can see, the other suggestions will have little material effect on the road policy of this country. Now the reason for this Fund is that it will permit an amount of money to be at the disposal of the Road Authority. It won't be a matter of guesswork from year to year, and therefore the Authority will be able to plan well ahead. Now one of the weaknesses about the administration of the Public Works Department was that the sums of money available from year to year depended on the blue pencil of the Financial Secretary. I will quote you a case. I think it was two years ago when the then Director of Public Works asked for a sum of £180,000 for the following year. This was cut down by the Financial Secretary to about £100,000.

[Mr. Cooke] Now, sir, the difference between efficiency and inefficiency is that you must have an economic amount of money to spend on the making and building of roads. If the taxpayers of this country realize that the money contributed by them will be paid into a fund, there will be more incentive on their part to contribute to that fund. Now, for instance, sir, if it were decided to-day to increase the taxes on petrol and road vehicles, people of this country would be very reluctant to agree, but those who use the roads and who are knocked about in the incredible way we are knocked about by pot-holes, if the suggestion were put forward that there should be an increase in the petrol tax, in order to provide a fund for better roads, people would be much more ready to accept that increase if they knew it was going to such good purposes. Now my hon. friend argued there would be a big deduction from the revenue, but he failed to admit there is quite a deduction from the revenue at the moment which is paid in the Public Works Department Road Fund.

THE FINANCIAL SECRETARY: On a point of explanation, I said that notwithstanding the fact that the Road Authority would take over the responsibility for financing the maintenance of roads, the fact remained that a large contribution represented by the proceeds of the two taxes would have to be earmarked and taken out of revenue and even on balance this represented a severe deduction from the Colony's budget.

MR. COOKE: Now another point about roads. We are always told in this country that we should purchase British cars and that we should save the dollar position. Well, what is the position at the moment. It is almost impossible to use British cars on many of even the main roads. I am a decided supporter of the recommendation in this report. I think I heard my hon. friend the Chief Secretary say—he will correct me if I am wrong—that heavy diesel trucks could be used on the gravel roads in this country. I think the inference drawn from that argument was that it is no use spending money on good roads if we can use diesel trucks instead of the present trucks that are being used. I do not know the opinion of my hon. friend the Special Commissioner on this point, but I will,

sir, very briefly give you a quotation of the ideas of the late consulting engineer to the Development and Reconstruction Authority on this particular point of diesel trucks:—

"Modern diesel trucks will move just as rapidly as light petrol lorries and their destructive properties to both gravel and bitumen roads will be nearly in proportion to their weight which is commonly much greater. Moreover, the present roads have been designed as wheel loads and if these are to be increased by the extended use of heavy diesel trucks the capital expenditure on roads must necessarily go up considerably."

That seems to combat any argument in favour of the extensive use of diesel trucks. If one looks at the state of the main Nakuru road now you will see within 10 or 15 miles of Nairobi countless pot-holes, which are being rapidly repaired by the staff of the Public Works Department, but it looks more like patchwork than anything else, but I am being informed that these pot-holes have been caused by the use of heavy diesel lorries on that particular portion of the road. Therefore that combats any argument which might be put forward in favour of diesels. I give this motion, sir, my wholehearted support.

The debate was adjourned.

ADJOURNMENT

Council rose at 12.45 p.m. and adjourned until 10 a.m. on Thursday, 25th May, 1950.

Thursday, 25th May, 1950

Council assembled in the Memorial Hall, Nairobi, on Thursday, 25th May, 1950.

His Honour the Speaker took the Chair at 10 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of the 25th May were confirmed.

PAPERS LAID

The following papers were laid on the table:

By THE ACTING DEPUTY CHIEF SECRETARY:

Two Additions to the Schedule to the Essential Services (Abliteration) Ordinance, 1950.

By THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES:

An Economic Survey of Forestry in Kenya and Recommendations Regarding a Forest Commission.

ORAL ANSWERS TO QUESTIONS

NO. 25—RENT CONTROL CASES

Mr. PATEL (Eastern Area):

(a) Is the Government aware that there are several Rent Control cases pending for hearing by the Coast Rent Control Board and that it takes a long time before such cases reach finality?

(b) Is Government aware that there are more Rent Control cases presented to the Board than determined every month?

(c) If the reply to the above question is in the affirmative will the Government please take early steps to appoint an independent Chairman for the Coast Rent Control Board in order to expedite its work?

Reply

THE MEMBER FOR COMMERCE AND INDUSTRY:

(a) The Government is aware that there is a backlog of cases awaiting hearing by the Coast Province Rent Control Board. This is due to an accumulation of cases

in the period between the cessation of hearings under the old Ordinance and the present law being brought into operation, to the illness of the Chairman, and to difficulties in providing adequate staff which have now been overcome.

(b) The answer is in the negative. During the first six days of May, 14 more cases were heard and finally disposed of than were filed during the whole month of April.

(c) While the appointment of a full-time Chairman for this Board might expedite matters, there are certain objections to such a course. The arrangement which is now being adopted is that the Coast Board sits for the greater part of one week each month, and it is doubtful if members could be found to give the necessary time to additional sittings. The law is not an easy one to administer and it is desirable that cases should be dealt with on a uniform basis. The appointment of a separate Chairman would require additional financial provision and it would be by no means easy to secure the services of a person with the necessary qualifications.

NO. 26—EDUCATION BUILDINGS

MR. PATEL:

Will the Government please state—

(a) What amounts were recommended by the Development Committee for construction of Education buildings for European, Indians, Arabs and Africans, giving figures for each race separately?

(b) What total amounts will be spent for each race for education buildings by the end of the current year?

Reply

THE ACTING CHIEF SECRETARY:

(a) The following amounts were recommended by the Development Committee for the construction of educational buildings for Europeans, Indians, Arabs and Africans:

	£
Europeans	670,700
Asians	636,500
Arabs	85,000
Africans	818,500

[The Acting Chief Secretary]

Since then additional contributions have been made to the Development and Reconstruction Authority for school buildings as follows—

£880,600 for European Schools,
£90,000 for Asian Schools,
£20,000 for African Schools.

(b) It is estimated that the following amounts will have been spent for each race for educational buildings by the end of the current year—

	£
European	1,366,525
Asians	542,957
Arab	48,265
African	645,163

NO. 27—EDUCATION EXPENDITURE

MR. PATEL:

Will Government please state:—

(a) What amounts were voted by this Council as recurrent expenditure of

education for Europeans, Indians, Arabs and Africans for the year 1945 to 1949, both inclusive, giving figures for each race and each year separately?

(b) What amounts were actually spent during each of these years out of the amounts voted for each race?

Reply

THE ACTING CHIEF SECRETARY:

I have arranged, with the consent of the hon. Member for Eastern Area, to have the answer to this question, which contains detailed statistics, distributed to hon. members this morning, and it will, of course, be published in Hansard.

(a) Amounts voted by Legislative Council as recurrent expenditure of Education for Europeans, Indians, Arabs and Africans for the year 1945 to 1949 both inclusive, giving figures for each race and each year separately:—

YEAR	European	Indian	Arab	African	General	Total
1945	151,215	84,440	7,983	110,268	26,693	380,599
1946	160,082	110,004	11,790	150,125	35,164	467,165
1947	171,258	129,041	13,053	162,558	36,664	512,574
1948	213,608	145,407	14,417	219,790	40,621	633,843
1949	301,349	210,175	19,147	411,940	52,135	994,746
Total	997,512	679,067	66,390	1,054,681	191,277	2,988,927

NO. 28—HOSPITAL BUILDINGS EXPENDITURE

MR. PATEL:

Will the Government please state:—

(a) What amounts have been spent for hospital buildings for Europeans, Indians and Africans during the year 1945 to 1949 both inclusive from the funds provided by the Development and Reconstruction Authority or

otherwise, giving figures for each race separately?

(b) What amounts have been spent as recurrent expenditure for hospital facilities provided for each race during the years 1945 to 1949 both inclusive?

Reply

THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT:

(a)	Actual Expenditure from 1945-1948	Estimated in 1949 as the Colony's Final Accounts are not yet Cleared	Total
European	£ 17,140	£ 1,019	£ 18,159
Asian	7,753	225	7,978
African	172,392	90,910	263,302
General	17,042	2,208	19,250
Total	£ 214,327	£ 94,362	£ 308,689

[The Member for Health and Local Government]

The amount for African includes Group Hospital from 1945 and Health Centres from 1948.

As it is not possible to divide the expenditure on Mathari Mental Hospital, Infectious Diseases Hospitals, Nairobi and Mombasa and General Dispensary in Nairobi, it is given under General.

(b) Records are not available which show expenditure for each race separately during the years 1945 to 1949.

A costing clerk has recently been appointed with a view to extracting information as is now requested in future years.

NO. 30—MEAT SHORTAGES, NAIROBI BY LT. COL. GILERSIE (Nairobi North):

1. Will Government please state whether the present meat shortage in Nairobi is due to seasonal causes?

2. If the answer is in the affirmative, will Government please furnish the number and weight of livestock sent to the Nairobi Abattoir during the months of March, April and May for the years 1946 to 1950?

3. If the answer is in the negative, will Government please give the reasons for the present shortage, and what steps are being taken to overcome it?

Reply

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES:

1. The present shortage in Nairobi is partly due to seasonal causes, and to interference with movements in the Northern Frontier Province by abnormal weather conditions.

