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COLONY AND PROTECTORATE OF KENYA

**LEGISLATIVE COUNCIL
DEBATES**
OFFICIAL REPORT

Second Series

Volume VIII

1939-1940

4th September, 1939, to 5th January, 1940

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COLONY AND PROTECTORATE OF KENYA

List of Members of the Legislative Council

President:

HIS EXCELLENCY THE ACTING GOVERNOR, W. HARRAGIN, ESQ., K.C.
(1) and (2)

Ex Officio Members:

CHIEF SECRETARY (HON. G. M. RENNIE, M.C.). (3)
ATTORNEY GENERAL, ACTING (HON. H. C. WILLAN, M.C.). (4)
FINANCIAL SECRETARY (HON. C. R. LOCKHART, C.B.E.).
CHIEF NATIVE COMMISSIONER (HON. E. B. HOSKING, O.B.E.).
DIRECTOR OF MEDICAL SERVICES (DR. THE HON. A. R. PATERSON,
C.M.G.).
DIRECTOR OF AGRICULTURE (HON. D. L. BLUNT). (5)
DIRECTOR OF EDUCATION (HON. A. T. LACEY, O.B.E.).
GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS
(BRIG.-GEN. THE HON. SIR GODFREY RHODES, C.B.E., D.S.O.).
DIRECTOR OF PUBLIC WORKS (HON. J. C. STRONACH).
COMMISSIONER OF CUSTOMS (HON. A. W. NORTHROP).
COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT
(HON. C. E. MORTIMER, M.B.E.). (6)

Nominated Official Members:

HON. J. D. MCKEAN, O.B.E. (Acting Prov. Commissioner, Coast). (7)
HON. J. C. RAMMELL (Acting Conservator of Forests). (8)
HON. S. H. FAZAN, C.B.E. (Prov. Commissioner, Nyanza Province).
HON. T. A. DENNISON (Acting Solicitor General). (9)
HON. R. DAUBNEY, C.M.G., O.B.E. (Director of Veterinary Services).
HON. S. O. V. HODGE (Prov. Commissioner, Rift Valley).
HON. C. TOMKINSON (Acting Prov. Commissioner, Central Province).
(10)
HON. G. B. HEDDEN (Postmaster General). (11)
HON. C. T. DAVENPORT (Acting Commissioner of Mines). (12)

European Elected Members:

MAJOR THE HON. F. W. CAVENDISH-BENTINCK, Nairobi North.
HON. S. V. COOKE, Coast.
THE RT. HON. THE EARL OF ERROLL, Kiambu.
HON. LADY SIDNEY FARRAR, Nyanza.
HON. S. G. GHERSIE, Uasin Gishu.
MAJOR THE HON. E. S. GROGAN, D.S.O., Ukamba.
LT.-COL. THE HON. J. G. KIRKWOOD, C.M.G., D.S.O., Trans Nzoia.
LT.-COL. THE HON. F. S. MODERA, D.S.O., M.C., Nairobi South.
HON. W. G. D. H. NICOL, Mombasa.
LT.-COL. THE HON. LORD FRANCIS SCOTT, K.C.M.G., D.S.O., Rift
Valley.
HON. E. H. WRIGHT, Aberdare.

LIST OF MEMBERS OF THE LEGISLATIVE COUNCIL—Contd.

Indian Elected Members:

HON. ISHER DASS (Central).
HON. SHAMSUD-DEEN (Central).
HON. R. KASIM (Western).
HON. J. B. PANDYA (Eastern).
HON. A. B. PATEL (Eastern).

Arab Elected Member:

CAPT. THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G. (R.N.V.R.).

Nominated Unofficial Members:

Representing the Interests of the African Community—

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

Representing the Interests of the Arab Community—

HON. SHEIKH HAMED BIN MOHAMED BIN ISSA.

Clerk to Legislative Council:

MR. C. M. DEVERELL (Acting).

Reporters:

Mr. A. H. Edwards, Mr. H. Thomas.

- (1) *Vice* Air Chief Marshal Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C., on leaving the Colony on the 28th September, 1939, pending reappointment to the Royal Air Force.
- (2) Acting Chief Secretary till 22nd September, 1939, and Acting Governor from the 28th September, 1939.
- (3) *Vice* Mr. W. Harragin.
- (4) *Vice* Mr. Harragin.
- (5) *Vice* Mr. H. Wolfe, acting for Mr. H. B. Waters, on transfer to Gold Coast.
- (6) *Vice* Mr. G. J. Robbins, acting.
- (7) *Vice* Mr. G. H. C. Boulderson, on leave.
- (8) *Vice* Mr. H. M. Gardner, O.B.E., on leave.
- (9) *Vice* Mr. H. C. Willan.
- (10) *Vice* Mr. S. H. La Fontaine, D.S.O., O.B.E., M.C., on leave.
- (11) *Vice* Mr. G. P. Willoughby, acting.
- (12) *Vice* Mr. H. Izard, on leave.

ABSENTEES FROM LEGISLATIVE COUNCIL SITTINGS

4th September, 1939—

Hon. Acting Commissioner of Customs (Mr. L. J. D. Smith).
Hon. J. D. McKean, O.B.E.
Hon. S. H. Fazan, C.B.E.
Hon. S. O. V. Hodge.
Hon. C. Tomkinson.
Hon. Elected Member for Coast.
Hon. Elected Member for Mombasa.
Hon. Elected Member for Aberdare.
Hon. A. B. Patel.
Hon. Arab Elected Member.
Hon. Arab Nominated Unofficial Member.

14th November, 1939—

Hon. Arab Elected Member.
Hon. Arab Nominated Member.

15th November, 1939—

Hon. Shamsud-Deen.
Hon. Arab Elected Member.
Hon. Arab Nominated Member.

16th November, 1939—

Hon. Elected Member for Mombasa.
Hon. Arab Elected Member.
Hon. Arab Nominated Member.

17th November, 1939—

Hon. C. Tomkinson.
Hon. Elected Member for Mombasa.
Hon. R. Kasim.
Hon. A. B. Patel.
Hon. Arab Elected Member.
Hon. Dr. C. J. Wilson, C.M.G., M.C.
Hon. Arab Nominated Member.

4th December, 1939—

Hon. General Manager, K.U.R. & H.
Hon. Commissioner of Customs.
Hon. H. R. Montgomery, C.M.G.
Hon. Arab Elected Member.
Hon. Arab Nominated Member.

5th December, 1939—

Hon. General Manager, K.U.R. & H.
Hon. Commissioner of Customs.
Hon. Arab Elected Member.
Hon. Arab Nominated Member.

11th December, 1939—

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

ABSENTEES FROM LEGISLATIVE COUNCIL SITTINGS—Contd.

12th December, 1939—

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

13th December, 1939—

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

14th December, 1939—

Hon. G. B. Hebden.
Hon. Arab Elected Member.
Hon. Arab Nominated Member.

15th December, 1939—

Hon. Elected Member for Aberdare.
Hon. Arab Elected Member.
Hon. Arab Nominated Member.

28th December, 1939—

Hon. Chief Native Commissioner.
Hon. Commissioner of Customs.
Hon. J. D. McKean, O.B.E.
Hon. S. H. Fazan, C.B.E.
Hon. S. O. V. Hodge.
Hon. C. Tomkinson.

Hon. Elected Member for the Coast.
Hon. Elected Member for Uasin Gishu.
Hon. Elected Member for Trans Nzoia.
Hon. Elected Member for Nairobi South.
Hon. Elected Member for Mombasa.
Hon. Elected Member for Rift Valley.
Hon. A. B. Patel.
Hon. Arab Elected Member.
Hon. H. R. Montgomery, C.M.G.
Hon. Arab Nominated Member.

3rd January, 1940—

Hon. Elected Member for Nairobi South.
Hon. Shamsud-Deen.
Hon. Arab Elected Member.
Hon. Arab Nominated Member.

4th January, 1940—

Hon. Shamsud-Deen.
Hon. Arab Elected Member.
Hon. Arab Nominated Member.

5th January, 1940—

Hon. Elected Member for Mombasa.
Hon. Elected Member for Aberdare.
Hon. Shamsud-Deen.
Hon. R. Kasim.
Hon. Arab Elected Member.
Hon. Arab Nominated Member.



COLONY AND PROTECTORATE OF KENYA
LEGISLATIVE COUNCIL DEBATES
EXTRAORDINARY SESSION, 1939-1940

Monday, 4th September, 1939

An extraordinary session of Legislative Council was held at the Memorial Hall, Nairobi, at 11.30 a.m. on Monday, 4th September, 1939. His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

PROCLAMATION

The proclamation summoning Council was read.

ADMINISTRATION OF OATH

The oath was administered to—

Ex Officio Members:

H. Wolfe, Esq., O.B.E., Acting Director of Agriculture.

G. J. Robbins, Esq., Acting Commissioner of Lands and Settlement.

COMMUNICATION FROM THE CHAIR

HIS EXCELLENCY: Honourable members, this is an Extraordinary Session of Legislative Council, called under paragraph 3 of our Standing Rules and Orders. There is no need for me to emphasize why it has become necessary to call this extraordinary session.

There has been a certain shortening of the proceedings, as you will see from the Order of the Day. I am not going to

make any formal or lengthy address, because I agree with the Prime Minister that the time has come for action not words.

As in the past, Great Britain has been slow to take up a challenge and enter into a struggle. That the struggle is to be a hard one is to be expected; when the end will come no man can say; but what is certain is this: that having once entered into the war we shall stay in it until our object is achieved.

The first real war news from England was received this morning that a British passenger steamship, the S.S. *Athena*, carrying 1,400 people, had been torpedoed 200 miles west of the Hebrides and was sinking. As it is, an official Admiralty announcement, one must assume that it is true. A report has been received since—it may only be a rumour, but one hopes that it is true—that, at any rate, the majority of the passengers have been saved. I pray that may be so.

But what a gallant act with which to start a war! And what a stimulus this is going to be to the German soldier, sailor and airman when he has to face men with weapons instead of women and children in an unarmed merchant vessel.

If any further proof were needed of the righteousness of our cause, here it is, and if further stimulus were necessary of our determination to see this war through to the end, whatever the cost, we have it now.

[H.E. the Governor]

I do not believe this action of torpedoing the *Athena* is in accordance with the wishes of the masses of the German people, silent though they have to be. Nor do I believe that it is in accordance with the desires and thoughts of the vast majority of the German fighting men. The blame lies with the present rulers of Germany, men who have surrendered themselves to evil, and whose every thought and action is guided by evil and by nothing else, and it is this we are going to eradicate and drive from off the earth to the place whence it came.

The business of this Council this morning is to deal with two Bills—the Compulsory Service Bill and the Trading with the Enemy Bill.

The former confers wide powers, and its object is to enable the best possible use to be made of the man power of the Colony during the war and to distribute the burden fairly. I might remind Council of the Compulsory Service Bill that has recently been passed in England and also of the fact that in Poland, our ally, boys down to the age of 17 are fighting for what is now our cause as well as theirs.

The second Bill is modelled on a draft Bill that was sent out from England some little time ago. It is a somewhat complicated and technical piece of legislation. All I will say about it is that copies of our draft Bill (which is modelled on and is practically the same as that which is to be passed or has been passed in England) have been sent to the neighbouring territories of Uganda, Tanganyika and Zanzibar, and an agreed Bill has been made. So identical legislation will shortly be enforced in all the territories.

SUSPENSION OF STANDING ORDERS

With the consent of His Excellency, under Standing Rule and Order No. 103, Mr. Harragin moved that Standing Rules and Orders be suspended to permit the Compulsory Service Bill and the Trading with the Enemy Bill to be passed through all their stages.

MR. WILLAN seconded.

The question was put and carried.

BILLS

FIRST READINGS

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

The Compulsory Service Bill,
The Trading with the Enemy Bill.

COMPULSORY SERVICE BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the Compulsory Service Bill be read a second time.

Sir, this is a very comprehensive piece of legislation which will enable the man power of this Colony to be mobilized to the best possible advantage. Most of the provisions are arbitrary, but in times like these that must of necessity be so.

As stated in the Objects and Reasons of this Bill, this measure has three objects: firstly, to provide for compulsory military service; secondly, to provide for compulsory personal service; and thirdly, to provide for the management of businesses where the owners of these businesses have been called away on military service.

As regards military service, we have already had legislation in force since 1937 whereby British subjects of European descent of all ages have to come under military service under the Kenya Defence Force Ordinance. Under that Ordinance there is no power to impose personal service. But under the Emergency Powers Defence Act which has recently been passed by the Government in the United Kingdom we, in this Colony, are empowered to make regulations to amend any Ordinance on the statute book, and in that way regulations have been drafted and will be promulgated as soon as this Bill has been passed whereby the members of the Kenya Defence Force will be obliged, if called upon, to perform personal service as well as military service.

With these regulations and with clause 4 of this Bill it is possible to call up persons, British subjects or British protected persons, irrespective of race or creed, between the ages of 18 and 50 for military service both within and without the Colony. The Regulations in the Defence Force Ordinance will also have an amendment whereby its members may be pledged for military service outside the Colony if called upon.

[Mr. Willan]

The scheme whereby men will be called up in this Bill is through the local Man Power Committees situated in the various areas up and down the country. It will be the duty of each such man power committee to provide from its area men for military service when called upon to do so by Your Excellency. Any requisition made by Your Excellency, I am authorized to say, will be spread out as evenly as possible over the whole Colony so that the inhabitants of one particular area will not be treated more unfairly than the inhabitants of any other.

In selecting men for military service, each man power committee must pay due regard, under clause 9 (4) of this Bill—

“to the necessities of civil life, and the circumstances of each case.”

When any person has been called up, or rather has been selected and then called up for military service by a man power committee under the provisions of this Bill, that person will be served with a notice signed by the District Commissioner, and in that notice will be stated the date and place where he is to report. If any person served with such notice fails to report in accordance with the provisions of that notice, then he is liable to penalties which may extend to imprisonment for five years.

In areas where it is not possible to situate man power committees, the duties of the man power committee will be performed by the District Commissioner of that particular area.

That briefly implies the provisions of this Bill with regard to military service.

As regards personal service, every male British subject and every male British protected person in this Colony over the age of 18 years is liable to be called up to do any work or render any personal service if called upon by the Governor to do so or by any person to whom the Governor has delegated powers under one of the clauses of this Bill. Such work might be of a temporary nature or might be for the period of the war.

All persons enrolled for military service will be paid by Government at rates which have been prescribed by the Regulations under this Bill.

Any person called upon to do work or render personal service for Government will also be paid by Government at the rate of pay current to such work in the area in which such work is performed.

Now I come to clause 13. That clause has been inserted because many men have been called up for military service; and it may happen that work vital to aid the Colony is required to be done by private firms or private persons; in such cases Your Excellency is empowered to order the work to be performed. But, by this clause 13, the private firm or person for whom that work is performed is bound to pay for such work.

Now I come to the last object of this Bill—that is, to provide for the management of businesses where the owners of such businesses have been called up for military service which is, as hon. members will see, provided for in clause 14 of the Bill. This clause contains provisions which may seem very arbitrary, but in times like these it is necessary, and this clause has been very carefully drafted in order to give adequate safeguards. I wish to stress now that this clause will only apply to the owner of a business who is called away for military service and is unable to make his own private arrangements for that business to be managed. Everyone hopes that all owners of businesses called away on military service will be able to make such private arrangements, but in the absence of such private arrangement being made it is necessary to have on the statute book a provision of this kind.