2. A large proportion of the livestock sent to the Nairobi Abattoir was sold on the hoof and the weights of these animals were not recorded. It is therefore possible to answer the question only in respect of the total numbers sent to the Abattoir. These were:—

	MARCH		APRIL		MAY	
	Cattle	Sheep and Goats	Cattle	Sheep and Goats	Cattle	Sheep and Goats
1946	3,518	11,841	3,759	10,880	4,286	7,841
1947	2,706	5,290	2,163	3,679	1,855	4,512
1948	1,518	5,753	1,927	5,812	1,876	5,013
1949	3,445	6,616	3,290	10,248	2,917	3,324
1950	2,915	7,551	2,487	6,125	970	4,137
						Up to 17th May

The figures for May, 1950, are up to the 17th only.

3. In reply to the third part of the question farmers have for a long period been dissatisfied with the prices which they receive for their slaughter stock, and have been making claims for substantial increases. These claims are under examination by Government and an announcement on them is expected in the near future. In the meanwhile many farmers whose steers in any event have not as yet, in many cases, fully recovered condition are awaiting the result of their demands for the increase in price which they consider is justified. Also the recent strikes have affected the Nairobi Abattoir.

When Government has announced its decision regarding prices and when the Kenya Meat Commission Ordinance, 1950, has been brought into operation, it is expected that the flow of better-grade slaughter stock will be resumed and that adequate supplies of meat will be available in Nairobi. This will probably be from the beginning of June.

MR. COOKE: Arising out of that answer is not the present shortage also partly due to the condition in the African Reserve?

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: That is a matter of opinion. In my opinion that is not so.

MR. COOKE: Arising out of this answer will Government take steps to assure that the consumers' interests are fully guarded in regard to the price of meat?

THE SPEAKER: You can always take the horse to water, you know!

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: Government will, of course, deal with the consumers' rights just as much as the producers' rights.

MR. COOKE: Will Government give an assurance that they are satisfied with the price control formula which regulates the retail price of meat and other commodities?

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: That so-called formula is still under discussion. It is a very complicated matter which we have not yet decided upon.

ROAD AUTHORITY REPORT

The debate was resumed.

SIR CHARLES MORTIMER: Mr. Speaker, I was the Chairman of the Committee whose report we are now debating, and it is perhaps not unnatural I should be in support of the motion.

THE SPEAKER: I hope you will not debate the report, but only the motion. The motion is being carefully confined to three points, while the report covers considerable ground.

SIR CHARLES MORTIMER: I intend, sir, to confine myself entirely to the motion and its terms, as distinct from some other hon. members. (Laughter.)

The few words I wish to say, sir, are rather by way of emphasis on things that have already been said, than by adding anything new to the discussion. The financial objections raised by my hon. friend, the Member for Finance, were fully recognized by the members of the Committee and were in fact specifically mentioned by them, but they did feel that the advantages to be gained by the establishment of a Road Fund to be administered by a Road Authority outweighed the desirability of preserving strict financial orthodoxy. We did emphasize in our report the importance of preserving the supremacy of the Legislative Council in all matters of finance, and we mentioned it in two or three places in the report. As I see it, the main advantage to be gained by the adoption of this motion is that there will be one authority responsible for the production of a road programme and policy and at the same time responsible for the distribution of finance for carrying it out, and responsible too for ensuring that that policy is efficiently carried out throughout the Colony. At present there is a weakness in the chain of responsibility. The Central Road and Traffic Board does its best in framing a road policy and in agreeing with representa-

tions made from time to time that certain roads should become a public charge. After weighing carefully all the pros and cons it makes a recommendation. That is then subject to financial control and quite frequently the Central Roads and Traffic Board is informed that there is just not enough money available to carry out that particular project and it must wait until money is available. It will be a great advantage to the authority responsible to be able to know exactly what funds it has available for any particular year and to distribute those funds in the light of its own knowledge of the road requirements of the country. I would again emphasize what has already been said, that the committee did not recommend any particular road programme. (Hear, hear.) It felt that it would be futile for a report to be framed without any financial recommendations whatever, and so it was under the necessity of finding out something about what was the probable road policy. That information could be obtained only from the Special Commissioner of Works and the Road Engineer. They gave the committee what they felt to be the sound road policy for this country. The committee said in its report, if the country decides that that is the policy it wishes to adopt it will cost x million pounds. We suggest that the way in which that money could be raised is as follows—and then we specified the manner in which we thought that large sum of money could be obtained if that policy was adopted, but we made no recommendation as to the policy that should be adopted. That, we felt, was the business of the Road Authority if and when appointed.

I would also emphasize what has already been said, that the policy framing body should have a fairly reasonable idea of what funds were going to be available during the next few years in order that it might make its plans with reasonable certainty of being able to carry them out.

I would like to correct what appears to be a misapprehension in various parts of the Colony, if one may judge from the reports of some speeches made in support of resolutions demanding the immediate introduction of a Road Authority. The establishment of a Road Authority and a Road Fund will not by some

(Sir Charles Mortimer) magical process immediately produce the roads that the Colony seems to want. It probably will not make any difference to the actual construction of roads or the maintenance of roads for a few years because nothing that we can do or say here will produce more staff, more plant, more money, unless it is on a considered plan which will have to be worked out in relation to all the other financial needs of the Colony, but I do sincerely believe that the establishment of a Road Fund and Road Authority will be of great assistance in the formulation and carrying out of a sound road policy extended over a long period of years. (Hear, hear.)

In conclusion, sir, I would like to express my thanks personally to the members of the committee who worked for many long hours, some of them putting in a great deal of time and thought on working out this particular problem and in producing a report which I am glad to see is receiving general acceptance. (Applause.)

Mr. Uthira (Mombasa): Mr. Speaker, there is one aspect of this resolution which has escaped my attention until this late moment in the debate. I am referring to the end of the resolution at which it is said, "This Council further recommends that there should be annually transferred to the Road Fund the proceeds from the Petrol Consumption Tax levied under the Dangerous Petroleum Tax Ordinance". Now it has occurred to me and to other members that this tax is paid not only by the motor-ign public who, as my hon. friend the Member for the Coast told us the other day, would not doubt welcome the tax if they knew the purpose for which it was to be spent. It is also paid by the users of aircraft and it is upon this point that I wish to speak, because I feel that there is a good deal of merit in the suggestion that the tax on petrol used for aircraft should be applied to some purpose which would be beneficial to the people who fly the aircraft—that is to the betterment and improvement of aerodromes. In order to secure that possibility it looks as if I shall have to move an amendment to the resolution, and with your permission, if I may have the time, I will frame such an amendment. It will have to read, I think, that a proportion of the petrol

consumption tax—Sir, I beg to move that the words "a proportion" be inserted between the words "and" and "of" in the tenth line of the motion as it appears on the Order Paper.

MR. PRESTON (Nyanza) seconded, reserving his right to speak.

THE ACTING CHIEF SECRETARY: Mr. Speaker, I don't think Government would wish to accept this proposed amendment, of which I had no knowledge until the hon. member rose a few moments ago. The reason why I feel we would be unable to accept it is that it does have the effect of proposing yet a further segregation, if I might so call it, of revenue, and is, in any event, a point which could be quite properly discussed when the legislation, which would follow the passing of this motion, comes up before this Council, as soon as we can get it here.

The question of the amendment was put and negatived.

THE ACTING CHIEF SECRETARY: Mr. Speaker, there is indeed very little that I need say in reply to this motion. It has quite obviously received the general approval of this Council, and I would like to say now that Government will, without question, support it. There was, however, one point which was made by the hon. Member for Kiambu concerning the question of the contribution by the Service Authorities towards the cost of our roads, which requires a reply. I would like to say, on this point, that my hon. friend, the Member for Finance, is actually in the process now of having discussions with the Service Authorities on that point.

The only other point that perhaps I should make, although it has already been made by you, sir, having regard to what the hon. Member for Rift Valley said in the course of his speech is that in supporting this motion we give our support to nothing which is not set out in the resolution before Council, and we are not committing ourselves to any of the details to which he drew attention. I beg to move.

The question of the motion was put and carried.

LEGISLATIVE COUNCIL ORDINANCE, 1935

LT. COL. GHERSIE: I beg to move a motion as follows:

[Lt. Col. Gherais]

"This Council resolves that a select committee be appointed to consider the desirability of amending the Legislative Council Ordinance, 1935, in so far as the following matters are concerned—

- (i) the compilation of the Voters' Registers;
 - (ii) the Authorities to be responsible for the compilation of the Voters' Register;
 - (iii) the qualifications of Voters;
- and with the permission of the Council, sir, I would like to add a fourth:
- "Arrangements for Postal Ballots."

As hon. members are aware I recently contested the by-election for the Nairobi North seat on this Council, and whereas I understand that representation has been made in the past for a revision of the regulations governing the Legislative Council Ordinance, due to no material action having been taken, the conditions under which this campaign was conducted rendered it difficult not only for the candidates but also not in the best interests of the electorate. The Electoral Roll of voters was that published in 1944—admittedly there were six supplements, but any person having failed to register prior to September of last year was debarred from participating in the election. Of approximately 1,200 voters' names on the Nairobi North roll, I think it would be correct to say that from three to four hundred had either departed the life or left the Colony permanently, and I have no doubt that if an examination of voters rolls was undertaken in other constituencies, it would disclose that similar conditions prevail.

Now, sir, I submit that a person who has permanently left the territory should have no right to exercise a vote in the Colony, it being fair to presume that the person concerned has relinquished any interest in the Colony, and more particularly in its political affairs, and further it being realized that votes recorded by people outside the Colony could quite easily be the deciding factor in an election in most constituencies in this territory. Unfortunately, under existing circumstances, a candidate must to-day canvass all overseas voters in pure self-defence, in order to compete with his opponent, on the presumption that he is adopting similar tactics.

But, sir, the position becomes ludicrous when it is appreciated that a candi-

date could to-day be elected to Legislative Council by a substantial number of votes obtained from people who have not the slightest interest in the present or future prosperity and development of the Colony, and it is for this reason, sir, that I would recommend that with perhaps the exception of civil servants who may be absent on a period of accumulated leave, any person who has been absent from the Colony for a period exceeding 12 months should be automatically expunged from the Voters' Register. Further, in order to obviate the position whereby voters appearing on two rolls themselves elect the constituency in which they vote, I suggest that the last recorded registration in any one constituency should automatically result in the expungement of their names from any other roll. Now, sir, statistics disclose that there are to-day in Nairobi approximately 6,500 adult Europeans who are entitled to vote in either the Nairobi South or Nairobi North constituencies for Legislative Council; but, sir, I think it would be an over-statement to suggest that there are 2,000 active resident voters on those two rolls. Now this rather apathetic disclosure is due in some instances, to complete apathy, in others it is the belief that they will avoid being called for the purpose of serving on a jury, but in most cases it is due to their ignorance in respect of the regulations governing the necessary qualifications and registration of a voter. In order to remedy the position I would suggest that subject to the necessary qualifications, such as being a British subject and possessing the prescribed residential qualification that the registration of a voter should be automatic and undertaken by an official of a local government authority, following the procedure adopted in the United Kingdom. Now, sir, the office of the local authority by virtue of collection of rates, water fees, etc., is in a far more advantageous position to maintain an accurate register of voters than that of the District Commissioner, and I believe this method would be far more satisfactory than the present system whereby it is necessary for the individual to complete a form at the office of the District Commissioner. The local government authority is in much closer contact with the taxpayers in any particular district, and moreover has the advantage of the knowledge of the immediate

[Lt.-Col. Gheris]

whereabouts of individuals through the medium of the Municipal or District Council Rolls. The District Commissioner would be relieved of an unsatisfactory duty and Government could, if considered necessary, make a contribution to the local authority for services rendered in this connexion.

I think, sir, Government should also consider the desirability of compulsory registration of voters as is the practice in the United Kingdom and the Dominions; this would not, however, necessarily involve the introduction of compulsory voting.

Now, sir, before concluding there is just one further aspect I propose to stress, and that is in connexion with the actual qualifications governing the right to vote for a candidate for Legislative Council, and I refer in particular to the oath of allegiance to His Majesty the King. We are aware that any person elected or nominated to Legislative Council takes an oath of allegiance to His Majesty, but to whom, sir, do those who elect them owe their allegiance? I would hasten to say that my remarks are not intended to raise any racial issue—I am referring at the moment to subjects of a Republic within the Empire, which at present embraces subjects of Eire and India. Now let us take, for example, the case of our Asian friends, many of whom I am convinced regard Kenya as their home and themselves as Kenya citizens, and I for one welcome them as such, always provided that if they desired the privilege of Kenya citizenship then they must be prepared to owe their allegiance to His Majesty the King and to Kenya, and I suggest that in this connexion every subject of a Republic within the Empire should be given the opportunity of electing to whom they wish to owe their allegiance in order that their status may be determined.

I mention this advisedly, because apart from being one of those who realize that we are to-day living during an emergency period, I also feel that war in the not too distant future is not an impossibility, and therefore we should clarify the position before any possible exigency arises.

Finally, sir, I submit that no person, unless he or she is prepared to profess and practise loyalty to His Majesty the King and Kenya can claim any right to

participate in any degree whatsoever in the Government of this Colony. I beg to move. (Applause.)

MR. PRESTON (Central).

MR. NATHOO (Central Area): Mr. Speaker, first of all I should like to congratulate the hon. Member for Nairobi North on his maiden speech of this particular session. It is a motion which is very timely and one which is in the forefront of the minds of all who have the interests of this country at heart. There is no question about it, that if people wish to participate in the affairs of this Colony they must, without equivocation, be prepared to owe allegiance to His Majesty the King and Kenya, and declare their loyalty here and now, before they are allowed to vote in the Legislative Council or, for that matter, on any matter which requires any representations by these people. I feel, speaking on behalf of a large number of the Asian community, I can give an assurance to the hon. member that we, as Asians, will give this matter our most loyal support, and that as and when the legislation is promulgated it will receive our very hearty support, and the furtherance of the interests of the Colony will be our constant aim and endeavour. Sir, I beg to support.

MR. COOKE (Coast): As I have been associated with elections for a number of years I should like to bear out what my hon. friend has said, and say that I should like to support the motion as well.

MR. ERSKINE (Nairobi South): I also would like to support wholeheartedly what my hon. colleague for Nairobi North has said, and I think he has struck very many nails very firmly on the head. There is one particular one I should like to say a word about. He mentioned the function of the local government authority in compiling the voters roll. If this is the orthodox way in Great Britain, I think I may say the time has now come to introduce that system into Kenya. I am not quite sure of my figures but I rather believe that in Nairobi South there are about a thousand live voters on the roll, and if one adds up the City Wards in that area south of the railway line it comes to about sixteen hundred, but my thousand are much better than their sixteen hundred because on my voters roll they all have the particular box number

[Mr. Erskine] in which they live, whereas in the voters roll for the City Wards they do not have that and so of course, I, at all times am ready to lend my special private voters roll to people who are standing for the City Ward, and they find it very useful (laughter), but it just shows, if you have one man or woman doing this job, they would be able to co-ordinate their knowledge, which they would gradually build up over a period, and we would be able to have a really good voters roll whether we were standing for this Council or whether we were standing for a City Ward. It would be a very great help to prospective candidates and might bring a whole lot of people into the field who so far have hidden their light under a bushel.

THE ACTING CHIEF SECRETARY: Mr. Speaker, I would like first of all on my own behalf and on behalf of my colleagues to join the hon. Member for Central Area, Mr. Nathoo in congratulating the hon. Member for Nairobi North on his maiden speech. (Applause.) I would like also to add to those congratulations the fact that he has used the occasion to come forward to this Council with a constructive suggestion. We on this side of Council are always only too glad when suggestions of this kind, which it is quite clear have the support of all members of the Council, come forward from hon. members sitting opposite us.

It is quite clear that the hon. Member for Nairobi North made out a prima facie case for examination by a Select Committee, and coming as it does from one who has so recently had experience of the polls I think it has added force. Government will be glad to support this motion.

THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT: There is just one point I would like to correct, because there may be a misapprehension on that point. The hon. Member for Nairobi South referred to his thousand live voters and then went on to deal with the fact that in the same area there are sixteen hundred voters on the City Council election roll. That is largely due to the fact that on a Legislative Council roll a man can only have one vote in the government of his country, but on a city or local government authority a man can have a vote in each ward provided he has a residence or property

therein, and the figures may not be taken therefore as being completely accurate because of the different principle involved. That, sir, is the common practice in England, in Great Britain, as is the practice of the preparation of both the Parliamentary and the local government roll by the local government authority, with financial assistance from the central government.

I would like to take this opportunity of congratulating the hon. member, who now occupies the seat that I once had the honour of occupying, upon a very able maiden speech.

THE SPEAKER: If there is no other member wishing to speak I will ask the hon. mover to reply.

LT.-COL. GHERIS: I feel there is no cause for reply at all except to thank hon. members for their complimentary remarks in regard to my speech.

The question was put and carried.

BILLS

FIRST READINGS

THE ACTING SOLICITOR GENERAL moved: That the Revised Edition of the Laws (Amendment) Bill be read a first time.

THE DIRECTOR OF EDUCATION seconded. The question was put and carried.

STANDING RULES AND ORDERS SUSPENDED

With the leave of the Speaker, the Acting Solicitor General moved: That Standing Rules and Orders be suspended to enable the Bill to be taken through the second reading and subsequent stages without due notice.

THE DIRECTOR OF EDUCATION seconded. The question was put and carried. Standing Rules and Orders were suspended.

THE ACTING SOLICITOR GENERAL: I beg to move that the Revised Edition of the Laws (Amendment) Bill be read a second time.

As hon. members will recollect, in 1948 a Commissioner was appointed to perform a long overdue and much needed task—the revision of our laws—both the Ordinances and subsidiary legislation. That task has now been completed so far as the Commissioner is concerned, and

[The Acting Solicitor General] indeed the volumes containing the Ordinances have been printed and will shortly be ready for publication. Regrettably, however, as the Ordinance now stands we cannot publish the volumes containing the revised edition of the Ordinances in advance of the volumes containing the revised edition of the subsidiary legislation. Section 9 requires the whole revised edition to be approved and brought into force at the same time. The purpose of this Bill is, accordingly, to amend that section by adding a proviso which will enable those volumes which contain the Ordinances to be brought into force separately from those volumes which contain the subsidiary legislation. Sir, I beg to move.