In any case where the owner of a business is unable to make his own arrangements, then Government, under the powers contained in this clause, will do everything possible to find a suitable person to carry on that business. And in any such case the owner is safeguarded because, before Your Excellency can make arrangements with regard to the management of that business, the owner must have consented to such arrangements. When the owner has consented to such arrangements, again with the consent of the owner, Your Excellency may appoint the person who has been selected to manage the business and to take over that business as if such person had power

[Mr. Willan]

of attorney. Here, again, the owner is safeguarded by the fact that the manager appointed to manage that business has no power to raise money by way of loans on the business except with the approval of the appropriate man power committee or by any other person or body of persons appointed by Your Excellency. And then only a loan can be raised in the case of a business that is not a farming business on the movable assets of that business, and if the business is that of farming on the produce grown, produced or to be grown or produced on the farm.

By clause 15 a further safeguard is afforded the owner of the business who has been called away for military service, because in that clause Your Excellency is empowered to appoint inspectors to inspect any business which is being managed or supervised under the provisions of the preceding clause, and every such inspector has very wide powers to see that the business is supervised or managed in a proper manner. If the manager fails to comply with any of the directions given to him by an inspector he may be liable to a fine of £100 or imprisonment for twelve months.

As to remuneration and expenses of the manager managing a farm under the provisions of this Bill, the remuneration and expenses will be fixed by Your Excellency on a certain scale and that remuneration and those expenses will be paid by the absentee owner and will come out of the proceeds of the business, because the business will be managed on his behalf and for his benefit, and it must be remembered that in addition that absentee owner is drawing military pay.

LORD FRANCIS SCOTT: Your Excellency, I beg to second.

In doing so, I should like to say that Government did the hon. Member for Nairobi North and myself the courtesy of allowing us to go through a draft of this Bill with the hon. Acting Attorney General.

With regard to the main part of the Bill dealing with compulsory service, this has to be passed for legal reasons but, speaking for the European community of this Colony, I can say that there is no need for any compulsory powers to make them do whatever they can do for the

State at this time of crisis. They are, one and all, united and determined to do everything in their power to assist in whatever way they can at the present moment.

With regard to the sections dealing with managers of businesses, those are naturally very difficult sections to draft to achieve the purpose which is wanted. It is possible there may be some criticism of them, but I can say that we went through them very carefully and this Bill is the result, and I believe that as far as it is humanly possible the necessary safeguards are included.

MR. PANDYA: Your Excellency, at this fateful hour of national emergency, on behalf of the Indian elected members and the Indian community I assure Your Excellency of our solid support to Government.

I support this Compulsory Service Bill. We are prepared and anxious to render any contribution that we may be capable of towards the defence of the country, and in any measures in which our efforts and energies may be effectively and usefully employed.

Whatever differences we may have with Government and the European community in this country—and these differences are domestic troubles which are bound to exist in a large family—I beg to assure Your Excellency that, in this hour of need and trial, those differences have to-day disappeared (Applause), and we stand united with other communities like a solid rock to offer resistance to the common enemy. We have been talking of and demanding rights in this country, but we are also aware of the fact that rights have corresponding duties and responsibilities, and I beg to assure you that we know where our duty lies in this hour of need, and we shall do our utmost to help Government.

I am sure that Your Excellency will extend to us and the leaders of the Indian community your trust and confidence, and I also hope that the Indian community will be permitted and given an opportunity to play their part in this historic struggle as worthy citizens of the country and Empire. I am confident that with all our united efforts we will come

[Mr. Pandya] out successful and victorious in the war which has been forced upon us. (Applause.)

DR. WILSON: Your Excellency, speaking on behalf of my hon. colleague who with me represents native interests in this Council, I support this Bill and all it implies.

Some of us at this moment are remembering August, 1914, and no doubt some of our Africans remember that time too. The tragic memory of the sacrifices that our natives had to be called upon to bear during that war will remain. But our Africans did not fail us then, and will not fail us now.

Many of them understand quite clearly what we are fighting for, and they realize that our cause is their cause. I am confident, Your Excellency, that the Africans of Kenya will play their part loyally in doing anything they are called on to do in helping us to win the war. (Applause.)

MAJOR GROGAN: Your Excellency, I think that this would be a good occasion to put on record that, at the last war, this Colony as far as I know was the very first portion of the British Empire to introduce, and pass on its own initiative, the powers you are asking for to-day.

The question was put and carried.

TRADING WITH THE ENEMY BILL.

SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the Trading with the Enemy Bill be read a second time.

This Bill is a measure necessary as a result of the outbreak of war, and it is modelled on legislation which, as Your Excellency has just said, has probably by this time been enacted in the United Kingdom. Under this Bill, when it becomes law, it will be unlawful for traders and all other persons to transact business with enemies without official permission, and that permission, of course, will only be granted in very exceptional circumstances indeed.

By clause 1 this measure is made retrospective to yesterday, the date of the declaration of war, with a proviso saving any acts done between yesterday and now which would have been unlawful if this

Bill had been passed into law immediately war had been declared.

The other provisions of the Bill are, I am afraid, very technical and highly complicated.

Clause 2 defines "enemy subject" and "enemy territory", and also provides for Your Excellency to issue certificates from time to time certifying whether any area is in the occupation of any Power and, if so, what Power. Such certificate is conclusive evidence of the facts stated therein, and this must be so, as otherwise it would be very difficult indeed to obtain proof of those facts.

Clause 3, a very long clause, has two objects: first, to impose penalties for the offence of trading with the enemy, and secondly, to define what is meant by trading with the enemy.

As regards penalties, a prosecution may be taken in the Supreme Court or in a first or second class magistrate's court, according to the seriousness of the offence. In the first case, if a prosecution is taken before the Supreme Court, an offender is liable to imprisonment which may extend to seven years; in the latter case, to imprisonment for twelve months.

Regarding the meaning of "trading with the enemy", this is set out generally and with particularity in clause 3 (2). Generally, it means having any commercial, financial, or other dealings with, or for the benefit of, an enemy, and it means in particular supplying or obtaining goods from an enemy or conveying money to an enemy or on behalf of an enemy, or transmitting money to a place in enemy territory.

The same clause exempts transactions authorized by the Governor which would, without special authorization, be prohibited, and such authorization can only be granted in very exceptional circumstances such as if a transaction was in the best interests of the Colony, or necessary to avoid extreme hardship.

In addition, this clause 3 (2) permits acceptance of payments from enemies in respect of transactions completed before the commencement of the war, that is, yesterday, but as regards all other payments they are forbidden, because it must be assumed that after war has broken out an enemy will not pay something for nothing.

[Mr. Willan]

In clause 3 (4), no prosecution for an offence of trading with the enemy can be instituted without the consent of the Attorney General, hereby providing a necessary check on frivolous prosecutions.

Clause 4 provides a general definition of an enemy, and the only part of the clause to which I need refer is sub-clause (1) (c), which provides that any body of persons carrying on business in any place—and I would stress those words "in any place"—is an enemy if that body of persons is controlled by a person who is an enemy. This is designed to cover businesses carried on in non-enemy territory, where the control is nevertheless vested in someone in enemy territory. For instance, a business may be carried on in a neutral country by a company incorporated in that country, but which is really only the branch of a larger concern carried on and controlled by an enemy in enemy territory.

This clause also empowers the Governor, with the prior approval of the Secretary of State, to make orders treating undesirable neutrals as enemies, thus bringing transaction with them within the prohibitions of this Bill.

Clause 5 empowers any business in the Colony to be inspected, under an order by Your Excellency, to see whether it is trading with an enemy and if, on a report received after inspection, Your Excellency thinks it necessary, Your Excellency may then appoint a supervisor for that business.

Clause 6 is possibly the most technical and is very legal. It provides that in the absence of the Governor's sanction, any assignment of a chose in action or any transfer of a negotiable instrument, that is a bill of exchange, confers no right on the assignee or transferee if made by or on behalf of an enemy. The expression "chose in action" is a legal term and covers debts and claims of any kind.

In the same clause, if any person purports to settle any such debts which have been assigned, he is guilty of an offence. But it would be a good defence to a debtor who has discharged a debt assigned by an enemy creditor if the debtor can prove that, had he not discharged it, his liability could and would

have been enforced against him by a court in a neutral country.

By sub-clause (4), if a claim is made against a person and such person thinks that in satisfying the claim he is committing the offence of trading with the enemy, he may discharge his liability by paying the money into the Supreme Court.

Clause 7 invalidates the transfer of securities made by or on behalf of an enemy except with Your Excellency's sanction, and provision also exists in the clause for preventing evasion of the provisions of the clause by the issue of bearer bonds.

Clause 8 prohibits the purchase of enemy currency.

Now I come to clause 9 which, from our point of view, is probably the most practical clause in the Bill, because under it Government is empowered to take possession of all enemy property in this Colony and vest it in a custodian of enemy property. The first custodian appointed will be the Registrar General, whose offices are in the Law Courts. The advantage of this particular clause over a similar clause contained in the Trading with the Enemy Ordinance enacted during the last war, is that this Bill enables the Governor to vest property straight away in the custodian without having to obtain an order of the court. The main functions of a custodian of enemy property are to prevent payment of money to enemies and to preserve enemy property in contemplation of arrangements to be made at the end of the war.

Sub-clause (2) is important and this, of course, may be criticized as being somewhat arbitrary. Nevertheless, it is very necessary if the custodian of enemy property is to discharge his duties effectively.

In many cases in war time it will be impossible to ascertain with absolute certainty that property believed to belong to an enemy subject is, in fact, enemy property. Without such a provision it would be quite unsafe for a debtor to pay to the custodian money which he owes to a person he believes to be an enemy, and should the debtor prove to be mistaken in his belief then, but for the provisions of this sub-clause, he might be

[Mr. Willan]
made to pay up again in response to a demand by the supposed enemy.

The remaining clauses of this Bill, 10 to 14, are formal and need no explanation.

As His Excellency has already said, I sent a draft of the Bill to the Attorneys General of the neighbouring territories of Uganda, Tanganyika, and Zanzibar for their comments. All four Attorneys General have acted in close collaboration, and I am safe in saying that the legislation enacted in these territories regarding this particular subject will be identical.

MR. DENNISON seconded.

The question was put and carried.

BILLS

IN COMMITTEE

MR. WILLAN moved that Council resolve itself into Committee of the whole Council to consider the two Bills clause by clause.

MR. DENNISON seconded.

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

His Excellency moved into the chair.

The Compulsory Service Bill was considered clause by clause.

The Trading with the Enemy Bill was considered clause by clause.

Clause 2.

COL. KIRKWOOD: Your Excellency, under clause 2, (b) I would like to ask if any consideration is to be given to nationals who have been incorporated in the German Reich by force of arms against their wishes—whatever that means? What is their position? I know of cases of people who have been in this Colony for 17 or 18 years and they are not Germans and they are not at war with their own country. Has this point been considered by Government and can they apply to be released at a later date? I presume they have been already arrested. It does seem very harsh that these people who are not Germans should be treated as enemies of our own country when they are not enemies at all.

MR. WILLAN: Your Excellency, that is a matter of international law which cannot be taken into consideration under this Bill.

COL. KIRKWOOD: Again, I think it is very unfortunate for these unfortunate people if they are going to be treated definitely as if they were enemies. I would like some assurance to be given that they can apply to the Governor in Council to do something and have their case considered. Technically, I admit, they are enemies, but that is all and I think they have a right to claim to be heard either by the Governor in Council or by some judicial authority.

LORD FRANCIS SCOTT: Sir, Does not section 4 (d) cover the hon. and gallant member's point? It does not include any person by reason only of his being an enemy subject.

MR. WILLAN: As I said just now, it is not a matter for us here, it is a matter for international law and I am not prepared to give any definite answer to the question now.

MR. HARRAGIN: Your Excellency, I can tell the hon. and gallant member that these cases will be considered and considered sympathetically, but at the moment he must realize that an enemy is an enemy and until we are able to alter the international law in some way to exclude or re-define the word "enemy" I am afraid things will have to remain as they are.

MR. WILLAN moved that the Compulsory Service Bill and the Trading with the Enemy Bill be reported to Council without amendment.

MR. DENNISON seconded.

HIS EXCELLENCY vacated the chair. Council resumed its sittings. His Excellency reported the Bills without amendment.

THIRD READINGS

MR. WILLAN moved that the two Bills be read a third time and passed.

MR. DENNISON seconded.

The question was put and carried.

The two Bills were read a third time and passed.

ADJOURNMENT

Council adjourned *sine die*.

Tuesday, 14th November, 1939

Council assembled at the Memorial Hall, Nairobi, at 11 a.m. on Tuesday, the 14th of November, 1939. His Excellency the Acting Governor (W. Harragin, Esq., K.C.) presiding.

His Excellency opened the Council with prayer.

OATH OF ALLEGIANCE

The Oath was administered to—

Ex Officio Member:

G. M. Rennie, Esq., M.C., Chief Secretary.

COMMUNICATION FROM THE CHAIR

His Excellency made the following communication from the Chair:—

Honourable Members of Council, we are all conscious to-day of the loss which this Colony has sustained through Sir Robert Brooke-Popham's relinquishment of his appointment as Governor to take up new duties with the Royal Air Force. Before he came to this country, Sir Robert served in the Air Force with great distinction for many years, and His Majesty's Government decided that he could render greater service during the war in that Force than as Governor of Kenya. That decision is not one which we can question, for the Home Government must be in the best position to judge how Sir Robert's services could best be utilized.

During the two and a half years that Sir Robert was with us here, he attained what can only be called a remarkable degree of popularity with all sections of the community. He took a deep interest in all our problems, and he never spared himself. Perhaps the qualities which most impressed those of us who were in daily contact with him were his desire to examine every point of detail as well as larger questions of principle, and his understanding and sympathy in matters where individuals, whether in the Service or out of it, were experiencing hardship.

Lady Brooke-Popham, too, will be greatly missed. She played a very active part in the public life of the Colony, and had great organizing ability. She will be

remembered particularly for her work in connexion with the creation and development of the Kenya Women's Emergency Organization, a body which has more than proved its value during the past two and a half months to Government, Force Headquarters and the public. It may not be out of place to remind hon. members that all the work of this organization has been carried out by public-spirited ladies without any payment whatever.

I am sure that all hon. members will join with me in wishing Sir Robert and Lady Brooke-Popham as much happiness and prosperity as is possible in time of war, and we all hope that, when the war is over, we will see them once again in Kenya. (Applause.)

His Majesty the King has appointed Sir Henry Moore as our new Governor, and he expects to arrive in Kenya early in the New Year. Most members of this Council already know Sir Henry Moore personally, for he served here as Colonial Secretary for several years. And those of you who know him will agree with me that we are indeed fortunate in our Governor-designate.

Since he left us, Sir Henry Moore has been Governor of Sierra Leone, and, for the past two years, Assistant Under-Secretary of State and later Deputy Under-Secretary of State in the Colonial Office. His experience in that Office will, I have no doubt, be of the greatest value when he comes to deal at this end with questions requiring reference Home.

Members will, I am sure, join with me in extending a warm welcome on behalf of the Colony to Sir Henry and Lady Moore in their new work. (Applause.)

It is customary for the communication from the chair at the opening of Legislative Council to consist of a review of recent events in the Colony, and no doubt hon. members expect this morning to hear much that is new to them. In that case, I am afraid that some disappointment is inevitable, because Government has made a point of giving to the Press as much information as it possibly could from time to time. We felt that the public had the right to know as much as we could tell them, and the machinery of the Information Committee has been used to

[H.E. the Governor]

keep as close contact as possible between Government and the Press. I fear therefore that much of what I have to say this morning will be to some extent out of date, but nevertheless I think it is not out of place for me to repeat it here, so that hon. members may be able to form a general impression of the events of the past few months as a whole.

Since war broke out, the Government has had to cope with many and difficult problems. Its task has not been made easier by the fire at the old Secretariat, which resulted in the loss of many valuable Government records as well as most, though not all, of the current files. The Secretariat has, however, been able to carry on reasonably efficiently, thanks to the co-operation of other departments and of members of the general public in supplying copies of correspondence with Government.

On behalf of Government, I would like to thank all those who co-operated with us in this way, and I would also wish to apologize for the many delays which unavoidably occurred in dealing with correspondence submitted before the fire.

I would now like to say something about the effect of the war on our domestic affairs in this Colony, and, first of all, I would like to speak about agriculture and production.

It is only common sense when I say that the first necessity is that this Colony should produce to the maximum extent all commodities which can be of value to the Empire as a whole. The carrying out of that production must rest largely with the efforts of individual farmers of all races. But it is necessary that producers should gain a reasonable, though not excessive, price for their produce, and every effort is being made by Government to ensure this. We are assured of the sympathetic support of the Home Government. We have been informed that certain products, notably butter, cereals, oil seeds, flax, sugar, tea, and sisal, will be required in the United Kingdom. It is not yet possible, except in the case of sisal, to indicate the prices

likely to be received over a fixed period. But the price level of the Colony's exports must be expected to show a rising tendency, and, provided that our cost of production is maintained at a reasonable level, the returns of the agricultural industry should show an improvement.

We are often asked, "What is Government's agricultural policy?" As I see it, Government's agricultural policy can only be to do what it can to ensure a reasonable return to the producer, and what it can to bring about an increase in production. One method by which Government can help in stimulating production is by the provision of short-term finance to enable crops to be reaped in cases where group farm managers have not been provided with adequate funds by the absentee owner, and the Land Bank has already arranged for some such assistance to be given.

This question of agricultural finance and other similar questions have been receiving the attention of a new Board which I recently appointed. I refer to the Settlement and Production Board, which is in constant session under the chairmanship of the hon. Member for Nairobi North. Detailed proposals for assistance to the agricultural industry are under consideration by Government and the Board. They would provide funds for group farm managers who are unable to meet charges for labour, fertilizers, seed, etc.; for similar arrangements in cases where landowners have made private arrangements for their farms to be carried on; and also for short-term advances to farmers in special cases where ordinary private finance is not forthcoming.

In considering any such proposals, the first thing necessary is to find the money. That question is being examined, and if we can solve it, it will be necessary to introduce legislation to enable the proposals now being considered to be put into effect.

Hon. members will remember that the Secretary of State recently approved the provision by loan of a sum of £250,000 to increase the capital of the Land Bank. This sum had not been raised when war

[H.E. the Governor] broke out, and it is doubtful what proportion it will be possible to raise now. But there is every reason to hope that sufficient capital will be forthcoming to enable the Land Bank to play its part in fostering agricultural production during the war.

Government is now considering a recommendation of the Settlement and Production Board for establishing a training farm and secondary farm school in the interests of the younger generation. Here I would like, on behalf of the Government, to acknowledge with thanks a most generous offer of 500 acres of land which has been made by Lord Egerton of Tatton for such an institution. (Applause.)

Hon. members will be aware that a member of the Board has recently visited most of the European settled areas, and had discussions with local farmers on agricultural problems arising from the war. His report will be of value in forming an estimate of Kenya's productive capacity and of the contributions which she can make to the common war effort. One such contribution is in respect of flax. Assistance has been forthcoming from the Colonial Development Fund towards the re-establishment of a flax industry in this country, and ten factories are to be erected. Indeed, one is already complete, and seven more are in course of construction. Legislation to control the industry will be introduced during the current session.

As was announced on the wireless on the 10th October by the hon. Member for Nairobi North, Col. Griffiths, the General Manager of the Kenya Farmers' Association, and Mr. Daubney, the Director of Veterinary Services, at the suggestion of the Settlement and Production Board, recently paid a visit to Egypt and the Near East to investigate the possibility of further markets for Kenya products. Their report is now in the hands of the Board, and shows that there are great opportunities for the sale of Kenya produce, particularly for agricultural produce, in that part of the world.

It is a matter of great concern to Government that this Colony has once again suffered this year from drought and locusts. A sum of over £13,000 has been spent in destroying hoppers, but we feel that it was well spent, and that the thanks of the Colony are due to all who helped so energetically in the campaign. I may say that a scheme for insurance of crops against future invasion of locusts is under consideration.

One result of the drought and locusts has been a shortage of grazing, particularly in the North Nyeri and Laikipia districts. In consequence of this, last June arrangements were made to reopen Messrs. Liebig's factory at Athi River, and provision was made for the transport of cattle to the factory by rail at reduced rates. Arrangements were also made for the production of hay and for its sale to farmers below cost. On the outbreak of war, Liebig's factory changed over to the manufacture of bully beef, and has so far been able to supply all our local requirements. The factory may be called upon to play an important part in furnishing meat rations during the war. Some difficulty has been experienced in obtaining sufficient numbers of cattle to keep it going, and the question of increasing supplies is being closely watched.

Turning to settlement, as hon. members know, the Secretary of State has approved generally the recommendations contained in the Report of the Settlement Committee, and has sanctioned the raising of a loan of a quarter of a million pounds for the purpose of giving effect to these recommendations. In common with many other projects these schemes have had to retire into the background since war broke out, and it is not clear when settlement on any substantial scale can be resumed. The Kenya Agent in London, Col. Knages, is being retained with a small staff for the time being, and is able to furnish inquirers with general information about the Colony.

The Trade and Information Office in London is being drastically reduced in size, and is being kept on with a skeleton staff only. A public-spirited private

[H.E. the Governor] individual in England, who is greatly interested in East African affairs, has generously offered his services free of charge, and the Governments concerned hope to be able to avail themselves of his offer. As hon. members know, this office is supported financially by all the East African Governments. Its future was discussed at the recent conference of East African Governors, who unanimously recommended that it should be retained on a greatly reduced scale.

The curtailment of the activities of this office is a natural result of the dislocation of trade which was bound to follow the change-over from peace to war conditions—a dislocation which, I imagine, has been even more pronounced at home than it has here. In Kenya we have, in fact, suffered little. Many of the restrictions imposed on the outbreak of war have been removed, and selling permits are only required in the case of a few articles of which there is an actual shortage. In general, stocks in Kenya are adequate, and no anxiety need be felt regarding a possible shortage of any essential commodity. Imports have been arriving regularly.

In this connexion, and in connexion with price control, I would like to pay a tribute to the work of the Supply Board, which generally supervises these and connected matters. Price control of essential local foodstuffs has been decentralized, and is now exercised by District Commissioners acting in consultation with Assistant Price Inspectors under the general supervision of the Board. A sub-committee of the Supply Board, which includes two Uganda representatives, fixes the free-on-rail price of the more important locally produced commodities, while the ex-godown price at Mombasa of certain key imported articles is scheduled from time to time in the Official Gazette on the advice of the Commissioner of Customs, assisted by a committee of Mombasa merchants. It is not intended to extend the list of these scheduled articles, except in cases where the need for special protection of the public is clearly proved. These arrangements ap-

pear to be working reasonably smoothly throughout the Colony. There have been remarkably few complaints, and it is satisfactory to note that competitive trade is continuing in the case of most commodities.

Economic warfare is an important feature of Imperial defence nowadays, and as members are no doubt aware, a special Ministry has been appointed at home to deal with it. For us, it has meant the control of exports and is going to mean the control of imports. In both cases this control is or will be exercised under the supervision of the Supply Board. Control of imports and exports is closely linked with control of currency, and special defence regulations were introduced at the beginning of the war to protect the pound sterling. These regulations have, I am afraid, led to some hardship in individual cases, and may lead to more, but every effort is made to deal sympathetically with special cases. The regulations are administered by the three Banks as agents for Government, and I would like to take the opportunity to thank the Banks for the unfailing help and co-operation which we have received.

All these restrictions on trade, and indeed the many other restrictions on the liberty of the individual arising from the war, were bound to give rise to inconvenience and hardship in individual cases. But in this respect we are suffering in common with the remainder of the Empire, and I think it is true to say that we have suffered less than many other places, and in particular much less than people in the United Kingdom.

In order to provide adequate shipping space to maintain our exports, and to ensure that the United Kingdom shall receive vital foodstuffs and war material, a Shipping Controller has been appointed at Mombasa, and is in direct contact with the Ministry of Shipping at home. He is advised by a representative Shipping Advisory Board, which deals with the allotment of tonnage in East African territories, and by a Loading Committee which deals with allocation of space as

[H.E. the Governor] between Kenya and Uganda and as between the producers' and exporters' interests.

One of the main functions of the Loading Committee is to forecast shipping requirements over a period of months, and to make representations regarding actual requirements, should there be any shortage of space.

Hon. members will remember that Sir Robert Brooke-Popham decided to appoint a Commission of Inquiry to investigate the recent series of Customs frauds at Mombasa. That was before the war, and unfortunately it has not yet been possible for the Commission to meet. I hope, however, that it will begin its work very soon.

The Report of the Commission of Inquiry into the recent labour trouble at Mombasa has been delayed for the same reason. All the evidence has been taken and the report is now in course of preparation, and it will be in the hands of Government shortly. I hope that it will be laid on the table before this session closes.

The war has made severe calls on the resources of the Post Office. A number of offices have had to be kept open for 24 hours per day, and the volume of telephone calls and telegrams, particularly for official purposes, has greatly increased. On the outbreak of war, the Empire air mail service as such ceased, and a modified surcharged air mail service was introduced. Foreign air mail correspondence was temporarily excluded from this service, but arrangements have now been made whereby air mail facilities are again available for such correspondence.

Another major activity of the Post Office has been the administration of the Censorship Regulations. Censorship has been imposed throughout the Empire, and the examination of mail matter, particularly foreign mail matter, is as comprehensive as possible. An organization consisting of three Deputy Censors, each with a staff of qualified linguists, some

of them part time, has been built up. This organization has to deal with a large volume of correspondence. For instance, apart from books, newspapers, parcels, etc., during the first four weeks of October, over 22,000 letters from or for countries outside the Empire, passed into or out of the Colony. This is quite apart from correspondence with Empire countries. In addition to that, the organization has to cope with about 15,000 telegrams a month.

On the outbreak of war, the censorship had to be applied as comprehensively as possible in respect of all communications. It has now been possible to allow a certain relaxation in the restrictions originally imposed, and as time progresses it is hoped that further measures of relief will be practicable.

Another important war-time activity is the dissemination of information. A committee has been appointed under the chairmanship of the Director of Education, which keeps in close touch with the Press and with broadcasting, and issues for publication local news and also official news from overseas. The Committee was instrumental in arranging for the publication by the *East African Standard* of a new paper in Kiswahili, called *Baraza*. This paper has proved a great success, and has in fact a higher circulation than any other paper published in East Africa. In view of the low price at which the paper is sold (ten cents) there may be a loss, and Government has indemnified the *East African Standard* up to a maximum of £1,500 per annum. The policy of the paper remains entirely independent of Government control.

Another activity of Government arising from the war has been the necessity of dealing with enemy aliens, both as regards their persons and their property. About 130 male enemy aliens have been interned, and although guards are supplied by the Kenya Defence Force, the internees are a responsibility of the civil Government. A number of enemy alien women and children have been interned at Mau Summit, the camp used by the Women's Transport Service having been adapted for the purpose. In addition,

[H.E. the Governor] some 70 German women and children have been accommodated in a hotel in Nairobi. They are living there without restriction and at Government expense, and their welfare is looked after by a small board of visitors.

At the outbreak of war, a Trading with the Enemy Ordinance was passed by this Council and the Registrar General has been appointed Custodian of Enemy Property. The provisions of this Ordinance have worked reasonably smoothly.

Much of the work connected with the enemy alien population has devolved on the Police Department, and it has been necessary, for this and other reasons, temporarily to increase the Police Force. In order to provide facilities for training additional African police, a training depot was opened early in September at Maseno, near Kisumu. Provision is being made for training a large number of Africans. No difficulty has occurred in obtaining recruits, and a number of ex-police have been re-enlisted. Extra police are being used to augment existing police establishments at most stations, because many farms are left without male protection owing to the employment of numerous farmers on military or other national service.

A number of Indians have also been engaged and are undergoing training to fit them for special police duties.

In the Public Works Department it has been necessary at short notice to carry out many emergency works for the military authorities. Most of them entailed construction in the most rapid manner possible. The Department itself has carried out admirable work in this respect, and I would also like to express Government's appreciation of the manner in which various contractors have operated in carrying out, economically and efficiently, many works which they were asked to undertake at short notice and without the usual plans and specifications.

As regards the peace-time activities of the Department, work on the African

block of the Group Hospital is progressing steadily and should be finished early next month. The new Indian elementary school in Nairobi should be available after the Christmas vacation.

A certain number of the Abyssinian refugees from the refugee camp at Isiolo have voluntarily returned to Abyssinia. The remainder have been moved to a new camp at Taveta, which is more suitable than the old camp at Isiolo from every point of view.

I would like now to speak for a moment or two about our military forces, but members will realize that I cannot say as much as I would like for obvious reasons. Both the Kenya Regiment and the Kenya Defence Force are young forces without any tradition beyond that of willingness to serve. But the work which these two forces have carried out since the outbreak of war has abundantly justified their creation. In many districts Kenya Defence Force training was carried out on an entirely voluntary basis, and yet the work of calling up, equipping and despatching men to their duties was accomplished within a period of time which would have done credit to a unit with war-time organization and establishment. (Hear, hear.) In Nairobi alone, over 1,000 men were detailed to their duties within the first few days of war and where necessary medically examined, clothed, equipped and entrained, in some cases, within six hours. There were undoubtedly individual cases of hardship, but on the whole it is an achievement of which Kenya may justly be proud.

Many will have noted with regret the military necessity of transferring the Kenya Regiment to Kampala. Hon. members will, I am sure, join with me in thanking the Uganda Government for the generous manner in which they have endeavoured to make the Regiment as comfortable as existing circumstances permit. Some small satisfaction can be derived from the fact that a large percentage of the Regiment has returned and more will be returning to Kenya to attend courses at the training school at Nakuru.

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There is every reason to believe that the system of group farm managers will successfully solve the difficulty of keeping in production farms belonging to or managed by those called up.

And here I would like to say something about the general question of the utilization of the Colony's man power. The Secretary of State has expressed the view, and no one can question that it is the right view, that the maintenance and the increase of production, and the maintenance of an efficient colonial service represent contributions of the first importance to the Empire's war effort. It is the case, no doubt, that many individuals feel that they would be rendering better service in one of the armed forces of the Crown than in their offices or on their farms. But it is vitally important that production and trade should be maintained, and it may well be that an individual is rendering better service to his King and country by carrying on with his normal civil occupation. The question of the utilization of the Colony's man power is always under review, and arrangements are now being made for some men at present serving with the military forces to return to their civil occupations, where it is considered that they can be more advantageously employed.

Local Man Power Committees have been consulted in the matter, and have been asked to consider carefully how far it is desirable for men from their areas to be released from military service for this purpose. They have been asked to submit their replies to the Director of Man Power by to-day, and as soon as these have been collated, the military authorities will be approached. The General Officer Commanding has already promised his co-operation in this matter.

Indian and Arab Man Power Committees have now been established, and are compiling a register of the Asian and Arab man power available.

I would like to emphasize that it is perfectly useless for ordinary patriotic persons wishing to serve with the armed forces in Europe to consider going home to enlist. I am informed that they will

not be accepted, unless they make their application through the local Government, which is in close touch with the home authorities.

I may mention, however, that certain types of skilled workers are at present required by the Army and the Air Force, and arrangements will be made to enable any volunteers with the requisite qualifications to join up. A full list of the types of technicians required appeared in the Press on Saturday last. Any would-be volunteers should apply in the first instance to the Director of Man Power in the Secretariat, and must not apply direct to the home authorities. It should be emphasized that only really skilled men are required.

I would again stress that the man power of the Colony is being organized according to needs of the Colony and of the Empire. The response made by those of all races who have been called on to perform military duties has been magnificent, but I cannot emphasize too strongly that those unofficials or officials who have been exempted from military service in order that they may be retained for services essential to the economic life of the Colony are "equally" bearing the burden of responsibilities thrust upon us by the war. I would ask them to continue at their occupations, where they are needed, unless they are definitely called upon to serve in some other capacity.