THE DIRECTOR OF EDUCATION seconded.

The question was put and carried.

THE ACTING DEPUTY CHIEF SECRETARY: Mr. Speaker, I beg to move that the Pensions Bill be read a second time. Sir, I think it is well known to the Council that the object of this Bill is to give statutory effect to the alterations to the superannuation arrangements which were approved by the Council in September, 1948, as a result of the Report of the East African Salaries Commission. The Commission devoted a chapter of this report to this subject, and the Government in Sessional Paper 2 of 1948 endorsed the recommendations of the Commission—subject to a few small modifications. The proposals in the Sessional Paper were examined and discussed in detail in the course of the debate and the Council will remember that a series of thirty resolutions were passed, in the course of which the recommendations were approved.

I think it will be helpful to the Council if I summarize the most important changes in the superannuation arrangements which were made in 1948 as a result of the Holmes Report. In the first place, substantial numbers of African civil servants became pensionable for the first time. The recommendation of the Commission was that Grade II or above should become pensionable. The Council agreed to a recommendation of Government that the pensionability should extend to the African Grade III, because the recommendations of the Commission would have had the effect that only very

small numbers of Africans would receive pensionable status. That is one of the most important alterations which was effected by the Holmes Report. Secondly, the pension constant became 1/600th for all groups of the public service for Europeans, Asians and Africans. That is subject to one qualification, in that certain officers who were in the service at the time of the salaries revision and were then entitled to the pension constant of 1/480th were, in accordance with the recommendations of the Commission which were endorsed by this Council, allowed to retain that pension constant in respect of the period of service before the 1st January, 1946, that date being, of course, the effective date of salary revision. Thirdly, the Kenya European Civil Service ceased to exist as a separate entity and the members of it—that is, the members who elected for the new terms of service as already applied to other overseas European officers. Previously the Kenya European Civil Service had been either on provident fund terms or contributory pension fund terms. With the salaries revision and the revision of pension conditions they came on to a free pension basis with effect from 1st January, 1946, and in addition to that—this was proposed by the Commission and approved by the Council—they had to surrender both their own and the Government contributions to the provident fund or pension fund, as the case might be, which were paid before 1946. Similarly, the Kenya Asian Local Civil Service which was formerly on a provident fund basis, came on to a free pension basis with, as I have said, the pension constant of 1/600th. There again they had to surrender their provident fund contributions made before 1946. There was a certain group of Asian officers who were in the service before the Kenya Asian Local Civil Service came into existence in 1935. They were already on a free pension basis, but with a constant of 1/720th. It was proposed by the Government and approved by the Council that they should receive a constant of 1/600th from the beginning of their service. Similarly, those African officers who were on a provident fund basis and with the salary revision came on to a free pension basis, had, just like the Europeans and Asians, to surrender their provident fund contributions in respect of service before the 1st January, 1946.

[The Acting Deputy Chief Secretary]

Another alteration was that arrangements were made for the award of ex gratia pensions to officers in non-pensionable grades on the grounds of long service and meritorious work and conduct. That proposal was made in the Sessional Paper and approved by the Council. It has been the practice previously to grant such ex gratia pensions on an *ad hoc* basis by resolution of the Council, and this systematizes that arrangement.

Another alteration was the approval of marriage gratuities for officers who resign from the service to marry. That of course applies to all three racial groups of the service. The forty-five rule was introduced, to be for an experimental period of three years in the first place, beginning in January, 1949, and ending in 1951. Under that rule a person who elected for the new terms of service can elect to retire, or the Government may require him to retire, when he reaches the age of 45. As the Bill stands at the moment, that arrangement will end at the end of 1951, but there is a provision in the Bill for the extension of that period with the approval of this Council.

Finally, free housing, which was formerly a condition of service for Asian officers ceased to be so, and therefore the housing no longer appears as an item of an officer's emoluments under the new terms of service.

Those, sir, were the main changes which were introduced in the Government superannuation arrangements as a result of the Holmes Report.

The debate was adjourned.

Council adjourned at 11 a.m. and resumed at 11.15 a.m.

The debate was resumed.

Sir, as I was saying, the main object of this Bill is to introduce the amendment necessitated by the Holmes Commission, and in doing that we have meticulously to follow the decisions of the legislature on the Holmes Report. As regards the portions of the legislation which do not refer to salaries revision they follow almost exactly the provisions of the existing law, which in itself was based on a model pensions Ordinance. There are a few amendments other than those which are necessitated by the salaries revision,

and I shall draw attention to those as we go through the Bill section by section. Most of them, I think, are amendments to the officers' advantage. Now, sir, this legislation falls into four parts. In the first place there is the Bill itself. That is the main part of the legislation. Secondly the first schedule which puts flesh on the bone. Then there are the second and third schedules; they deal with rights of officers who were in the service before the date of salaries revision on 1st September, 1948. They have been, in accordance with the resolution of this Council, permitted to retain certain of the rights they enjoyed before revision. The Bill itself and the regulations in the first schedule differ very little from our own Pensions Ordinance, 1947, which is very similar to the pensions legislation of other territories. The second and third schedules appear to be very complicated. That is because there are so many groups of officers to be considered. I shall deal with it in general terms later on. I will now go on with the Bill clause by clause as briefly as possible, drawing attention to those parts which differ from the existing legislation.

Clause 1 is merely the title.

Clause 2—definitions, I don't think requires any comment.

Clause 3 gives the Governor in Council power to make or amend regulations. The regulations must be published in the Gazette and laid before this Council. Under that section there is, of course, power to amend the regulations contained in Schedule 1.

Clause 4 says that pensions are to be paid out of the General Revenues of the Colony. That is the existing practice.

Clause 5 lays down that there is no absolute right to pension or gratuity, the Governor in Council may reduce or completely withhold a pension in the case of misconduct.

Clause 6 is fundamental. It is the same as the present law. It lays down the circumstances in which an officer may qualify for a pension. Those circumstances are: on attaining the age limit, which is 55, or in special cases 50; on retirement on pension or gratuity from another Government; compulsory retirement on reorganization of his department; on medical grounds; on grounds of inefficiency. It will be noted that

[The Acting Deputy Chief Secretary] Clause 6 starts by saying: "No pension, gratuity or other allowance shall be granted under this Ordinance to any officer except . . ." In other words those conditions are necessary but not sufficient; we shall see that there is another important condition to be fulfilled. The proviso to section 6 is new. I have already referred to it. It was introduced on the recommendation of the Holmes Commission, and it provides that a gratuity may be paid to a female officer who has resigned on account of marriage. This is a new provision and as I have said I shall deal with it later on; it crops up in the regulations.

Clause 7 deals with inefficiency. That is in the existing law; it refers to a case where an officer is retired on account of inefficiency. It does not refer to cases of dismissal for misconduct. If an officer is dismissed on account of misconduct he loses his pension.

Clause 8 deals with compulsory retirement. The Solicitor General will, at the Committee stage, move an amendment to this section to exclude from it Judges of the Supreme Court. That is because Judges of the Supreme Court are appointed by His Majesty the King and removed by His Majesty the King, and it is therefore not appropriate that they should be covered by this section of the Bill.

Clause 9 deals with the maximum pension. A pension must not exceed two-thirds of the highest pensionable emoluments drawn by an officer during his public service. This limit does not apply where an officer is awarded an additional pension on account of injuries received in the execution of his duties, which is provided for in regulation 24 (1).

Clause 10 gives power, in cases in which an officer retires on pension before he has attained the age of 50, to recall him into service if he is physically fit. If he refuses then his pension can be withheld until he reaches the age of 50. This section is designed to cover the case of a man who retires prematurely, either on medical grounds or abolition of office. I have never known a case in which use has been made of this section.

Clause 11 deals with the officer's pension on re-employment. This is to meet the case of a pensioner who is re-

employed on a pensionable basis. The pension that has already been awarded can be withheld during the completion of re-employment and a new pension can be awarded when he finally retires. It will be noted that the pension will only be suspended with the officer's consent. If he does not consent he will be re-employed on non-pensionable terms.

Clause 12 says that a pension cannot be assignable or transferable except in the case of a debt due to the Government, or an order of any court for the payment of periodical sums of money towards the maintenance of his wife, or former wife, or minor child, of the officer to whom the pension, gratuity or other allowance has been granted. This is common to all Colonial Pension legislation.

Clause 13 says what is to happen if a pensioner becomes bankrupt and clause 14 says what is to happen if he is convicted of some offence. These sections are common to Colonial Pensions legislation. I have never known of a case in Kenya, but I have known of many cases under clause 13 in another Colony, where the section operates to the advantage of the officer, because it means that Government will look after the disposal of his pension if he becomes bankrupt.

Clause 15 says that a pension will be withheld if an officer accepts certain kinds of employment in Kenya. I have never known this provision used in any Colony. It is intended to cover cases where the pensioner's new employment, outside Government, is in some way in conflict with the public interests.

Clause 16 (1) deals with the officer who dies in the service. His legal personal representative may be paid a gratuity equal to one year's pensionable emoluments. Now this is something new here because before the present Bill the legal personal representative of the officer was only eligible for this gratuity if the officer had completed a prescribed period of service, I think 5 years. Under this new section no such period is prescribed, I think that is a reasonable alteration. The cases in which an officer dies within the service are few and far between, and the cost of this concession will not be considerable from the Government's point of view, but of course to the dependants of officers it is very valuable indeed.