Generally, and this does not apply to military service alone, I cannot pay too high a tribute to the loyal response made by all communities in Kenya to every demand made of them and the good nature with which they have taken the inevitable discomforts of war.

I would like at this point also to express my appreciation of the work of our Man Power Committee, whose thankless task has been performed so efficiently. (Hear, hear.) I must single out for special mention the work carried out by the Noble Earl, the Member for Kiambu, who has been working full time for many months in an entirely voluntary capacity. (Applause.) The Exemption Tribunal has now toured the whole Colony,

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examining in detail every complaint and misunderstanding. It has found little to criticize, and that in itself is sufficient evidence of the Committee's work, which has been accomplished in spite of having had more than a year's records destroyed in a few minutes in the Secretariat fire.

I must say a word on the subject of war charities. It will be remembered that, during the last war, collections were taken for many deserving charities, and I have no doubt that the people of this Colony will wish to contribute now according to their means to any funds which may be created for the purpose of providing comforts for members of the armed forces. In order to make sure that any available money is utilized in the best possible manner, I have appointed a representative committee to organize appeals, collect funds and allocate them between the various charitable organizations.

As hon. members know, it has been necessary in the interests of defence to requisition a large number of motor vehicles, aircraft, ships and other property. A Compensation Board has been set up to award compensation to the owners of the property concerned, and they have had to deal with about 750 claims. Awards have been made in most of these cases, and cash payments for these awards are being made daily. Owing to the varied nature of the claims the Board have an extremely difficult task, but I can assure hon. members that they are doing everything in their power to ensure prompt payment.

Turning to medical matters, I would like to pay a tribute to the way in which the whole body of physicians, both official and unofficial, rose to the emergency. The importance of medical services for the armed forces requires no emphasis from me, but in this country one must not lose sight of the need for maintaining ordinary medical services, especially among the large African population. Many unofficial members of the medical profession in Kenya came forward, often at great inconvenience and material loss to themselves, and they have rendered valuable services, both as members of local medical units, and as reliefs for Government medical officers at hospitals

in native reserves; in fact, it has not been necessary to close any Government medical institutions. There has been no difficulty in meeting civil or military needs for medical stores, because adequate reserve supplies were laid in some time ago in anticipation of an emergency.

There has, unfortunately, been some dislocation in education. A number of European members of the Education Department were called up, and in some cases suitably qualified reliefs have not been obtainable from outside the Department. Moreover, a number of schools have been requisitioned for military purposes. This requisitioning of schools has particularly affected the Indian community, and Government is very fully aware of the difficulties which Indian education is experiencing in consequence. The military authorities are most sympathetic in the matter, and every effort is being made to obtain suitable alternative accommodation. Some schools have already been handed back to the Education Department, and I hope that by the end of the year Indian education generally will have returned to something like normal. (Hear, hear.)

Although the activities of the Game Department have been greatly reduced since war broke out, because of the absence on active service of many members of its staff and of many honorary game wardens, the Government hopes to be able to maintain a reasonable standard of game preservation. Particular attention is being paid to the protection of farm grazing and crops from the ravages of game and vermin. For instance, during the past two months, three Europeans have been employed in shooting zebra in areas particularly affected, namely North Nyeri, Laikipia and Southern Samburu.

A number of Bills will be laid before hon. members for their consideration during the coming session. One of them is the East African Dependencies Military Units Bill. This is an important and urgent measure, which it is proposed to take through all its stages to-day under the suspension of Standing Rules and Orders. It is a Bill to provide for the establishment of military units composed of men recruited from all the East African territories on a voluntary basis.

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This Bill does not conflict with the provisions of the Compulsory Service Ordinance. It is clear that more than sufficient personnel will be forthcoming voluntarily, but should additional men be wanted the provisions of the Compulsory Service Ordinance could be utilized.

Another Bill is the Matrimonial Causes Bill. This measure brings our local legislation into line with present English law, which, as hon. members will remember, is based on a Bill which was sponsored in Parliament by Mr. A. P. Herberl.

Other measures are the Criminal Procedure and Penal Code (Amendment) Bills, which give effect to a number of recommendations put forward by the Law Officers Conference, and also to a recommendation of the Bushe Report that the jurisdiction of magistrates in Kenya and Uganda should be reduced in order to conform with the jurisdiction of similar magistrates in Tanganyika.

As hon. members are aware, power exists under the Imperial Emergency Powers (Defence) Act to amend any law of the Colony by regulations. This power has been used sparingly, and hon. members will have seen the few amendments so made published in the Official Gazette from time to time. I need not refer to them in detail now; but hon. members will see that opportunity is being taken to incorporate any important amendments in legislation which will be submitted to this Council in the normal way.

The Railways and Harbours Administration has changed over smoothly to war-time conditions. On the first eight months of the year there was a surplus of £230,000, in spite of special assistance given to the coffee and cotton industries in the form of railway and port rebates. Since the outbreak of war, the revenue position has remained steady, but some increase in working costs is inevitable owing to the general rise in prices.

Turning to the economic and financial position of the Colony itself, I am glad to be able to say that the value of our domestic exports for the first nine months of the year was over £3,000,000, an increase of 8 per cent on last year's figure. Kenya imports during the first eight months of the year were nearly 28 per

cent higher than during the corresponding period last year. This increase in imports has given rise to a welcome increase in Customs revenue. The Kenya allocation of Customs and Excise for the first ten months of the year; that is, up to the end of October, shows an increase of almost £50,000 over the corresponding period last year.

As regards the financial position of the Colony as a whole, the Accountant General's books have not yet been closed for the month of August, but from January to July revenue exceeded expenditure by £127,000. There was therefore every indication that, if the war had not intervened, we would have been fortunate enough to end the year with a substantial surplus.

With the changed conditions, however, since the beginning of September, all our hopes and expectations have been dissipated. Hon. members will not expect me to elaborate on the necessity for incurring additional expenditure on defence measures in East Africa. Extra expenditure has been incurred on local military, naval and air forces, and it is clear that the sums involved are much greater than the East African Governments can afford to meet unaided from their own resources. The Kenya Government is not in a position to exercise any degree of control over military expenditure in East Africa. The War Office is in control of all military forces, a General Officer Commanding has been appointed, the responsibility of deciding whether any expenditure is necessary must rest with him, subject to the instructions and financial authorities which he received from the War Office. Military accounts are audited by the Military Audit Unit. The Government is, of course, consulted in regard to the recruitment of approved units, and renders, through organizations such as the Supply Board and the Tender Board, the Public Works and other civil departments, such assistance as is possible in order to secure efficiency and economy in local purchases and expenditure. This assistance is freely sought by the General Officer Commanding. The incidence of war expenditure is at present under active discussion between the East African Dependencies and His Majesty's Government in the United Kingdom, and I can make no specific

[H.E. the Governor]

announcement at this stage, except to say that it is beyond doubt that some additional provision will have to be made in our budget for defence expenditure.

One point to which attention is being paid in the present discussions with the Home Government, is the desirability of paying our contribution to the cost of the war from year to year in accordance with our means. It is unlikely that the contribution which hon. members may later be invited to approve will be directly related to the actual military, and naval and air force expenditure which is being incurred throughout East Africa.

There are, however, certain charges arising directly from the war which will have to be met by the local Governments, and their incidence is not in question. Some of them I have already mentioned. They include, for example, expenditure on alien enemy internees, on air raid precautions, on censorship, on the dissemination of information, and on the Man Power Committee and Supply Board.

All this additional expenditure, civil and military, arising from the war, clearly renders it necessary that every possible economy should be made in what I may call the ordinary recurrent expenditure of the Government. The Draft Estimates of Expenditure for 1940 are at present under preparation, and all possible economies are being made. Government proposes to avoid any retrenchment of personnel, if it can possibly do so, and reductions in expenditure are being made through leaving vacancies unfilled and in other ways. When the Estimates are presented to Council, which I hope will be early next month, there will be a full opportunity for discussion both here and in the Standing Finance Committee.

Meanwhile, I must speak about the revenue side of the Estimates. Hon. members have heard over the wireless and read in the Press of the unparalleled sacrifices which have been demanded from the tax-payers in the United Kingdom to enable the Government to meet the cost of the war, and I feel sure that no hon. member will disagree with my view when I say that there is an obliga-

tion on the whole Empire to bear its share of the burden and to make its contribution to the common effort. For this reason, it is necessary to call on the tax-payers of this country to make further sacrifices. In deciding what these sacrifices are to be, the Government is guided by two considerations: first, that the industries of the country should not be handicapped in their production and second, that the burden should fall on those best able to bear it. Additional indirect taxation has therefore been confined to intoxicating liquor and tobacco which may fairly be described as non-essential luxuries on which expenditure is within individual control. Increased direct taxation will consist mainly of (i) surcharges on income tax, which will not affect individuals whose incomes fall below the generous abatement limits, and (ii) an increase of company tax which will apply, of course, only when profits are actually earned and subject to the present provisions for carrying forward past losses.

The surcharges proposed are 40 per cent in the case of individual tax-payers and 50 per cent in the case of companies. In regard to the figure of 40 per cent, this represents approximately the average increase in income tax which is to be imposed in the United Kingdom on tax-payers whose incomes range within scales comparable to those in Kenya. The increase of 50 per cent in the case of companies is in excess of the corresponding proportionate income tax increase in the United Kingdom but it must be borne in mind that companies in the United Kingdom are also subject to National Defence Contribution and Excess Profits Duty. As hon. members are aware, an increase in company tax has little effect on companies operating in Kenya and registered in the United Kingdom and that in the case of local companies, individual shareholders obtain an adjustment by reference to their individual liabilities.

It is proposed that non-native poll tax should also be subject to a surcharge which will amount in the case of non-income tax payers to £1 a year for Europeans, Sh. 15 a year for Asian non-natives and Sh. 10 a year for other non-natives. As non-native poll tax is set off against income tax, those who normally

[H.E. the Governor] pay income tax will not be affected by the increased poll tax. No increase is proposed at present in the direct taxation of Africans.

The other additional tax proposed relates to gold. As hon. members will be aware, gold production in Kenya is not at present subject to royalty. Remission was first granted for two years as from the 1st October, 1937, when the price of gold was Sh. 140/60 an ounce. On the 1st August, 1939, the Government announced the extension of the concession for a further year, that is until the 30th September, 1940. The price of gold at the date of that announcement was about Sh. 148/50 an ounce. It is now Sh. 168 and may go higher. Various means of securing for the State some part of this enhanced price have been considered, and it has been decided that the course fairest to the industry would be to restore the normal royalty of 5 per centum of the value of gold won and thus bring Kenya into line with the neighbouring territories.

The estimated yields in a full year from these proposed measures are as follows:—

Customs and Excise Duties	£95,000
Income Tax	£55,000
Non-Native Poll Tax	£20,000
Gold Royalty	£30,000
Making a total of	£200,000

The increase in income tax will yield in 1940 a sum of only £20,000 since it will apply to one instalment only in that year.

I must warn hon. members that the estimated yields will not be available in full in order to meet a corresponding rise in the expenditure side of the Budget, as a reduction in certain revenue items must be expected. Additional taxation is largely required in order to make good these shortfalls. Indeed, after allowing for the effect of increased taxation the revenue for 1940 is unlikely to equal the revenue of 1939.

In regard to the application of these proposals, legislation will be introduced to-day both here and in Uganda and Tanganyika to amend the customs and

excise tariffs. Members will see the detailed proposals in the Bills which are now before them and they will be further explained by the Financial Secretary when introducing the measures. The surcharges proposed in the case of income tax and non-native poll tax will be dealt with by a Bill to be introduced at the next session which, if enacted, will remain in force for the duration of the war and one year thereafter. The present remission of gold royalty will be withdrawn by regulation.

Government fully realizes that the additional taxes proposed will bear hardly on many members of the community. That is inevitable, but I trust that when hon. members have fully considered the proposals as a whole, they will be accepted unflinchingly to enable this Colony to make its contribution to the Empire's common effort.

Hon. members, in opening this session of Council I earnestly trust that, with the blessing of Almighty God, its deliberations may lead towards the promotion of prosperity and welfare of this Colony and Protectorate. (Applause.)

MINUTES

The minutes of the meeting of the 4th of September, 1939, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

By MR. G. M. RENNIE:

Printing and Stationery Department Annual Report, 1938.

Standing Finance Committee Reports on Schedules of Additional Provision No. 5 of 1938, and Nos. 1 and 2 of 1939.

Nutrition in the Colonial Empire (1st Reports, Parts I and II).

Trade and Information Office Annual Report, 1938.

Judicial Department Annual Report, 1938.

Prisons Department Annual Report, 1938.

Police Department Annual Report, 1938.

Registrar General's Annual Report, 1938.

Report of European Local Civil Service Committee.

By MR. C. R. LOCKHART:

Financial Report and Statement for the Year 1938.

Land and Agricultural Bank of Kenya Report, 1938.

Colonial Development Fund Statements for the Quarters ending 31st December, 1938, and 31st March, 1939.

Schedules of Additional Provision Nos. 5 of 1938 and 2 of 1939.

Kenya Savings Bank Accounts, 1938.

By MR. H. WOLFE:

East African Agricultural Research Station, Adani, Annual Report, 1938.

Department of Agriculture Annual Report, 1938, Parts I and II.

By MR. A. T. LACEY:

Education Department Annual Report, 1938.

By SIR GODFREY RHODES:

K.U.R. & H. 2nd Supplementary Estimates of Revenue and Expenditure for 1938.

By MR. J. C. STRONACH:

Public Works Department Annual Report, 1938.

By MR. C. E. MORTIMER:

Quarterly Return of Land Grants, July to September, 1939.

Annual Report of the Commissioner of Lands and Settlement, 1938.

By MR. J. C. RAMMELL:

Forest Department Annual Report, 1938.

By MR. G. B. HEBDEN:

Posts and Telegraphs Department Annual Report, 1938.

By MR. C. T. DAVENPORT:

Mining and Geological Annual Report, 1938.

SUSPENSION OF STANDING RULES AND ORDERS

FIRST READINGS OF BILLS

With the consent of His Excellency, under Standing Rule and Order No. 108, Mr. Rennie moved that Standing Rules and Orders be suspended to permit the following Bills to be passed through all their stages:—

The Customs Tariff (Amendment) Bill.

The Excise Duties (Amendment) Bill.

The Beer (Amendment) Bill.

The East African Dependencies Military Units Bill.

The hon. Acting Attorney General (Mr. Willan) seconded.

The question was put and carried.

Standing Rules and Orders were suspended.

On the motion of Mr. Willan the four Bills were read a first time.

CUSTOMS TARIFF (AMENDMENT) BILL

SECOND READING

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

It is necessary to consider this Bill in conjunction with the two Bills that follow and, in speaking to it, I shall be compelled to refer to the Excise Duties (Amendment) Bill and the Beer (Amendment) Bill at the same time.

The effect of these combined measures in 1940, is to produce, we estimate, additional revenue of £95,000, that is after allowing for a reduction of 15 per cent in the estimated consumption owing to the additional duties and also making some allowance for the substitution of imported articles by those of local production.

As Your Excellency has indicated, that amount is not one which is available to apply to expenditure. A tentative estimate has been made of the amount of customs and excise for 1940, and we cannot at present place it, even allowing for these additional duties, at a higher figure than £785,000. That contrasts with the total

[Mr. Lockhart] estimate of this year, £830,000, an estimate which I may say will be substantially exceeded.

The reasons for that are that we shall start 1940 with a heavy stock of duty-paid goods in the country, and it is reasonable to suppose that in the course of the year that stock will be reduced and not fully replaced. There will be practical difficulties in the way of replacement under import control, and there may, later in the year, be some hesitancy in buying large stocks on a rising market which may reach its peak at any time. We must also allow for some reduction in consumption, in the case of Europeans through war-time economies such as in petrol and, in the case of Africans, through increased price which has already been applied to their imported goods.

That position would, of course, be changed if there is any material increase in the overseas price level of our exports, with a consequent rise in our internal wage and profit level, but we should require better reasons than we can see at present for anticipating any substantial improvement. In the meanwhile we shall do well, and we have endeavoured in framing these proposals to do so, not to impose any avoidable increase in the cost of living or the cost of production or to do anything which will diminish the incentive of native producers.

Hon. members will see therefore that no increase is proposed on such normally excisable articles as tea and sugar which have a large local market among the poorer class of the population, or on any item which can be said to go into cost of production. The only tax which will affect Africans is the tax on cigarettes and tobacco, and some anxiety was expressed by the tobacco industry (with whom discussions took place) as to the effect on consumption by the increase in customs and excise duties proposal. The view taken, which is shared by the three East African Governments is that all we can do is to apply the test, and agree that if experience shows that these fears are realized we shall have to consider the matter again.

Turning to the details of the Schedule, the first item to be amended is Item 25,

in which the main article is imported beer. The duty here is to be increased from Sh. 3 to Sh. 4 per imperial gallon, which is equal to about 14 cents per bottle.

Item 27 (b) is of little consequence, but (c) includes whisky, brandy, gin and so forth. It is proposed to increase the import duty from Sh. 48 to Sh. 58 per proof gallon, which is about Sh. 1/46 per bottle.

The increases in Item 29 are very small, either in amount or in the revenue they will produce.

In Item 30, which is cigars, the duty is to be increased from Sh. 5 to Sh. 8 per pound, equal to about 5 cents in the case of cigars which are 60 to the pound. On cigarettes, in Item 31, the increase proposed is from Sh. 2/65 to Sh. 6 per pound. That, in the case of cigarettes which are 440 to the pound, amounts to about 75 cents per hundred. That increase is a large one but, nevertheless, the customs tariff on imported cigarettes and tobacco, which can be considered together, is still not a high one in comparison with other colonies and, in the case of imported cigarettes of a better quality, the price in Kenya should not noticeably exceed the price in the United Kingdom for the same brands.

Item 34, it will be seen, is increased from Sh. 1 to Sh. 2 per pound of leaf tobacco. This needs to be considered in connexion with the excise duties, and I will refer to it further in dealing with the next Bill.

MR. NORTHROP (Commissioner of Customs) seconded.

The question was put and carried.

EXCISE DUTIES (AMENDMENT) BILL

SECOND READING

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

This Bill proposes to increase the excise duty on locally manufactured cigarettes and tobacco from Sh. 1/25 to Sh. 2/50 per pound but, in the case of cigarettes or tobacco manufactured from imported leaf, the effect of increasing the

[Mr. Lockhart] duty by one shilling on imported leaf in the previous Bill means that the combined duties on manufactures from imported leaf will amount to a total of Sh. 4/50 per pound, in comparison with the duty on imported tobacco and cigarettes of Sh. 6.

The effect of this proposal will be to increase the excise duty on tobacco and cigarettes manufactured from local leaf by only Sh. 1/25, and it is anticipated first that it will preserve the trade in fire-cured tobacco in Uganda, the produce of which is sold very cheaply, and that it will also encourage the production of the Virginia type of tobacco in Kenya and elsewhere in East Africa where it can be grown.

MR. NORTHROP seconded.

The question was put and carried.

BEER (AMENDMENT) BILL

SECOND READING

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

The effect of this measure is to increase the excise duty per 36 gallons of locally manufactured beer from Sh. 40 to Sh. 60, which is equivalent to approximately 7 cents per bottle. This contrasts with the increase of 14 cents per bottle in the duty on imported beer and will, to that extent, be an advantage to the local industry.

MR. NORTHROP seconded.

The question was put and carried.

EAST AFRICAN DEPENDENCIES MILITARY UNITS BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the East African Dependencies Military Units Bill be read a second time.

No doubt hon. members of Council are aware that there is in process of formation in Kenya and the neighbouring territories military units of varying character, and legislation is urgently required for the establishment of those units. Some hon. members will no doubt be inclined to ask why further legislation

is necessary, in view of the fact that we already have on the statute book the King's African Rifles Ordinance, the Kenya Regiment Ordinance, the Kenya Defence Force Ordinance, the Indian and Arab Company Ordinance, and lastly the Compulsory Service Ordinance. If I may anticipate that question, the answer to it is as follows.

Each of the military forces created under the authority of each of those Ordinances has varying functions, and the personnel of each of those military forces has varying liabilities. For instance, under the King's African Rifles Ordinance we have infantry battalions established, the personnel of which consists of African soldiers with British officers and British warrant officers and non-commissioned officers. The Kenya Regiment Ordinance empowers the formation (and it has been formed) of a European unit liable for service anywhere. The Kenya Defence Force Ordinance is the compulsory military service ordinance, but its members are only liable to be called upon for the defence of this Colony either in or beyond the limits of the Colony. The Indian and Arab Company Ordinance only covers Indians and Arabs and they also, like the members of the Kenya Defence Force, are liable for service for the defence of this Colony. Lastly, the Compulsory Service Ordinance only covers Asians and Africans, because all the Europeans in Kenya are either in the Kenya Regiment or the Defence Force.

While on the question of that last-mentioned Ordinance, Compulsory Service, with the consent of the present General Officer Commanding, Major-General Dickinson, and at his express wish, I make the following statement: that during the short time he has been here he has found that he can obtain as many recruits as he requires for the units now in process of formation on a voluntary basis. That is a most satisfactory state of affairs for Kenya and also other neighbouring territories, because it means as far as can be foreseen at present, that we shall not have recourse to the provisions of the Compulsory Service Ordinance.

[Mr. Willan]

So the problem which had to be faced was this: to devise legislation whereby military units which could be established on a voluntary basis should not be confined merely to infantry units but should embrace units of varying characters, that they should not be confined to Europeans only but should embrace British subjects and British protected persons of various races, and lastly, that the recruitment for them should not be confined to Kenya alone but could extend to men in neighbouring territories. Hence this Bill comes before this Council to-day.

As hon. members will see from the long title, it is called "A Bill to provide for the establishment in the Colony of military units for the East African Dependencies and for other purposes connected therewith". The reason for that title is this. All the local forces in the East African Dependencies are grouped together under a General Officer Commanding, and he has been appointed to command all these local forces in British East Africa. Therefore the problem of legislation is not confined to any one particular colony, but it is for each colony and protectorate or territory to enact its own ordinance, so that when all the ordinances of the colonies are read together you get one comprehensive measure covering the whole of the East African Dependencies.

Since the military headquarters have been established in Nairobi, it has been felt to be most convenient that the establishment of the government of these military units should be provided for and covered by Kenya law, and that Kenya law will be implemented in each of the other territories by a short ordinance. With that object in view this Bill comes before this Council now. Other governments have been informed of the action Kenya is taking, and I have every reason to believe that the Legislative Council of Uganda is sitting to-day to pass their ordinance.

That is the history and those are the reasons leading up to this Bill, and now I come to the details of the Bill.

Clause 3 (1)—The Governor may with the approval of the Secretary of State by notice in the Gazette establish under this

Ordinance such units of combatant arms and departmental services as he may think fit . . . " Now the phrase "departmental services" of course would cover such units as the Pay Corps. Then, under sub-clause (3) of the same clause any unit may be established with retrospective effect. This is in order to cover by legislation the action which the military authorities have already taken towards the formation of these units.

Clause 4, possibly the most important clause of the Bill, describes the functions of these units. Particular care has been taken in the drafting of this sub-clause to set out very clearly indeed the functions of the units to be established under clause 3.

Hon. members will see in sub-clause (1) of clause 4 that the primary use for which these units are to be employed is the defence of the East African Dependencies or the maintaining of their security. That is the primary purpose. Then, in sub-clause (2) the Governor may, with the approval of the Secretary of State, order any of these units to serve anywhere and for any purpose. There is no restriction except of course the approval of the Secretary of State must be obtained.

Clause 4 follows very closely similar provisions in the K.A.R. Ordinance.

Missing out clause 5 and coming to clause 6 which deals with the membership of these units, membership is open merely to British subjects or British protected persons of 18 years and over.

Then in clause 7 Your Excellency is empowered to appoint officers to these units and I might say that men coming from neighbouring territories to be appointed as officers to these units will be appointed by the Governor of Kenya.

Clause 8 deals with the terms of service of volunteers for these units and the terms of service are for the duration of the present war and for twelve months after the termination thereof or for such shorter period as the Governor may at any time determine.

In the *East African Standard* of yesterday there was a portion of the leading article which read as follows—(This is a leading article or editorial dealing with

[Mr. Willan]

matters coming before this Council and in that editorial is the following extract):

"Among other matters, too, is the precise effect and intention of some recent military legislation, particularly the East African Dependencies Military Units Bill which though primarily an enabling Bill to legalize the position of units already in being has been read by some as providing authority for the unrestricted movement of the country's forces anywhere, thereby raising the problem whether in the case of the K.D.F. and the East African Army Service Corps the original terms of enlistment are now to be arbitrarily altered."

I am very glad to see this in that paper of yesterday because it gives me the opportunity of allaying any suspicions or misgivings which the public may have with regard to the personnel and the terms of service of these units about to be formed when this Bill becomes law.

It must be remembered that every member of these units will be a volunteer and before he can be enlisted in these units he will have to sign an attestation form—they have already been drafted—and in these forms it is clearly set out what are the provisions of clauses 4, 6 and 8 of this Bill, so that any man who volunteers to join these units and is accepted will know exactly what liabilities he is undertaking. With regard to the members of the K.D.F., this Bill does not alter the K.D.F. Ordinance at all. Under section 27 of that Ordinance any member of that Defence Force can volunteer for service in any other military unit and if he does volunteer and become a member of these units then he knows perfectly well what his liabilities are.

With regard to the men already taken into these units, in anticipation of this Bill they will be re-attested and their attention will be drawn particularly to the terms of service as set forth in clauses 4, 6 and 8 of this Bill. If they decline to accept these terms of service then, of course, they will not be enlisted in any of these units.

The General Officer Commanding and his staff are very particular that there should be brought to the notice of all recruits their liability under this Ordinance

and I do not think that any member of the public need have any misgivings on that question.

Clause 11 applies the Army Act to the military units established under this Ordinance, and the Air Force (Constitution) Act to the Air Force units, and I think it is proposed to reconstitute the Kenya Air Auxiliary Unit as the East African Auxiliary Air Unit when this Bill becomes law.

The other provisions of this Bill are self-explanatory. Clause 14 empowers amending regulations and does not need any further explanation from me.

MR. DENNISON seconded.

LORD FRANCIS SCOTT (Rift Valley): Sir, I have not very much to say on this Bill. It is quite obvious that there is need for such a bill and that it should be brought into force so as to legalize the somewhat illegal actions which have taken place already in the formation of some of these units.

There are only two points I should like to raise. The hon. and learned Mover said that all the people already enlisted would be re-attested after this Bill becomes law. I take it, Sir, that that means that anybody who has perhaps joined, for instance, the East African Army Service Corps, will be able, if he does not agree to this, to retire from that Corps?

The other point I should like to raise is under clause 6 in which this law only admits British subjects or British protected persons to any of these units.

Personally, I am only speaking for myself, although I know that some of my colleagues agree with me if all of them don't, I do think that it is rather hard that all foreigners in this country should be debarred absolutely from serving this country at the present time. I do not advocate that all foreigners should automatically be allowed to join any of these units, I suggest that they should be very carefully selected. But there are people of other nationalities, especially Scandinavians, who have been citizens and very good citizens of this Colony for a great many years and who, though they retain their Scandinavian citizenship, in fact are very much Kenyans. And I think it is hard that they should be absolutely debarred

[Lord Francis Scott]

from being able to serve in any of these units. I do not propose to move any amendment but I do trust that this question will be further considered and if it is agreed upon an amendment could be brought into this Ordinance.

MR. WILLAN: Your Excellency, with regard to the first point raised by the noble lord the hon. Member for Rift Valley the answer is that if any member of the East African Services group does not wish to re-attest on the terms of service as set forth in this Bill he will then be discharged.

On the second question, the question of membership to these units being restricted to British subjects and British protected persons that of course is a question which will be borne in mind, but it is not one which this Government feels is the concern of this Government alone because, as I mentioned in introducing this Bill, other Governments have or are taking action on this Bill and, therefore, we will have to consult with the other Governments in that connexion with taking any action in this territory.

The question was put and carried.

BILLS

IN COMMITTEE

MR. WILLAN moved that Council resolve itself into Committee of the whole Council to consider the Customs Tariff (Amendment), the Excise Duties (Amendment), the Beer (Amendment) and the East African Dependencies Military Units Bills clause by clause.

MR. DENNISON seconded.

The question was put and carried.

Council went into Committee.

His Excellency moved into the Chair.

The Customs Tariff (Amendment), the Excise Duties (Amendment) and the Beer (Amendment) Bills were considered clause by clause.

THE EAST AFRICAN DEPENDENCIES MILITARY UNITS BILL

MR. WILLAN: Your Excellency, with reference to the East African Dependencies Military Units Bill I have just at this moment received a copy of a tele-

gram from the Secretary of State which may entail one or two amendments. I have not had time to consider it and so, Sir, I request that the Committee stage of this Bill be taken tomorrow.

HIS EXCELLENCY: With the permission of Council the committee stage of this Bill, the East African Dependencies Military Units Bill, will be postponed until tomorrow.

MR. WILLAN moved that the Customs Tariff (Amendment), the Excise Duties (Amendment) and the Beer (Amendment) Bills be reported to Council without amendment.

MR. DENNISON seconded.

HIS EXCELLENCY vacated the Chair.

Council resumed its sitting.

HIS EXCELLENCY reported the three Bills—The Customs Tariff (Amendment), the Excise Duties (Amendment) and the Beer (Amendment) Bills without amendment.

MR. WILLAN moved that the three Bills be read a third time and passed.

MR. DENNISON seconded.

MAJOR CAVENDISH-BENTINCK (Nairobi North): Your Excellency, on the third reading of these Bills may I ask for an assurance from Government that these are to be regarded as war-time taxation and regarded only as of a temporary character. Your Excellency did say in your communication from the Chair or rather give a list of a number of measures which were, I think, to be regarded as our contribution to the war effort.

MR. LOCKHART: I am not prepared to give any such assurance on behalf of Government at such short notice. It is a matter which will have to be very carefully considered.

The question was put and carried.

The Customs Tariff (Amendment), the Excise Duties (Amendment) and the Beer (Amendment) Bills were read a third time and passed.

ADJOURNMENT

Council adjourned until 10 a.m. on Wednesday the 15th of November, 1939.

Wednesday, 15th November, 1939

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, the 15th of November, 1939, His Excellency the Acting Governor (W. Harragin, Esq., K.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of the 14th of November, 1939, were confirmed.

PAPERS LAID ON THE TABLE

The following papers were laid on the table:—

By THE HON. GENERAL MANAGER, K.U.R. AND H.:

First Supplementary Estimates, 1939, Kenya and Uganda Railways and Harbours.

Estimates of Revenue and Expenditure for 1940 of the Kenya and Uganda Railways and Harbours.

ORAL ANSWERS TO QUESTIONS

No. 54—WORKMEN'S COMPENSATION

MR. SHAMSUD-DEEN (Indian Central) asked:—

Will Government please state when it proposes to introduce the necessary legislation to deal with workmen's compensation, in the nature of an Ordinance based on the model Workmen's Compensation (East and West Africa) Ordinance, in accordance with the report of a sub-committee of the Colonial Labour Committee appointed to revise the model Ordinance?