[The Acting Deputy Chief Secretary]

Clause 16 (2) is new to the Kenya legislation and it requires little explanation. It provides that if an officer dies shortly after he retires on pension, his legal personal representative shall be paid the difference between the gratuity which would have been paid if he had died in the service, and the amount of pension or gratuity he has drawn before his death. Suppose an officer dies one day before his leave pending retirement expires, so that he dies in the service, his legal personal representative is eligible for a death gratuity equal to a year's pensionable emoluments. Now if this man were to die a day after the termination of his leave pending retirement, he would be out of the service and therefore would not be eligible for anything. All he would get would be the one day's pension which he would have drawn.

I think the Council will agree, this is a very reasonable amendment. It seems to me obvious it should be made. Here again, there is a small drafting amendment which the Solicitor General will move at the committee stage.

Clause 16 (3) requires a little explanation. It will be amended at the committee stage so that it applies only to 16 (1) and not 16 (2). The intention is that the death gratuity should be equal to one year's pensionable emolument which would have been taken into consideration if we had been calculating the officer's pension. Later on, in Schedule 1, there is a regulation which says that if an officer has been promoted within three years of the date of his retirement, the pensionable emoluments for the purposes of calculation are to be averaged over the final period of three years. It is usual in Colonial pension legislation for this principle to be adopted in the case of death gratuities but it is not provided for under the existing Kenya law. The effect of 16 (3) will be that it will be applied; save that since the 1st January, 1946, a number of death gratuities have already been paid out without the application of the averaging principle; we certainly do not want to take back what we have already given; so that 16 (3) (a) provides for cases where the officer has already received the gratuity on the old basis, and 16 (3) (b) provides for cases in the future.

Section 17 provides for the payment of special pension to the dependants of officers who die as a result of injuries received in the discharge of their duties, without their own default and on account of circumstances specifically attributable to the nature of those duties. These pensions are payable in addition to the death gratuity which I have just referred to. It will be noted from clause 17 (3) that these special pensions are payable to widows and children of non-pensionable as well as pensionable officers.

Clause 17 (6) I think requires explanation. It says, "This section shall be deemed to have come into operation on the 8th day of May, 1942". Under the existing Ordinance pensions in these particular circumstances are only payable to children until they reach the age of 18. In 1945 this Council approved an amendment to the Widows and Orphans Pensions Ordinance which raises the qualifying age of children under that Ordinance from 18 to 21, and that amendment was made effective from the 8th May, 1942. We have therefore selected the same date for this Ordinance. I think the Council will agree it is obviously desirable that the two Ordinances should be in line.

Clause 18 deals with the application of the Ordinance. It applies to all officers other than those who were in the service before the 3rd September, 1948, and elected to remain on the old terms of service. Now there are a few people—a very small number—who elected to remain on those old terms of service. I think here I should apologize to the Council for the fact that in this section there is a reference to Secretariat Circular No. 68 of the 1st October, 1948, and No. 69 of the 1st October, 1948, and copies of those circulars were not sent to members with the Bill. I must apologize for that, but I think it is well known those are the salary revision circulars and the contents of them are also well known.

Clause 19 contains the power to amend the second and third schedules. I have explained that the second and third schedules are those which deal with the rights of officers who were in the service before September, 1948. The preparation of this Bill was an extremely complicated business, particularly as regards the rights of the officers I have referred to. The

[The Acting Deputy Chief Secretary]... people responsible for drafting this Bill have done their very best to cover everybody, but it is difficult to be absolutely certain that some individual or small group of people with special rights have not been omitted. This clause enables the Governor in Council to make amendments to the second and third schedules without having recourse to an amending Ordinance. Section 19 (3) says "All orders made under this section shall be laid before the Legislative Council".

Clause 20 provides for the Governor in Council, with the approval of the Secretary of State, to settle questions which arise under the Ordinance. Pension questions are constantly arising which are obscure and have to be settled, and this is a provision which makes it possible for the Governor in Council to do that.

Clause 21 deals with the 45 rule. I have already referred to this on several occasions. It is for a trial period of three years in the first place, that is until the 31st December, 1951, Clauses 6, 8 and 10 of the Bill all contain references to the retiring age of officers. Section 21 amends those sections for the time being, substituting the age of 45 for the age 50 or 55. This section applies equally to all racial groups of public service. Section 21 (2) says, "The Governor in Council may, on or before the 31st December, 1951, by order with the approval, to be signified by resolution, of the Legislative Council, declare that the provisions of sub-section (1) of this section shall continue to have effect until such date as may be specified in such order"; so that before the end of 1951, the Governor in Council has got to decide whether or not the life of this section is to be prolonged, and if it is desirable to prolong it a resolution will have to be passed in this Council.

Clause 22 repeats two Ordinances. If there are any officers still in the service who elected not to be subject to the new terms, they will still be subject to the provisions of these Ordinances in spite of their repeal. This point is covered in Part VII of the second schedule.

Now we come to the first schedule, which contains the regulations. Regulations 1 and 2 are the title and definitions. Regulation 3 is application. Regulation 4 is fundamental. It says that an officer

who has completed the requisite qualifying period of ten years' service and retires in the circumstances contemplated in section 6 of the Ordinance, may be granted a pension at the rate of 1/600th of his pensionable emoluments on retirement for each completed month of his pensionable service. That is the meaning of the pension constant 1/600th.

I have already mentioned that some officers enjoyed a pension constant of 1/480th before the date of salary revision and have been allowed to keep it in respect of their service before the 1st January, 1946. Those officers are covered in the second schedule.

Regulation 5 says that an officer who has otherwise qualified for a pension—that is, who has qualified in the sense of section 6 of the Ordinance—but has not completed the qualifying period of ten years' service, may be granted a gratuity instead of a pension. He only qualifies for the gratuity if he leaves the service in circumstances under which he would have qualified for a pension if he had completed ten years' service. The gratuity is five times the pension which would otherwise have been awarded.

Regulation 6 deals with marriage gratuities. As I have said this is new to Kenya pension legislation and was introduced as a result of the recommendations of the Holmes Commission. It is already in existence in many colonies' pension legislation. The gratuity is calculated at 1/12th of a month's pensionable emoluments for each completed month of pensionable service or one year's pensionable emoluments, whichever is less, and the officer must have completed five years' pensionable service in order to qualify for the gratuity.

Part III of the regulations deals with the transferred officers. This refers to officers with service under other Governments as well as the Kenya Government. Special provisions are required for the calculation of the pensions of such officers with mixed service, and for the apportionment of the pension among the various governments with which they have been employed.

Regulation 7 is application.

Regulation 8 is definitions. There is a list of scheduled Governments at the end of the regulations. Briefly it includes all Colonial Governments, the United Kingdom Government and the Union of

[The Acting Deputy Chief Secretary] South Africa, and the East Africa High Commission. Between all these authorities there is reciprocity in the matter of the calculation and apportionment of pensions of officers who have mixed service under those Governments.

Regulation 9 lays down how the pension of an officer with mixed service under scheduled Governments is to be calculated and apportioned. Now this is a very complicated matter and hard to explain, but I will endeavour to do so. A hypothetical pension is first calculated by each Government as if the officer's whole service had been under that Government. This hypothetical pension is then divided up in the proportion to which the aggregate pensionable emoluments drawn from that Government bear to the total aggregate pensionable emoluments drawn throughout the officer's public service. The answer to that sum is the actual pension payable by that Government.

Regulation 10 and Regulation 11 deal with cases in which an officer has other public service, not under a scheduled Government. This service counts towards the ten years' qualifying period for pension, but is not taken into account in the calculation of the pension itself.

Regulation 12 covers the arrangement for the calculation and apportioning of the gratuity of an officer with mixed service who has not done the necessary ten years' pensionable service and therefore is not qualified for a pension. The gratuity is apportioned in the same way as a pension would have been if the man had been due for a pension.

Regulation 13 refers to marriage gratuities, and deals with the case of an officer with mixed service who becomes eligible for a marriage gratuity.

Part IV contains general provisions.

Regulation 14 deals with the parts of an officer's service which may or may not be taken into consideration in the calculation of pension. That agrees with the existing law.

Regulation 15 deals with breaks in service. The general rule is that service must be continuous, except, for example, if a temporary suspension of employment is due to circumstances outside the control of the officer. 15 (1) covers African subordinate police and prisons

officers. The regulations which now cover them provide for certain breaks to be condoned and it is necessary to make similar provision now.

Regulation 15 (2) says that if a pensioner has been re-employed on pensionable terms and had his pension suspended under clause 11 of the Bill, he can, on final retirement, be awarded a completely new pension covering his whole service.

Regulation 16 deals with leave without pay. This does not usually count in the calculation of pension, unless it has been granted on the grounds of public policy. It may happen that an officer might be employed by some other authority, in which case the borrowing authority would usually pay a contribution to cover the pension earned during the period of loan; the arrangement really amounts to a secondment.

Regulations 17 and 18 deal with the pension value of war services, service in His Majesty's Forces and in certain civilian employment. These regulations were formerly the subject of a special Ordinance which was enacted in 1940, I think. This opportunity has been taken to incorporate the substance of that Ordinance in these regulations.