MR. RENNIE: The Government has under consideration the question of setting up a committee consisting of representative local interests for the purpose of examining in detail the draft model Ordinance to which the hon. member refers.

STANDING FINANCE COMMITTEE REPORTS

SCHEDULES OF ADDITIONAL PROVISION

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

"That the Standing Finance Committee Reports on Schedules of Additional Provision No. 5 of 1938, and Nos. 1 and 2 of 1939, be adopted."

These three Schedules, Sir, have already been examined by the Standing Finance Committee and they have recommended that they be approved. In the circumstances I do not propose to take up the time of Council by referring to the schedules in detail.

I would merely observe that, as regards Schedule No. 5 of 1938, of the total additional provision for the year 1938 of £501,428 a sum of £299,034 was met from savings on the Estimates as a whole, and that means that the actual amount of new money required was only £202,394. As stated in the note at the front of the schedule, the sum of £232,000 was spent on the writing off of non-liquid assets.

As regards Schedule No. 1 of 1939, which covers the period from the 1st of January, 1939, to the 31st of March, 1939, the total additional provision is £54,464. As a set-off against that expenditure, we have the sum of £1,924 savings and £25,388 recoverable in the form of reimbursements. In addition, we have the sum of approximately £1,175 which it is expected will be recovered in the way of increased revenue.

As regards Schedule No. 2 of 1939, which covers the period from the 1st of April, 1939, to the 30th of June, 1939, of the total additional provision of £101,048 shown therein we have the sum of £5,575 earmarked against savings. £22,962 is recoverable in the form of reimbursements, and it is anticipated that the sum of £4,264 approximately will be recovered in the way of increased revenue. It is also to be noted that the total sum of £28,339 was spent on defence measures. Hon. members will also observe that the loan schedule on page 2 of the Schedule of Additional Provision covers a sum of £50,000 in respect of the grant to Makerere College. The expenditure of this sum in anticipation of the raising of a loan has already received the approval of this Council.

I need not, I think, enter into any further details as regards these Schedules and therefore I move that the Standing Finance Committee Reports on these three Schedules be adopted.

MR. LOCKHART seconded.

The question was put and carried.

BILLS

IN COMMITTEE

MR. WILLAN moved that Council resolve itself into Committee of the whole Council to consider the East African Dependencies Military Units Bill clause by clause.

MR. DENNISON seconded.

The question was put and carried.

Council went into Committee.

His Excellency moved into the chair.

The East African Dependencies Military Units Bill was considered clause by clause.

Clause 1.

MR. WILLAN: I beg to move that the words "East African Territories" in lines 1 and 2 of clause 1 be deleted. This will leave the Ordinance entitled as "The Military Units Ordinance." This is felt to be a better title for a law which is being passed in Kenya.

The question was put and carried.

The question that the clause as amended stand part of the Bill was put and carried.

Clause 2.

MR. WILLAN: I beg to move two amendments in clause 2, with reference to the first definition. The first amendment I move is that "The word 'Dependencies' be deleted and the word 'Territories' be substituted therefor." This is felt to be a more proper description of Kenya and the neighbouring territories round Kenya.

The second amendment I move is "That in the same definition the words 'Northern Rhodesia' and the comma immediately following these words be deleted." The reason for that is that Northern Rhodesia has already to-day its own legislation, and therefore will not have to enact legislation for implementing this Ordinance.

The question was put and carried.

The question that the clause as amended stand part of the Bill was put and carried.

Clause 3.

MR. WILLAN: I move an amendment to sub-clause (3) of clause 3 that "The words 'The Governor may establish' which appear in line 1 thereof, be deleted,

and immediately after the word 'section' which occurs in line 2 there be inserted the following words: 'may be established.'" The reason for that is that under sub-clause (1) it is the Governor, with the approval of the Secretary of State, who may establish the units, whereas in sub-clause (3) we give the Governor himself the power. This amendment brings sub-clause (3) into line with sub-clause (1).

LORD FRANCIS SCOTT: Should the letter "a" in the word "any" be a capital in line 1 of clause 3 (3)?

MR. WILLAN: That is so, but that will be attended to by the printer.

MR. HOSKING (Chief Native Commissioner): The word "section" occurs twice in that line.

MR. WILLAN: Oh, yes; the amendment should read, "Where the word 'section' appears in line 2 for the second time". The sub-clause will now read:—

"Any unit under sub-section (1) of this section may be established with effect from any date prior to the enactment of this Ordinance and such unit shall be deemed to have been lawfully established as from such date."

The question was put and carried.

The question that the clause as amended stand part of the Bill was put and carried.

Clause 4.

MR. WILLAN: I beg to move that clause 4 be deleted and the following clause be substituted therefor:—

New clause 4, sub-section (1):—

"Every unit shall be charged with the defence of the East African Territories, with the maintenance of order, and with such other duties as may be from time to time defined by the Governor of any East African Territory within which such unit or any portion thereof may from time to time be stationed.

"For the purposes of this sub-section the term 'Governor' shall include the British Resident, Zanzibar."

New sub-clause (2) of clause 4:—

"The Governor may at any time and for any purpose, as the Secretary of

[Mr. Willan]

State may direct, order that any unit or any portion thereof which may be stationed in the Colony shall be employed out of or beyond the Colony."

The reason for this amendment is this: It brings the provisions of that clause directly into line with the provisions of the K.A.R. Ordinance, 1932.

MAJOR GROGAN (Ukamba): Is there any particular significance in the expression "out of or beyond the Colony"? To me it is rather redundant, unless it refers to the other regions.

MR. WILLAN: I would refer the hon. member to sections 43 and 44 of the King's African Rifles Ordinance, 1932, from which this is directly copied. As these units will be working with the K.A.R. it is essential that they should have the same functions as the K.A.R. under that Ordinance.

MAJOR GROGAN: I was not referring to the purposes but to the terminology. It seems rather redundant.

MR. WILLAN: It may appear redundant, but it is absolutely essential that the terminology of this Ordinance should be the same as the terminology of the K.A.R. Ordinance.

MAJOR GROGAN: What is the legal meaning?

The question was put and carried.

The question that the clause as amended stand part of the Bill was put and carried.

Clause 6.

MR. WILLAN: There are three amendments I wish to move to clause 6. The first one is that the words "British subject or British protected" in line 2 thereof be deleted and that the same words in lines 4 and 5 should also be deleted, thereby not restricting the personnel of these units to British subjects or British protected persons, and thereby meeting the point raised yesterday by the noble lord the hon. Member for the Rift Valley.

The third amendment is that the word "Dependency" in the last line but one of this clause be deleted and the word "Territory" substituted therefor.

MAJOR CAVENDISH-BENTINCK: Doesn't it mean that these units could not be taken into Northern Rhodesia. It does not cover Northern Rhodesia, only Nyasaland?

MR. WILLAN: The territories are defined as Kenya, Uganda, Tanganyika, Nyasaland, Zanzibar, and Somaliland. A unit can be taken to Northern Rhodesia under clause 4, sub-clause (2), as amended.

MAJOR CAVENDISH-BENTINCK: In clause 6 it prescribes that a man shall take the oath and complete the attestation form before a magistrate, except in Northern Rhodesia?

MR. WILLAN: That is so.

The question was put and carried.

The question that the clause as amended stand part of the Bill was put and carried.

Clause 9.

MR. WILLAN: I move that the word "Dependency" in the last line of clause 9 be deleted and the word "Territory" substituted therefor.

MAJOR CAVENDISH-BENTINCK: That means that we could not transfer anybody for instructional purposes, for instance, to the Northern Rhodesian unit. We have already sent people down there.

MR. WILLAN: That is the effect of the amendment.

LORD FRANCIS SCOTT: Is that wise?

HIS EXCELLENCY: I can say that that has been done at the request of Northern Rhodesia.

LORD FRANCIS SCOTT: Does this mean that Northern Rhodesia is quite different from the rest of these territories so far as these units are concerned?

MR. WILLAN: The point is this, Northern Rhodesia has its own Ordinance and its own regiment, and therefore they do not need another law implementing the law we are passing to-day, and therefore we cannot do anything against Northern Rhodesia. We have had a telegram to say that they have their own legislation there.

MAJOR GROGAN: If that is so, how can we legislate for Tanganyika Territory?

MR. WILLAN: The other territories are legislating for themselves, by Ordinances which will implement their legislation.

The question was put and carried.

The question that the clause as amended stand part of the Bill was put and carried.

Clause 11.

MR. WILLAN: I beg to move one amendment to clause 11, that immediately after the word "to" in the first line thereof there be inserted the following words: "the government and discipline of." So clause 11 will then read:—

"11. In relation to the government and discipline of—

(a) military units, the Army Act, etc."

The reason for that is that this terminology follows that in section 177 of the Army Act.

The question was put and carried.

The question that the clause as amended stand part of the Bill was put and carried.

Title and Preamble.

MR. WILLAN: I move that in the long title the words "East African Dependencies", which occur in lines 2 and 3 thereof, be deleted.

The question was put and carried.

The question that the title and preamble as amended stand part of the Bill was put and carried.

MR. WILLAN moved that the Military Units Bill be reported back to Council with amendments.

The question was put and carried.

His Excellency vacated the chair. Council resumed its sitting.

HIS EXCELLENCY reported the Military Units Bill with amendments.

MR. WILLAN moved that the Bill be read a third time and passed.

The question was put and carried.

The Military Units Bill was read a third time and passed.

BILLS

FIRST READINGS

MR. WILLAN moved that the following Bills be read a first time:—

The Compulsory Service (Amendment) Bill.

The Kenya Defence Force (Amendment) Bill.

The Municipalities (Hospital Rate) Bill.

The Penal Code (Amendment) Bill.

The Criminal Procedure Code (Amendment) Bill.

The 1938 Supplementary Appropriation Bill.

The Tea (Amendment) Bill.

The Adulteration of Produce (Amendment) Bill.

The Trading in Unwrought Precious Metals (Amendment) Bill.

The European Civil Service Provident Fund (Amendment) Bill.

The British Nationality and Status of Aliens Fees Bill.

The Flax Bill.

The Matrimonial Causes Bill.

MR. DENNISON seconded.

The question was put and carried.

SUSPENSION OF STANDING RULE AND ORDER NO. 68.

MR. WILLAN: Your Excellency, I beg to move the suspension of Standing Rule and Order No. 68 in order that we need not give one day's notice before proceeding with the second readings of each one of these Bills. The reason for this rather unusual motion is that Your Excellency was rather too quick off the mark when adjourning Council yesterday and thereby I was unable to move the first readings of the Bills yesterday which the Clerk has just enumerated.

MR. DENNISON seconded.

LORD FRANCIS SCOTT: Sir, in the ordinary way I would not rise to speak on this motion to cover up a slight mishap which occurred to my hon. and learned friend opposite, if it were not for the very unfortunate episode which occurred yesterday.

[Lord Francis Scott]

Yesterday Government moved the suspension of Standing Rules and Orders, which we on this side of Council in our simplicity agreed to without a word because we understood that it was for the purpose of introducing temporary emergency additional taxation purely for war purposes. That, Sir, was what we all understood, but, unfortunately, when my hon. and gallant friend the Member for Nairobi North asked for a definite assurance to that effect he got a somewhat abrupt reply to the effect that such an undertaking could not be given because the hon. Financial Secretary had not had time to consider it. Twenty-four hours have now elapsed and I do trust that we will be given that undertaking, because if anything of that sort arises which undermines the confidence that the unofficial representatives have in Government procedure it must militate against the necessary co-operation between both sides of Council and the prosecution of our war efforts.

I do not ask that Government shall commit themselves to wipe off this increase on customs duties when the war comes to an end and never re-impose them. What I do ask though is that in some way, as you yourself gave an undertaking that the direct taxation proposals should come to an end one year after the war, the same should apply to indirect proposals so that these can be re-considered and if, in the light of experience, some of these increases are found to be necessary and quite justifiable then they should be dealt with on their merits. I do hope that Government will give that undertaking.

MR. LOCKHART: Your Excellency, may I point out that one of the reasons which induced me to suggest that longer consideration was necessary is that a feature of the emergency taxes which we imposed yesterday in relation to tobacco may very well lead to a considerable change in the nature of the tobacco trade of this country. These duties were incidentally designed first to encourage the production of tobacco in East Africa, and secondly they may well have the effect of increasing the local manufacture of tobacco. Similarly, the protective

margin afforded to the production of local beer was markedly widened. Before we tell the industries concerned that this protection, the wide margin of preference on tobacco and beer, is going to be wiped out, I do suggest for the consideration of Council that it is a matter which requires a little more consideration than I was allowed to give to it yesterday in a question raised at the very last moment, when the vote on the third reading was about to be taken.

MAJOR CAVENDISH-BENTINCK: We have still not had any reply. We are quite capable of realizing the possibility of the implication of this form of taxation, but that can be dealt with on its merits when the time comes. What we want to know is, is it the intention of Government to introduce these changes in customs duties in the first instance for the purpose of helping us to finance our share of the war, and therefore are they considered temporary, or are we to be told that we are not even to ask that question and it is nothing to do with us at all?

MR. PANDYA (Indian Eastern Area): Your Excellency, there is one point which I should like to raise in support of what the noble lord has said. In my view an assurance is very necessary because while we all sympathise with the point of view mentioned by the hon. Financial Secretary, we are not quite clear as to whether this measure was introduced as a war measure, as an effort for supporting the war, or was also to be at the same time a measure for the protection of the industries. I do not think we can have it both ways. If it is simply a measure for the protection of the industries, I do not think these question would ever arise, but as we understood yesterday the measure was a war effort, therefore I think the assurance required by the unofficial members should unequivocally be given, because I think that is the basis on which we supported the measures yesterday.

MR. RENNIE: Your Excellency, I think I can reassure hon. members by stating that the present intention of Government is that this legislation is emergency legislation designed to enable

[Mr. Rennie] the Colony to play its part in bearing the additional war expenditure. It is impossible to say, as the hon. Financial Secretary has stated, what may be the position after the war, but this legislation was introduced as an emergency war measure. That is how it is regarded by Government at the present time.

Some of the implications the hon. Financial Secretary has already referred to. It is quite impossible to say what further implications may arise, but I may state definitely at this time that the legislation was introduced as an emergency war measure.

The question was put and carried.
Standing Rule and Order No. 68 was suspended.

COMPULSORY SERVICE (AMENDMENT) BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the Compulsory Service (Amendment) Bill be read a second time.

All hon. members will remember that the Compulsory Service Ordinance was passed by this Council on the 4th September of this year, the day immediately after war was declared. But all hon. members are not aware of the speed at which that Ordinance was drafted and the short time in which it was drafted. Therefore I make no apologies for bringing forward an amending Bill so soon after the enactment of the principal ordinance.

Turning to clause 2, we can consider that in conjunction with clause 3 (b), clause 2 refers to the functions of any units that may be established under the principal ordinance, and clause 3 (b) deals with the liabilities of the members of any of those units. The functions of the units and the liabilities of the members if this Bill becomes law means that units and their personnel can only be used for the defence of the Colony either in or beyond the Colony.

The other change in the law in clause 3 is in paragraph (a), which reduces the age limit for compulsory military service from 50 to 45 years. Hon. members may

be aware that in England, under the National Service Armed Forces Act, 1939, the limit for compulsory military service is 41.

Passing on to clause 4, the principal ordinance applies to male British subjects and British protected persons ordinarily resident in the Colony. The amendment provides that such persons cannot be enrolled for military service unless they are actually in the Colony when the notice is issued calling them up. In other words, if any male British subject or British protected person is out of the Colony, he cannot be called back to the Colony for the purpose of being enrolled for compulsory military service.

Clause 5 merely amplifies the provisions of section 10 of the principal ordinance, by providing that people can apply to be exempt from military service on conscientious grounds, thereby following the provisions of the Kenya Defence Force Ordinance. It also provides for exemptions on the ground of hardship from military and personal service.

Clause 7 is a saving clause, and will not prevent any person who is liable to be enrolled under this ordinance from volunteering to serve in any military unit which may be established under section 2 of the Ordinance. In the light of the Military Units Ordinance which has just been passed, I shall have to move an amendment in committee that this new section 18 in clause 7 shall read as follows:—

"18. Nothing contained in this Ordinance shall be deemed to prevent any person liable to be enrolled for military service under the provisions of this Ordinance from volunteering to serve in any military unit established under the provisions of section 2 of this Ordinance or any other law for the time being in force in this Colony."

The last clause, 8, of the Bill exempts Dominion nationals with less than two years residence in the Colony, and has been inserted at the request of the Secretary of State.

MR. DENNIS seconded.

The question was put and carried.

KENYA DEFENCE FORCE (AMENDMENT) BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the Kenya Defence Force (Amendment) Bill be read a second time.

Clause 2 makes the same amendment to this ordinance as the amendment which we have just considered in clauses 2 and 3 of the Compulsory Service (Amendment) Bill. In other words, the personnel of the Kenya Defence Force can only be employed for the defence of the Colony either in or beyond the Colony. That is one amendment we made under the Defence Regulations and which we are now putting in the Bill.

Clause 3 deals with the appointment of a tribunal, and hon. members will notice in sub-clause 4 that it says—

"The provisions of sub-sections (2) and (3) of this section shall be deemed to have come into operation on the 5th day of September, 1939."

The reason for that is this. Under the Defence Regulations we amended the Kenya Defence Force Ordinance by regulations, and a tribunal was set up consisting of the noble lord, the hon. Member for Rift Valley, the hon. member Mr. Montgomery, and Mr. George Tyson. That tribunal has been sitting in many places in the Colony, and has considered exemptions from the liabilities of the Ordinance, and has granted certain exemptions, so that it is necessary in this Bill to establish the tribunal with retrospective effect to the 5th September.

Clause 4 is a long clause, covering almost three pages, and incorporates several new sections into the Defence Force Ordinance. In fact, it adds a whole new part to the principal ordinance. This new part deals with "Personal service and Man Power Committees" and the management and inspection of businesses of men who are called away on military service. The provisions of this part follow exactly the provisions relating to these subjects which appear in the Compulsory Service Ordinance, and the reason for the inclusion of this new part in the Kenya Defence Force Ordinance is that the former ordinance does not cover Europeans, and it was necessary to enact

it in the Kenya Defence Ordinance in order that the businesses of Europeans on service with the Kenya Regiment or Defence Force might be managed and inspected.

Passing on to clause 5, it amends section 28 of the principal ordinance by suspending the operation of paragraph (a) of that section. This paragraph reads:—

"Any employer who (a) by dismissing an employee or by reducing his wages or in any other manner whatever penalizes him for entering upon or carrying out any service or training under this Ordinance, shall be guilty of an offence."

That provision was a perfectly sound provision when we were at peace, in order to prevent employees who went to camp or were called up for temporary services in aid of the civil authorities being penalized either by being dismissed or by a reduction of wages. Now that we are at war, and we are preparing for a three years' war, it is not possible from an economic or equitable standpoint to subject employers to this liability. That is the reason for suspending the operation of (a) of section 28.

Clause 6 in the Bill extends the rule-making power contained in section 31 of the principal ordinance, by permitting rules to be made regarding the procedure to be adopted by man power committees, and so on.

In committee I shall move an amendment which affects section 31 (h) of the main ordinance. This section reads as follows:—

"The Governor may make regulations providing for (h) the fixing of rates of pay and allowances and issues of rations to members of the Defence Force when called out under section 21 of this Ordinance."

That is, when they are called out and mobilized, but the section does not permit of making regulations and prescribing rules of pay for people still continuing their peace training, i.e. people not called up and mobilized. I believe the military authorities contemplate that there should be more intensive training for people not called up and mobilized, and it is considered equitable that they should receive

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The question was put and carried.

Standing Rule and Order No. 68 was suspended.

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"The Governor may make regulations providing for (h) the fixing of rates of pay and allowances and issues of rations to members of the Defence Force when called out under section 21 of this Ordinance."

That is, when they are called out and mobilized, but the section does not permit of making regulations and prescribing rules of pay for people still continuing their peace training, i.e. people not called up and mobilized. I believe the military authorities contemplate that there should be more intensive training for people not called up and mobilized, and it is considered equitable that they should receive

[Mr. Willan]

a certain rate of pay for this more intensive peace training.

Clause 7 exempts Dominion nationals in the same way as the Compulsory Service (Amendment) Bill did.

MR. DENNISON seconded.

LT.-COL. MODERA (Nairobi South): Your Excellency, the proposed amendments which appear in this Bill are far reaching, and not only far reaching but, I venture to suggest, revolutionary, inasmuch as they involve, I submit, a confession that the Kenya Defence Force was never a force to be employed in war in a military sense.

If we look at part IVA and see what it is, it refers to nothing more or less than personal service in civil life, and the whole of Part IVA combined with new section 22i makes it abundantly clear that the idea of the Defence Force for war purposes is that they should be nothing more or less than a civil force. The introduction into a military ordinance of a part IVA of this description is, I venture to suggest, not only unnecessary but unfortunate.

Section 22i reads:—

"This part of the Ordinance shall continue in force until such date as the Governor, by proclamation, declares to be the date on which the war that was the occasion of the enactment of this part of this Ordinance comes to an end, and shall then expire except as respects things previously done or omitted to be done."

At the same time, this Bill purports to amend the ordinance in section 2 by requiring that the Force concerned should serve in the defence of the Colony either in or beyond the Colony.

When we consider both amendments together, one is forced to ask the question: What is the role of this Kenya Defence Force, and what are to be its functions during the war? As a matter of fact, that very question has been addressed to Government by myself as long ago as the 23rd October, and no answer has yet been forthcoming unless, indeed, the answer is to be found in these amendments.

By these amendments, it would seem that the primary duty of this Force is to

remain at its civil occupations. It would also appear that there is a secondary duty. That secondary duty is to be found in the Ordinance we are now amending, namely, that the members shall be liable, in accordance with the provisions of the Ordinance, "to be called up for active service" (which is to be amended now to be "for the defence of the Colony either in or beyond the Colony") "or to undergo such peace training as may be prescribed." It would seem obvious that it is the intention of Government to employ this Defence Force in two capacities and, if I may say so, I do not think it is beyond the bounds of possibility that this Force should play a dual role.

But I would suggest that the actors in what I may call this semi-military drama should receive justice and not suffer the extremely raw deal which they have suffered at the hands of Government in the past. When I say Government, I include also, unfortunately, some hon. members of this side of Council, who have been content to stand by and allow the inequitable treatment to be meted out.

The Kenya Defence Force Ordinance, as members will remember, became law in 1937, and by August of that year regulations had been published in accordance with the Ordinance. In June, 1938, the Colony was divided into certain districts for the purposes of the Defence Force, and certain district commandants were commissioned. No ranks for those district commandants or other section officers, although repeated representations were made, were ever allotted to them until October of this year or some time after the war had started. Camps for Class I were held in 1938 and 1939, but apart from those camps no training of the Defence Force was ordered, except in one or two districts, and in other districts where training was actually started it was stopped.

Despite all this, the district commandants and their subordinates expended a considerable amount of time and a considerable amount of money out of their own pockets in organizing their districts and undertaking a vast amount of clerical work. They had to travel in their

[Col. Modera]

own districts and spend a great deal of time from their business or farm, whichever it may be, and the only recompense they got for it was a mileage allowance of 50 cents per mile for a district commandant and 25 cents for his subordinates.

Despite the lack of interest in their efforts and despite lack of encouragement, the spirit of the members of the Force remained, and still remains.

Let us see what happened when the emergency came: When the emergency came the very first people to be ordered to do a job of work were members of the Defence Force. Six days before the outbreak of war certain districts were called up and mobilized, and individuals were put on guard duties, they were sent to patrol roads, and they were sent to build road blocks at very short notice. In some cases the individuals concerned had received no training at all; in other cases they were merely men who had received a maximum of 10 days training in two camps. They were taken from their farms, their businesses, and were sent in many instances out of their districts within six hours after being called up.

What happened next? Government having made this use of them, sent them back to their civil occupations, officers and men alike, without any demobilization or anything of that kind. Some of them are still at duty, and they are without the knowledge of on what terms they are serving. They may similarly be returned to their civil occupations at any moment, and perhaps those civil occupations may not be open to them. As to the district commandants, they are all taking up their civil occupations; a good many of them have remained throughout at their occupations, their districts not being mobilized.

MR. WILLAN: On a point of order, may I ask to which part of the Bill the hon. member is referring?

COL. MODERA: I am referring to the amendments by which it is proposed to turn what is a military force into a civilian force.

I was referring when I was interrupted to district commandants. They are still at their civil occupations. They are required

to do a considerable amount of clerical work; they are required still to organize districts, and are not receiving a penny piece. It may be said that in some cases, cases where fixed salaries are received, that a little extra work does not do anybody any harm, but that is not the standard from which this should be viewed. It must be recognized that these men are spending time away from their farms or away from their businesses, and their farms or businesses must suffer in consequence.

Up to this day the Defence Force has never been informed of what its role is or what its function is in this war, and the only indication up till to-day has been in the title: "Kenya Defence Force." Absolutely no endeavour has been made to afford sufficient facilities for training or to fit them for their duties. If this new Ordinance purports, as it seems to, to retain the Kenya Defence Force in a military capacity, then I say that Government should see that it is trained and see that facilities are available with all that that implies. Let the commander and the leaders know what is expected of them, so that the Force, when it is called upon, may carry out to the credit of the individuals and the Colony the duties expected of them.

The retention of the Force as a military force is, I take it, an insurance. If it is an insurance, then there must be a premium which must be paid. If it is not the intention to retain this Force as a military force, then let Government come forward and say straight out to all its members that they have no further use for their services and that the efforts of the past will apparently not bear any fruit. It is so easy for Government to say that they rely in these matters on the advice of their military advisers. If that be so, then I suggest that they should act on that advice.

In the past, before the war, representations were repeatedly made, when the answer invariably was "No money." The advice was not accepted because there was no money. Yet it was expected that Government could have its cake and eat it. The Defence Force continued, and the expectation was put into practice by the very first people who were used before

[Col. Modera] the war being members of the Kenya Defence Force.

Now we are at war it is a very different matter. No one knows when the members of this Force, if it is to remain as such, are likely to be called up to defend the lives of women and children and those of their brothers and their property. That, I understand, is visualized as the function of this Force. That is, it may be called upon at any time to defend the lives of their women and children and their property in the various districts.

But it is no good having such a Force available unless the men concerned can handle their weapons. I can see my hon. friend the Financial Secretary saying, or he may well say to himself, "What is to be the cost of all this?" I suggest that the answer lies in this: that if the necessity exists it must be paid for. If there is a question of continuing a Force which is to protect lives and which may be called on before any of us realizes, it must be paid for. If you want an insurance you have got to pay for it. If it is merely a question of looking on the Force as a luxury and whether this luxury should continue to exist, that is a different matter. The cost of maintaining or training this Force would, I suggest, be negligible compared with many other items of expenditure necessitated in this war.

One can also see certain hon. members saying, "Are all the men going to be seized from their farms and trained and the military commander them so that business cannot be carried on?" I suggest that it is perfectly possible for this Force to remain at its business and on farms and at the same time receive the necessary degree of training which will allow it to be a credit to the Colony should the time arise for it to be called out as a military force. Schemes on these lines have been put forward and have been recommended by the General Officer Commanding. I suggest that on this occasion his advice should be acted upon.

Upon receiving from the hon. and learned mover an assurance that it is

Government's intention to retain this Force and that it is Government's intention to retain it for the defence of the Colony, to train and equip it suitably, I shall be only too happy to vote for this Bill, but if such assurance is not forthcoming I ask all hon. members—unfortunately there is no free vote—but I ask all hon. members not to allow what was a Bill for the defence of the Colony to be turned into a Bill for merely civilian purposes.

Council adjourned for the usual interval.

On resuming:

LORD FRANCIS SCOTT: Sir, I rise to support the Bill before Council, and in doing so I must refer to some of the remarks made by my hon. and gallant friend the Member for Nairobi South, who is also the Officer Commanding the Local Forces, an appointment to which I am sure everybody in this Council would like to offer him their best congratulations (hear, hear).

I was sorry to hear him make an attack on his colleagues on this side of Council, an attack which I think is quite unmerited and which, personally, I feel rather sore about because I have done enough in my time—and there are records to show that I have devoted a great deal of time and trouble—to help this particular force, the Kenya Defence Force.

COL. MODERA: Your Excellency, on a point of order, I made no such specific attack on any member in particular.

LORD FRANCIS SCOTT: The hon. and gallant member said "some members", and he said it, in my own opinion, so that one could not tell to whom he was referring.

I think the point which he perhaps ignored a little bit is the fact that every male European in this country of the age of 18 and over is a member of the Kenya Defence Force, and everybody, therefore, does come under this Ordinance. And, as at the present time it has been agreed that the policy of this country shall be that everyone shall contribute what they can towards the common effort in this war time—whether

[Lord Francis Scott] they are producing crops on a farm, keeping businesses going or whether they are with the military—everybody should be considered as equally doing their job for the country. And as they all come under this Ordinance I consider it entirely right and proper that these sections dealing with personal services should be incorporated in this Bill.

I do not see myself, keen as I am on the success and welfare of the Kenya Defence Force, that these amendments in any way militate against its efficiency or the methods of training or anything of that sort.

Actually the amendment which the hon. and learned mover added at the end with regard to authorizing pay to be given for work done other than what is previously covered in this Ordinance is going to assist very much towards that end.

Now, Sir, I know perfectly well that at times this Force has had what my hon. and gallant friend has described as a "raw deal". I also know that many of the Defence Force Commandants feel that they have not been supported altogether in the way they should have been. But my experience when going round the country recently was that their grievance was more against the Military than the Civil Government.

I do feel that at this time, when we have a General Officer Commanding all military Units in these territories, that the question of what degree of training should be given to this force is a matter on which he should definitely give guidance to the people concerned. I do not consider that it is a question entirely for the Civil Government.

I do not know, Sir, whether the General Officer Commanding has actually laid down what he considers is required, but I do know that there has been correspondence going on between Your Excellency's Council and the General Officer Commanding on this subject, and perhaps in due course we may know what is decided.

Personally, I feel that there are many young men in the country still left in their civil occupations who have not had any

proper training and who certainly should have training. Everybody should know how to use their rifle and should at least know the elementary work of a soldier if he is going to be of any use in case any emergency arose. And I consider that steps should be taken to see that that is carried into effect. Frankly I cannot see anything in this Ordinance which militates against it whereas the section to allow pay to be given to people under such circumstances should help.

There is one point I should like to suggest as an amendment which might be considered when we go into Committee. That is that on page 3, section 22F (1), line 4:—

"Where any person has been called out and mobilized under section 21 of this Ordinance or has been called out under the provisions of the Kenya Regiment (Territorial Force) Ordinance, 1937."

I suggest that there should be inserted after that "or under the Military Units Ordinance, 1939." That is, the Ordinance we passed this morning, so as to cover all people called up in any of these units. That, I hope, perhaps may be considered when we go into Committee.

I beg to support the motion.

COL. KIRKWOOD (Trans Nzoia): Your Excellency, I rise to support the motion. My hon. and noble colleague who has just spoken was rather surprised at the general reference made to the elected members on this side of Council by the hon. and gallant Commander of Local Forces. He has explained since that it was in general terms that he was referring. Well, I take it that in a general reference he has either referred to some individuals or he has referred to them all.

I am a supporter of this Bill and I am also supporting many of the grounds that have been opposed by the hon. and gallant member for Nairobi South.