Regulation 19 deals with a matter to which I have already referred, which is the averaging of emoluments in certain cases. The pension is normally calculated on the final pensionable emoluments at the time of retirement, but if an officer has been promoted from one post to another within three years of the retirement, then this provides that his emoluments shall be averaged for the purpose of calculating his pension.

Regulation 20 deals with service otherwise than in a pensionable post. Proviso (a) covers the case of an officer who has service in a non-pensionable post and is later appointed to or promoted to a pensionable post. Under this regulation either half or the whole of the service in the non-pensionable post may be taken into consideration in the eventual computation of the pension. Whether half or all of it is counted depends upon the circumstances of the case.

Now, sir, the Solicitor General will move an amendment to Regulation 20 at the committee stage. There are certain classes of officers who are now on Provident Fund terms. It was contemplated

[The Acting Deputy Chief Secretary] at the time of the Holmes Report that in such cases the officer should be required to surrender his own and the Government's Provident Fund contributions, and that the Provident Fund service should count in full towards his pension. The Solicitor General will move an amendment specifically to cover that.

Regulation 21 says that acting service in a pensionable office may in certain circumstances be counted in the computation of the pension.

Regulation 22 says that "service under the age of 20 years cannot count as pensionable service. Nor can service on probation or agreement, unless the officer is, without a break, confirmed in a pensionable office". That again is in accordance with the existing law.

Regulation 23 deals with abolition of office or reorganization of a department. Now if the officer retires from public service as a result of the abolition of his office, or for the purpose of facilitating the organization of the department, then he can be granted a pension even though he has not completed the normal ten-year qualifying period. Moreover, and this is new to the Kenya pensions legislation although it exists in many other colonies, he can be granted an additional pension at the rate of 1/600th of his pensionable emoluments for each complete period of three years' pensionable service. Cases in which an officer is retired are very few and I think the Council will agree that when it does occur he should have a small additional pension.

Regulation 24 deals with a case where an officer retires on account of injury— if an officer receives injuries in the execution of his duty, on account of the circumstances which arise specifically out of the nature of his duties, then he can have a pension regardless of the qualifying ten years, and he can also be awarded an additional pension.

Regulation 24 (4) covers the case of an officer who is non-pensionable.

Regulation 25 deals with commutation of pension. An officer can at present commute one-quarter of his pension. Under the new regulation he can commute any amount up to one-quarter. This is a small change recommended by the Holmes Commission and accepted by this Council.

Regulation 26 (1) deals with compassionate gratuities to non-pensionable officers. That is in accordance with the existing Ordinance, except that up to the present the gratuity has been calculated on only one week's pay for each complete year of service. In future it will be half a month's pay, that is two weeks for each complete year. The increase is in accordance with the Holmes Report.

Regulation 26 (2) is new, and it provides for an annual allowance to a non-pensionable officer on completion of a period of service not less than 30 years. I referred to this previously. It was approved by this Council at the time of salary revision. In the past it was customary to award *ex-gratia* pensions to these people. It will be noted that these allowances will be limited to officers whose salary on retirement is not more than 200 shillings per month.

Now that, sir, brings us to the end of the first schedule. I don't think it is necessary for me to go through the second schedule paragraph by paragraph. It will be sufficient to explain the method by which the second schedule works. I have already explained that the object of this schedule is to deal with the case of officers who joined the service prior to 1948. Those officers were permitted to retain certain rights which they had under the old terms of service. What we have done in this schedule is to specify the various classes of officers, and then to make amendments to the regulations in Schedule I appropriate to each group of officers.

Sir, I beg to move.

THE ACTING SOLICITOR GENERAL: Sir, beg to second, reserving my right to speak should it become necessary.

MR. USHER: Mr. Speaker, I declare my interest as a pensioner. The Bill has been circulated and dealt with so faithfully by the hon. mover that it seems almost churlish to raise any point. Nevertheless I think he himself felt a little doubtful over clause 15. If I may say so he glissaded over it. Now a pensioner may behave quite scandalously, so long as he does not become bankrupt or get himself into prison, but he cannot become a company director without asking the Governor first. Now that seems to be a curtailment of natural rights for which we have no explanation. It is

[Mr. Usher] dear to the clause that this disability applies to companies whose business is in any way directly concerned with the Colony. Now, if it is suggested that those who enjoy the honourable status which I myself enjoy will engage themselves with some company which is doing shady business, I can only say that surely outside the Colony, unconnected with the Colony, there are concerns which are considerably more unbraugeous. In order to avoid the necessity for moving a detraction in committee stage, I should be grateful, sir, if I might have a little further explanation.

Sir, I beg to support.

MR. JEREMIAH: Mr. Speaker, when we were debating the Salary Commission Report in 1948, I was then a recruit to this Council and I was not aware how fast things move in this Council and actually I was accused or blamed for having missed the bus. Now, sir, this time as I have an interest in the matter I am trying my best to get into the bus first, pay for my ticket, leave the bus but not miss it again, by having no sympathy with my fellow passengers who should insist that I should remain in.

I stand now to speak on this Bill for two main reasons—firstly, to congratulate the Government on introducing such an important Bill, which provides for retirement benefits for employees of all races and most of all for omitting anything which can be regarded as being of a racial nature, which I am afraid is usually the case especially when pecuniary matters are concerned. Now the hon. members of this Council are aware that no African civil servant was entitled to a pension or any retirement benefit prior to 1943. The only retirement benefit an African could hope to get was a gratuity calculated at the rate of 1/12 a year or one week's salary for each complete year of service. The meagreness of that sum is obvious. In 1943 new terms of service were introduced for African civil servants. The African civil servants concerned found those terms worse than the previous ones, and all those who had the option of choosing them or not refused to go in for the new terms of service. Those new terms, due to their unsatisfactory nature, were rejected and it must be

remembered that the absence of provision for any retiring benefit to African employees prior to 1943 was deliberate, for reasons which have not been made public and which, in our opinion, were considered to be selfishness. There were retirement benefits for all the other races but not for Africans. Therefore it is with happy feelings that I express congratulations to the hon. mover and the Government for displaying at last their sense of responsibility to employees of all races.

Secondly, under regulation 20, in the first schedule of the Bill, it is proposed that the group of officers who decline to enter the African Civil Service and who were not permitted to become members of the Government staff provident fund should be deprived of half their previous service prior to 1943, because they were not contributing to the provident fund scheme. Now, bearing in mind the fact that such officers had not any fund to contribute to, although there were all the necessary funds for other employees, I consider it grossly unfair to deprive them of half of their service prior to 1943. Another point to remember is that those officers were entitled to a gratuity and that does not seem to have been mentioned in this Bill. I submit, therefore, for the sympathetic consideration of this hon. Council, a request that the whole period of service of such officers, referred to in regulation 20, sub-section (a), be taken into consideration when computing their pension. The request, sir, is reasonable, and in view of the explanation given I believe the hon. members will accept it and I hope the Government will not reject it. This will make us proud to know that we have at least removed an injustice done to Africans by previous legislation or the lack of it.

With regard to paragraphs 7 and 8 in Part IV of the second schedule, it is difficult for me to agree that the officers who contribute to the provident fund should be required at the time of being promoted to surrender all claims to a refund of their contributions, when it is at the same time provided that an officer who was appointed, or in the opinion of the Governor was selected for appointment to a pensionable office prior to the 3rd September, 1948, shall not be required to surrender any claim to any refund of contributions made by

[Mr. Jeremiah]. This creates an anomaly inasmuch as it favours some and ignores others. The Bill being non-racial as it is, I am sorry to say that the African will be more affected in this section than any of the other communities. There was no pensionable office to which an African could be appointed or selected for appointment prior to 3rd September, 1948. It is therefore, I submit, quite unfair to require any class of person to surrender all claims to contributions made by him when he becomes eligible for pensionable office. I consider the person's contribution should be refunded. The provident fund scheme will still be in existence for Africans and it will be expecting too much from them if, when they reach the point of pensionable office they are required to surrender all claims to contributions they might make to the provident fund. This, in my opinion, will not encourage the African to remain as long as necessary in the service. The tendency may be for them, when they see they are reaching the point of being appointed to a pensionable office, to resign, get paid for their pension and go. Such a position, I submit, should not be encouraged, and as we are now in a position to prevent such a happening, I trust we shall not lose the opportunity of doing so.

Finally, the retiring age has been laid down in the Bill, but no qualifying length of service for retirement is provided, unless one can assume that under regulation 4 in the first schedule of the Bill one can retire with full benefits after continuous service of ten years or more, whether he falls under clause 6 or not. I consider it is absolutely necessary for an officer to have an option of retiring from the service, whether he is 55, 50 or less than 50 years of age, provided he has performed sufficiently long service in the Government. I hope that the hon. mover will introduce an amendment to that effect. It was provided in the former Pensions Bill and I do not see why it is omitted in this one. Formerly it was either 20 or 25 years for Europeans and 30 years for non-Europeans. This is not provided and it is necessary. Africans as a rule work under arduous conditions. They hardly have any high posts to aspire to, and in my view 30 years is sufficient before retiring. He can

continue if he wishes, but he should not be debarred from retiring after 30 years' service if he chooses to.

The hon. mover himself admitted that the Bill is extremely complicated and as such it is not possible for me to try and argue its bad points. There are several alterations of detail which are necessary and as perhaps it would not be possible to suggest them to this Council this morning I would request that the Bill be sent to select committee. In anticipation of sympathetic consideration of the points I have raised by the Council, and especially by the hon. Member for Finance, I beg to support.

MR. COOKE: Mr. Speaker, I shall be very brief, but I would like to support what the hon. Mr. Jeremiah has said—that fullest sympathy should be given to the points he has made. Speaking personally I think the best way would be to refer the matter to select committee, but I do not know what my other colleagues think.

THE FINANCIAL SECRETARY: Mr. Speaker, I rise to refer to the points made by the hon. Mr. Jeremiah. I could, of course, go into a great deal of detail on this matter, by reference to the various sections of the Bill and by reference to the various items in the schedules, but I have a feeling that the Council would prefer that detail, at this stage, be omitted. I would, however, say this, that the points that have been made by the hon. Mr. Jeremiah are points of principle. These points were discussed at considerable length at the time the Salaries Commission Report was under debate in this Council and were then disposed of. In fact this Bill which is now before the Council seeks to give practical expression to the decisions of the Council taken at that time. I might at this stage refer to a speech then made by the hon. Mr. Jeremiah himself in regard to this question of fixing a special retiring age in the case of Africans. This is what he said: "The retiring age should be the same for all races. It has been proved that the climate of this country is quite good for everybody and if it is good for the African it is good for the others. If it is necessary for anyone to be retired at the age of 45 then it should be for everybody and not for Europeans and Asians

[The Financial Secretary] only, and the Africans made to work longer". In that speech, Mr. Speaker, Mr. Jeremiah quite rightly points to the principle that there should be no discrimination, and I suggest his speech this morning is diametrically opposed to the principle he sought to establish at that stage. In the circumstances the Government could not accept the points Mr. Jeremiah has just made.

THE ACTING SOLICITOR GENERAL: First I should like to deal with the points raised by the hon. Member for Mombasa, as to clause 15 of the Bill. This provision is existent in our present legislation and will be found with regularity in the legislation of the other colonial territories. Where a Government officer over a period of years has acquired information as a result of his activities on behalf of the Government, it may not be in the interest of Government that that information should be turned to commercial or other advantage. It must be remembered that the ex-officer is still being paid from the funds of the Colony and I submit that it is not unreasonable that the Government should have the right to curtail his activities if it appeared to Government that he was proposing to pursue a course not in the interests of Government.

In relation to the point made by the hon. Mr. Jeremiah as to a request for a select committee, the points which the hon. Mr. Jeremiah has made are, in my submission, points of principle and would not be appropriate to be dealt with by a select committee which could, after all, only examine the Bill in detail and make amendments of detail and not principle. The principles having already been accepted previously, it is a matter for this Council at this stage either to reject the Bill with the principles which it contains or to accept the Bill. If the Bill is accepted then I submit, Mr. Speaker, that a select committee could not effect the amendments.

Sir, I beg to support.

THE ACTING DEPUTY CHIEF SECRETARY: I have nothing to add to what the Financial Secretary and the Acting Solicitor General have said in reply to the points raised by the hon. Mr. Jeremiah.

The question was put and carried.

IN COMMITTEE

THE ACTING SOLICITOR GENERAL moved: That Council do resolve itself into Committee of the whole Council to consider clause by clause the following Bills:—

The Revised Edition of the Laws (Amendment) Bill.

The Pensions Bill.

The question was put and carried. Council in Committee.

The Bills were considered clause by clause.

Clause 8: The Acting Solicitor General moved: That clause 8 be amended to substitute a colon for the full-stop at the end of the clause and by adding the following proviso: "Provided that the provisions of this clause shall not apply to a Judge of the Supreme Court".

The question of the amendment was put and carried.

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

Clause 16: The Acting Solicitor General moved: That for the words "For the purposes of this section" where they appear in sub-clause (3) of clause 16 there shall be substituted the words "For the purposes of sub-section (1) of this section".

The question of the amendment was put and carried.

The Acting Solicitor General moved: That sub-clause (2) of clause 16 be amended in the following respects—

(a) by substituting for the words "where an officer who is receipt" where they occur, the words "where an officer who is in receipt"; and

(b) by substituting for the words "the annual pensionable emoluments of such officer" where they occur the words "the annual pensionable emoluments on which the pension of such officer has been calculated".

The question of the amendment was put and carried.

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

Clause 19: The Acting Solicitor General moved: That there shall be inserted between the words "shall" and

[The Acting Solicitor General]

"retrospective" where they occur in the proviso to sub-clause (2) of clause 19 the word "have".

The question of the amendment was put and carried.

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

MR. JEREMIAH: Mr. Chairman, can an amendment be made in regulation 4, please, I would like to move an amendment to regulation 4. I would like the words "resignation or" to be inserted before the word "retirement" in line 4 of the regulation.

THE CHAIRMAN: It is proposed to insert in the fourth line of regulation 4 the words "resignation or" before the word "retirement".

THE ACTING DEPUTY CHIEF SECRETARY: I cannot accept that amendment. It is contrary to the whole principle of the pensions legislation. In section 6 of the Ordinance itself it says that no pension, gratuity or allowance shall be granted under this Ordinance except on retirement. The Government could not accept the amendment proposed by the hon. Mr. Jeremiah.

The amendment was ruled out of order by the Chairman on the ground that it was contrary to the purpose of the Bill.

Regulation 9: The Acting Solicitor General moved: That for the letters "od" where they appear in sub-regulation 9-(2)-(d) there shall be substituted the word "or"; That for the letters "undcd" where they appear in proviso (a) to regulation 9 there shall be substituted the word "under".

The question of the amendments was put and carried.

MR. JEREMIAH: May I give notice of an amendment to regulation 20, that sub-section (a) of the regulation be amended by substituting for the words "one-half of that period, or such greater portion or the whole thereof as the Governor in Council may determine" the words "the whole of that period".

THE ACTING DEPUTY CHIEF SECRETARY: I am afraid the Government cannot accept the proposed amendment. What we have done in this proviso is to follow exactly what was decided upon on the occasion of salary revision, when

this particular point was fully discussed and settled.

MR. JEREMIAH: Mr. Chairman, I think the reasons given by the hon. Member are not quite satisfactory because even if the Council accepted the Salaries Commission recommendations, I don't think the Council is bound to carry them out without making a change if something was wrong with that recommendation. I still appeal to this Council to see the reason for my request, because the Africans had no fund at all to contribute to, all the other races had a fund.

THE ACTING CHIEF SECRETARY: Mr. Chairman, I think I ought to make a point here. What the hon. member is discussing now is an important matter of principle which has already been accepted by this Council when the Bill was read a second time, and I would ask, sir, whether it is, in fact, in order to discuss an important point of principle of this kind while we are in Committee.

THE CHAIRMAN: I am, of course, taken by surprise as to whether this is a point of principle, because I had no previous notice of anything of this kind, and I would like the legal advice of the Government Legal Adviser present as to whether this proposed amendment, if carried, would, or would not, destroy some vital principle of the Bill.

THE ACTING SOLICITOR GENERAL: Mr. Chairman, these regulations stand in somewhat a different position to regulations made subsequent to the enactment of an Ordinance. They are contained in a schedule to the Bill and form part of the Bill, and will become part of the Ordinance when enacted. Furthermore they do contain matters of principle. As the hon. the mover so aptly described it the regulations provide the meat which covers the bare skeleton of the Bill. They are, in my opinion, Mr. Chairman, to be regarded as forming part of the Bill and therefore containing matters of principle vital to it.

THE CHAIRMAN: I cannot see why an amendment cannot be moved in Committee of the whole Council to any part of any Bill, and I must, as I have already proposed this amendment and a debate has started, continue with the debate until I put the question. If no member wishes to add anything I will put the question.

The question of the amendment was put and negatived.

The Acting Solicitor General moved: That there shall be added after the proviso (d) to regulation 20 in the first schedule the following new proviso: "(g) Where an officer who is a contributor to the Government Staff Provident Fund is without break of service appointed to a pensionable office and confirmed in that office he shall on surrendering all claim to any refund of contributions made in respect of any period between his attaining the age of 20 years and the date of his confirmation in the said pensionable office be deemed for the purposes of this Ordinance and the regulations to have been serving in a pensionable office during the aforesaid period".

The question of the amendment was put and carried.

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

Second Schedule

Paragraph 6: The Acting Solicitor General moved: That the word "of" be inserted between the figure "(3)" and the word "regulation" in sub-paragraph (7) (a) of paragraph 6.

The question of the amendment was put and carried.

Paragraph 8: The Acting Solicitor General moved: That the proviso to be added to regulation 20 by sub-paragraph (2) of paragraph 8 in Part IV to the second schedule shall be relettered "(f)" instead of "(e)".

The question of the amendment was put and carried.

Paragraph 9: The Acting Solicitor General moved: That the proviso to be added to regulation 20 by sub-paragraph (b) of paragraph 9 in Part IV to the second schedule shall be relettered "(f)" instead of "(e)": That for the words "paragraph (3) regulation 9" where they appear in sub-paragraph (a) of paragraph 9 there shall be substituted the words "paragraph (3) of regulation 9".

The question of the amendment was put and carried.

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

THE ACTING SOLICITOR GENERAL moved: That the Revised Edition of the Laws (Amendment) Bill be reported back

to Council without amendment and that the Pensions Bill be reported back with amendment.

Council resumed and the hon. Member reported accordingly.

THIRD READINGS

THE ACTING SOLICITOR GENERAL moved: That the Revised Edition of the Laws (Amendment) Bill be read the third time and passed.

THE CHIEF NATIVE COMMISSIONER seconded.

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

THE ACTING SOLICITOR GENERAL moved: That the Pensions Bill be read the third time and passed.

THE CHIEF NATIVE COMMISSIONER seconded.

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

THE ACTING SOLICITOR GENERAL moved: That the Electric Power (Amendment) Bill be read the third time and passed.

MR. NATHOO: There are one or two observations I would like to make in respect of this Bill arising out of a letter which was submitted and circulated by some interested parties. It is but fair to say, sir, that the principle having been accepted in the second reading of the Bill, there was very little that the Select Committee could do in regard to changing the principle. It has been alleged that due consideration has not been paid to some points which have been raised by these interested parties. I would like to say that while the members visited the place in question when all the machines were not working, I myself paid a visit at night and I was convinced that the decision was the decision which would have been arrived at even if all the members had gone there when these were working at full pressure. Another point I would like to raise, sir, is that we have not deprived these residents to take action against the company if they can prove that they have suffered physical damage caused by anything which could have been prevented by the company, but the only consideration we have to take is the good of the greatest number. I have been convinced, sir, by a personal visit to the new site

[Mr. Nathoo]

that the Electric Power Company is making every effort to shift their station in that area, and we hope that unless some emergency occurs or some circumstances arise which are beyond the control of the company, the nuisance which is caused to the residents will be removed.

Sir, I beg to support.

THE CHIEF NATIVE COMMISSIONER seconded.

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

THE ACTING CHIEF SECRETARY: I have to report that the Sessional Committee has appointed the following Select Committees:—

The Factories Bill.

The Hon. Deputy Chief Secretary (Chairman).

The Hon. Labour Commissioner.

The Hon. Solicitor General.

The Hon. Mr. Usher.

The Hon. Mr. Preston.

The Hon. Mr. Gheraie.

The Hon. Mr. Pritam.

The Hon. Mr. Mathu.

The Hon. Mr. Ohanga.

The Hon. Mr. Shatry.

The Legislative Council Ordinance, 1935.

To consider the desirability of amending the Legislative Council Ordinance, 1935, within the terms of reference set out in the motion which was moved by the hon. Member for Nairobi North and carried today:—

The Hon. Member for Law and Order (Chairman).

The Hon. Sir Charles Mortimer.

The Hon. Mr. Havelock.

The Hon. Mr. Gheraie.

The Hon. Mr. Cooke.

The Hon. Mr. Nathoo.

The Hon. Mr. Madan.

The Hon. Mr. Jeremiah.

The Hon. Mr. Shatry.

THE ACTING CHIEF SECRETARY: There is, sir, if I may take up the time of Council a little bit longer, another important task which I know it is the wish of all hon. members that I should perform. I refer to the fact that to-day is the last occasion on which my hon. friend the Labour Commissioner, Mr.

Hyde-Clarke, will be sitting with us in this Council.

Mr. Hyde-Clarke has been a member of this Council since 1946, when he was appointed Labour Commissioner, and I think that since that time I myself have worked more closely with him in my substantive capacity as Deputy Chief Secretary than probably any other member of the Government, and I am indeed glad that chance has brought about the opportunity which I have to-day of paying to him the tribute which I know all hon. members will agree his valuable service to the Government throughout these years so fully entitles him. (Hear, hear.) It gives me particular pleasure to know that in paying that tribute I am, as you have heard, voicing the feelings of all my colleagues on this side of the Council.

This is not an occasion on which to review the work of any officer or the work of any particular department, but I would like to say that as Labour Commissioner Mr. Hyde-Clarke has applied such zeal, energy and understanding to the problems facing his department that he has earned in a remarkable way the respect and admiration not only, as I believe, of members of this Council, but also of a very wide public outside this Council. (Applause.) His work has meant that he has occasionally found himself associated somewhat prominently with controversial subjects in this Council, but notwithstanding the seeming paradox it is very much to his credit that he has more than once found himself in the unusual position on this side of the Council of gratefully acknowledging bouquets thrown to him by hon. members opposite.

Sir, in Mr. Hyde-Clarke's retirement the Government and the Civil Service is not only losing an extremely able officer but also a colleague and a friend whose counsel both within and outside the sphere of his immediate departmental responsibility will be sadly missed, and on behalf of the Government and the Civil Service I wish to him and to Mrs. Hyde-Clarke a happy and prosperous future wherever it may take them. (Applause.)

MAJOR KEYSER (Trans Nzoia): Mr. Speaker, I rise on behalf of the European Elected Members to express our good

[MAJOR KEYSER]

wishes for the future of Mr. Hyde-Clarke on the occasion of his retirement with a feeling that we are losing a comparatively young officer, whose useful and valuable services to the Colony could have continued for many years. (Applause.) Mr. Hyde-Clarke has held a number of responsible positions in the Colony and has everywhere created an atmosphere of friendliness and confidence. He has had to carry out a particularly difficult task as Commissioner for Labour, and while we have not always been in agreement with him he has, by his sincerity, honesty of purpose and his high moral courage, gained our esteem and admiration (applause), and his friendly and genial manner has always kept the discussion in a congenial atmosphere. He has brought into all discussions a very fair and wise viewpoint and has undoubtedly been a great influence in maintaining the good relations between employer and employee. I cannot but feel regret that the Colony will no longer have the advantage of his wise counsels in this matter (hear, hear), and that there is something wanting in a system that allows of the services of such a valuable officer as Mr. Hyde-Clarke to be lost to the Colony. I should like Mr. Hyde-Clarke to know that when he leaves this Colony he will be sadly missed, and wish him and Mrs. Hyde-Clarke and their family every good wish for the future (applause) and to assure them that they will always receive a warm welcome should they visit us in the future.

MR. PATEL: I rise to associate the Indian Elected Members with the remarks made by the hon. Chief Secretary and the hon. Member for Trans Nzoia. As a member of the Labour Advisory Board for a certain period I often noticed the great ability, enthusiasm, courtesy and tact which Mr. Hyde-Clarke showed in tackling the difficult task which he had to undertake in this Colony as Labour Commissioner. I believe that he has served the best interests of the workers as well as the country as a whole in discharging his duties, and we will all miss his presence in this Colony very much. On behalf of the Indian Elected Members I wish Mr. Hyde-Clarke and Mrs. Hyde-Clarke the best of luck and future prosperity and success.

MR. SHATRY: I would also like to associate myself with the previous speakers in paying my tribute on behalf of the Arab community to Mr. Hyde-Clarke. I had the opportunity of working with him when the strike was on in Mombasa and I saw what a hard-working gentleman he was and how he did help to bring the strike to an end. I wish him and Mrs. Hyde-Clarke a very successful journey, and wish him the best for the future.

MR. OHANGA: Mr. Speaker, may I join with hon. members on both sides of the Council in congratulating the hon. Labour Commissioner who is now retiring very much for his labours on behalf of the Colony. On behalf of the African members here and the African community generally, I should like to say that the tenure of office of the retiring Labour Commissioner has been a time when the labour conditions of the country, mainly among Africans, have been improved very much, and although the time has not yet come when we shall enjoy the full benefits of the good the Labour Commissioner has done I can say that Mr. Hyde-Clarke is leaving what has proved to be a very valuable commission. We are very grateful to him for his services and wish him a good time.

THE LABOUR COMMISSIONER: Mr. Speaker, this is one of the worst of the bad moments which I have experienced here. I suppose it comes somehow or other to all hon. members to go through this, but up to the time when it comes for you to speak you think you have something to say, but when the time comes everything you had in mind goes straight out of your head. I am sure that has been the experience of other hon. members here.

Sir, I am quite overwhelmed by the expressions of appreciation which have been made by hon. colleagues and hon. opponents or hon. members on the opposite side of the Council. I cannot say how much I appreciate what has been said. On my part, sir, I must also say from my side how very much I appreciate the assistance and help that has been given to me and to my department by all hon. members of this Council, and if I say, especially by hon. members on the other side of the Council I think they will probably understand,

[The Labour Commissioner] because unless those measures with which I have been concerned carry the full confidence of Unofficial Members, then they are worse than useless.

Sir, may I also take this opportunity to pay a personal tribute to my very long-suffering Member. He has ridden a rather unruly horse with a very light hand, and I am most grateful to him for his advice and guidance. Only once, and that quite recently, have my flanks felt a preliminary twitch when I felt the whip was going to descend, but fortunately a kind fate has decreed otherwise.

Finally, may I say this. I have the happiest recollection of all the service here and all the cuts and thrusts we have had across the floor of this Council. I do feel that the very fact that we have had these cuts and thrusts has done a great deal to shape the labour policy of

this country in a manner in which it is best fitted to help all interests and the Colony itself.

In taking my leave I can only say that I wish Kenya and hon. members and the community generally all possible happiness, and I do not think I can say anything more than to ask that everyone should bear in mind the words of my hon. and learned friend the Attorney General in his recent very moving speech on the subject of co-ordination and co-operation among the different communities. Again I must say I am most grateful for everything that has been said. (Applause.)

ADJOURNMENT

Council rose at 1.10 p.m. and adjourned until 10 a.m. on Thursday, 8th August, 1950.

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SECOND SERIES

VOLUME XXXVII

9th May to 25th May, 1950

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