I consider myself that the Kenya Defence Force have had a raw deal and that it seems to be nobody's child. I do not think the fault lies with the K.D.F., it is not their personal fault, it is the fault of the Government and the fault of the military authorities and the people in higher command. I maintain that there is

[Col. Kirkwood] not sufficient training—that is not their fault—the K.D.F.'s. The principle of the K.D.F. Ordinance when it was brought in was that it should be a voluntary ordinance, but later on in 1937 it was altered to conscription. At the same time we took the opportunity also to implement another ordinance which was brought into being—the Kenya Regiment.

The Kenya Regiment, I know, look upon themselves as volunteers, but personally I do not. The law of this country is conscription and if there is a war they are liable to serve. Although they voluntarily join the Kenya Regiment they are conscripted into the K.D.F., so I think the voluntary part of it is really compulsion. It is rather Gilbertian, I know, but it is true.

Another point I might mention applying to the Kenya Regiment is that if everybody volunteered to join that regiment consequently they automatically become conscripts in the K.D.F.

But they are all details, I would like to get back to the fact that it is not the fault of the Kenya Defence Force if they are looked upon in advance, as it were, by the military authorities. They are insufficiently trained—but that is not their fault. If I remember rightly the Ordinance laid down 100 hours per year. Well, that is not sufficient to turn out a soldier, that is only playing at it. I submit to hon. members of Council that provision should be made for adequate training with the Kenya Defence Force irrespective of what role they are expected to fill. As far as I can see in this Bill they are liable to perform services as ordered—that is well and good—where they are all part of the whole, and every man has got to pull his weight, and under the military system every man has got to obey orders. Without that you will not have an army, you will have a rabble.

I do maintain that Government should think this matter over. If my friend Mussolini decides to bring me into this scrap well then, we want every man we have got and every man we can get, and the fighting forces must be trained men. I submit that it would be unfair to the K.D.F. to expect them to perform their duties as indicated in this Bill.

In clause 2: "for the defence of the Colony, either in or beyond the Colony", that I agree, Sir, is a necessary proviso. It would be absurd for the K.D.F. to go with the other armed services and if they are engaged on the Uganda border and the enemy are driven back over the Uganda border that the Kenya Defence Force should not be able to cross the line, for that would be the position without this proviso, whether the enemy were real or imaginary.

I am sure that the General Officer Commanding and Your Excellency will agree with me, and that every member of this Council also, that every man of every unit that takes part under war conditions in this Colony should be a trained man. And you are only playing at it if you are going to exclude the Kenya Defence Force from the training they are justified in having.

That is the only point I wish to make and I hope that it will be taken to heart and that the Government will seriously consider finding ways and means for seeing that the Defence Force is adequately trained as they are entitled to be.

LADY SIDNEY FARRAR (Nyanza): Your Excellency, I rise to ask whether it would be possible for the hon. member at a later stage to qualify the difference in application between 22b and 22p. If the application is similar, as it seems, then it is redundant, and unless there is very good reason, I find it very difficult to be in agreement with the difference of the wording of these two paragraphs.

In one we read:—

"... in the opinion of the Governor it is necessary that the business of such person should be carried on under supervision, the Governor may, with the consent of the owner of such business, make all such arrangements" and so forth.

In the other one that very excellent provision "with the consent of the owner" is omitted, and the power is left entirely in the hands of the Governor, who may direct the rate of pay for such work or such service and that the rate of payment shall be paid by the person for whom the work is being done.

MR. COOKE (Coast): Your Excellency, I rise merely to associate myself with the remarks of the hon. and gallant Member for Nairobi South. So far as I am personally concerned, I take no objection whatsoever to his reasoned and I think reasonable remarks. But there is just one point which I would like to make and that is concerning the regularity of bringing in an amending ordinance which totally changes the principal of the original ordinance.

I refer particularly to section 22f, which gives the Governor power to compel compulsory service on farms, etc. I personally agree that compulsory service on farms is very necessary and desirable, but I think, and I submit, that that measure should be brought in in a separate ordinance, a "Compulsory Service" ordinance.

I am a little bit disappointed that my hon. and learned friend, in whose legal acumen I have so much confidence, should have submitted to this and consented to this amending ordinance. It is completely a misnomer to call it an amending ordinance because it is a new ordinance bringing in a new principle.

MAJOR GROGAN: Your Excellency, I am in support of this amending Bill. I think perhaps our hon. and gallant friend, due to the sartorial differentiation between himself and the rest of Council, may possibly have just a little bit misunderstood the lesson of modern war, which is surely to the effect that the purely military function, as distinct from the administrative and economic functions of society, grows less and less important. I think that might be made clear with a little modification of the explanatory notes in the Bill. I refer to section 3 of the principal ordinance, which it is proposed to amend by adding to the words "for the defence of the Colony either in or beyond the Colony" the words "and for the maintenance of the economic life of the Territory."

There is also another point that occurs to me, that is whether the term "Colony" instead of "Territory" is the correct one, because presumably it is intended to cover the "Protectorate" as well as the "Colony".

MR. RENNIE: Your Excellency, I am somewhat handicapped in replying to

some of the points raised by the hon. and gallant member for Nairobi South by the fact that I was not here prior to the outbreak of war, and therefore I am not in a position to answer some of the points raised by him as regards the treatment accorded the Kenya Defence Force before that date.

Since that date, however, I have come into possession of a certain amount of knowledge about the Kenya Defence Force and I think that little knowledge enables me to answer some of the points raised by him. He has mentioned that some considerable time ago, sometime in October, he addressed a question to Government as regards the role of the Kenya Defence Force. And he indicated, rather late in his speech, that he was aware that that particular point, of the role of the Kenya Defence Force, was under consideration between the General Officer Commanding and Your Excellency. It is for that particular reason that he had not or has not, up to date, received a reply to his question.

My own view of the matter was that, in as much as the General Officer Commanding is officer commanding all forces in East Africa, the Officer Commanding Local Forces might well have sought the information from his superior officer, the General Officer Commanding. But that is as it may be.

I am grateful to the hon. and gallant member for indicating that there is a weakness in some of the amendments put forward to-day. The suggestion has been made by another hon. member that section 3 might well be amended to cover the amendments now suggested as Part IVa. As a matter of fact that point has already been considered and the Attorney General had drafted a short time ago the necessary amendments to section 3.

At the present time, as I have mentioned, the question of the exact role of the Force is under discussion between the Acting Governor and the G.O.C., and I think an agreement has been reached. It will now be necessary to implement the definition of the role of the Force as far as possible.

Although the hon. and gallant member spoke for some time as to the defects in the training of the Force and on the

[Mr. Rennie] necessity for it being adequately trained, he did not indicate exactly what his views on the matter are. He did not, for instance, indicate whether he considers it necessary to have a large number of the Force called up and mobilized and kept more or less ready for active service, shall we call it, instead of carrying on their ordinary civil occupations either on the farm or in the office.

He criticizes the Civil Government very severely on the method it has adopted, but it would be interesting for him to indicate what his views are on that particular aspect.

The question of further training for this Force has recently been under the consideration of the Government and it has been decided that the present arrangement of 100 hours' peace-time training is not sufficient. The question whether that period of training should be considerably extended is at present under consideration.

For my own part, I would say that it is essential that all our young men who have no training at the present time in musketry or in ordinary weapon training should have that practice, and the question as to how this training can best be given to the young men has been under the consideration of Government recently.

I think there is no further point I need cover at this stage. It may be that the hon. mover has one or two points to answer, but in so far as the general points are to be considered I think I have covered them.

MR. WILLAN: Your Excellency, with reference to the remarks of the hon. member for Nairobi South, I do not think it is necessary for me to add anything more to what has already been said by at least three hon. members on the other side of Council and by the hon. Chief Secretary.

I am indebted to the noble lord, the hon. Member for Rift Valley, and the hon. Member for Ukamba for drawing my attention to amendments necessary to clause 3 and clause 4 (new section 22f); one of those amendments is already drafted and the other will be ready for the committee stage.

The hon. Member for Nyanza has raised the question of the interpretation of section 22f in clause 4, and more particularly with regard to the words "in the opinion of the Governor it is necessary that the business of such person should be carried on under supervision, the Governor may, with the consent of the owner."

The reason why those particular words were included in section 22f is this. Supposing a farmer—and incidentally this new section is not confined to farmers as suggested by the hon. member for the Coast—if a farmer or owner of a business is called away on military service, and he is able to arrange to get another person to manage that farm or business without having recourse to section 22f, there is no need to invoke the provisions of this Bill: it is done purely by arrangement between the owner of the farm or the business who has gone away on military service. But if that farmer or owner of a business is unable to come to an arrangement with somebody to carry on that farm or business, the owner would approach the Governor and say, "I cannot find anybody to carry on my farm or business when I am away on military service." In such a case the Governor would, through his advisers, find somebody to manage that farm or business.

But in order that Government should not be liable for any damage which might accrue if that farm or business was mismanaged when the owner was away, it is necessary to get the consent of the owner to the nomination of a person to so manage that farm or business. That is the reason why these particular words are inserted in section 22f, in order that Government should be under no liability.

LADY SIDNEY FARRAR: On a point of explanation, I entirely agree with the section, but I should like to know why those words are not inserted in section 22e?

MR. WILLAN: Sections 22e and d relate to questions of persons liable for remuneration. 22d deals with the rates of pay for compulsory personal service, which are "the ordinary rates of pay current for such class of work or service in the area in which such work or service is performed." That is, when the work or

[Mr. Willan] service is performed for Government or the military authorities. Under 22e, it might happen that a ship came into Mombasa and there was not sufficient labour to unload it, and the ship contained military stores which it was vital to get up to Nairobi or some other place. Under 22e, the shipping company might invoke the aid of Government, and then Government would, under the provisions of the Ordinance, detail persons to help to unload that ship or superintend the unloading. But the work would be performed for the shipping company, who would then be liable to remunerate the persons who had supervised or performed that work.

Those, I think, are all the questions which have been raised other than the remarks of the hon. member for Nairobi South, which have already been adequately dealt with.

MR. COOKE: On a point of order, would the hon. and learned Attorney General answer my question about the principle of introducing into an amending Bill an entirely new principle?

HIS EXCELLENCY: May I say that this is not question time, and it will be quite impossible to carry on the second readings of Bills if questions are asked immediately after the mover of the second reading has replied to the debate and sat down.

The question was put and carried.

MUNICIPALITIES (HOSPITAL RATE) BILL

SECOND READING

MR. MORTIMER (Commissioner for Lands and Settlement): Your Excellency, I beg to move that the Municipalities (Hospital Rate) Bill be read a second time.

This is a simple measure designed to give authority to municipal councils and boards to levy a hospital rate on every European or Asian resident within their borders.

Ill-health is at all times burdensome, and hospital treatment is often expensive and sometimes financially crippling. Instances will no doubt be within the knowledge of every hon. member of persons who have had to undergo pro-

longed hospital treatment and who have, as a result, been plunged heavily into debt or have lost their savings. The loss sustained by those who suffer illness is a personal one in the first instance, but the loss is also a community one. Every member of the community of which the sick person forms a part suffers as a result of the ill-health of the one primarily concerned, so not only on humanitarian grounds but on the lower ground of self interest the obligation of restoring a sick person to health should be regarded as a community service. In most countries to-day that is a recognized principle of social service.

The Nairobi Municipal Council has for the past few years been anxious to inaugurate a scheme for the benefit of the inhabitants of Nairobi which would make hospital treatment less expensive to an individual than it is to-day. A satisfactory scheme with that object in view has been worked out between the Nairobi municipal authority, my hon. friend the Director of Medical Services, and my predecessor in the office of Commissioner for Local Government.

Under that scheme it is proposed to levy a charge on every European or Asian resident within the municipality in order to utilize the funds for the payment of a portion of the cost of hospital or nursing home treatment. There is at present no authority under the law whereby such a rate can be levied, consequently this enabling Bill is necessary for such a scheme to be put into effect. It may well be that the circumstances of these days will prevent this scheme from being put into operation in the immediate future, but the present Bill will leave the way open for the scheme to become operative when times are more favourable.

The Nairobi Chamber of Commerce has expressed itself strongly in favour of this Bill, and the Mombasa Municipal Board has also accorded its support. The principle of the Bill has already been accepted by this Council in the enactment of the Eldoret Hospital Rate Ordinance, 1931.

Turning now to the general principles of the Bill as embodied in the various clauses, we look first at clause 3, which provides that the Ordinance "shall apply

[Mr. Mortimer]
to such municipalities as the Governor may by proclamation from time to time declare". That, read with clause 4, provides that municipal authorities will have it within their own control when and how to apply this Ordinance to their own requirements.

Clause 4, read with the exemption sections of clause 8, provides for a flat rate levy on all adult Europeans (except those who reside only temporarily in a municipality) of a sum not exceeding Sh. 30 per annum. Incidentally the Nairobi scheme provides for a rate on Europeans of Sh. 20 per annum. This clause also provides for a levy on Asian residents not exceeding Sh. 24 per annum. Here again the Nairobi scheme provides for a rate of Sh. 15 per annum upon Asians.

Clause 6 provides for the allocation of the sums collected by means of the rate to the ordinary municipal revenues, and further provides that out of the municipal revenues shall be paid a proportion of the cost of hospital or nursing home treatment to all who come within the four walls of the scheme.

Clause 7 gives municipal authorities power to accept gifts, donations, and bequests from the charitably inclined for the furtherance of the scheme.

Clause 8 provides for certain exemptions, the most important of which is in sub-clause (c), which provides for the exemption from the operation of the Ordinance of all persons who are employed by Government, by the Kenya and Uganda Railways and Harbours Administration, or by any municipality and whose terms of service provide for hospital treatment at reduced rates. If they are already covered for hospital treatment, there is no necessity to make further provision under an insurance scheme for which this Ordinance opens the way.

Finally, clause 11 provides for the collection of the rate, and also provides for exemptions to be made in individual cases where the collection of the rate would be a hardship on the person concerned.

The enactment of this Bill will make possible schemes of great benefit to Europeans and Asians resident in the municipalities of the Colony, and I com-

mend the Bill for the acceptance of this Council.

MR. DENNISON seconded.

MR. ISHER DASS: Your Excellency, with regard to the speech of the hon. member in introducing this Bill, I wish to point out that the suggestion that the health and prosperity of Indians is some concern to society I should have preferred if he had mentioned that it was the concern of the State.

Dealing with the Bill, the hon. member has mentioned that it has had the approval of Mombasa Municipal Board and of Nairobi Municipal Council. He did not mention whether at any stage it has ever been discussed by Nakuru, Kisumu, and other centres. A similar measure was once introduced into this Council for Eldoret Municipality, and he implied that because it was an accepted principle in the case of Europeans it could be inferred that people at Nakuru, Kisumu, and other centres would accept this Bill.

But I must explode the bogey that the Indian members on the Nairobi and Mombasa bodies are representative of the Indian community. They are only nominated by the Governor, and therefore they do not represent the Indian community at all, because the Indian community in Nairobi and Mombasa are wholly opposed to the principle of this Bill.

Before I actually go through the Bill clause by clause, I should like to inform the hon. mover that I personally do not see any benefit in this scheme at all. For instance, if this scheme was on a voluntary basis, one could accept it, but when it is made compulsory we have to take into consideration not only the benefits but compare such benefits derived from this compulsion with the benefits an individual can derive if he takes out insurance with a company.

If an insurance policy is taken out on a similar basis, not only has the insurance company to pay medical expenses during illness but also losses sustained during that illness, and is also responsible for paying all other incidental expenses such as appliances required and other things. In this case the hon. mover has not told us whether

[Mr. Isher Dass]

this rate will only cover part payment by a municipality or also such other expenses incurred in connexion with X-ray treatment, crutches, or other surgical appliances. He did not make the position clear at all. As I said before, when we compare the benefits of this scheme with the benefits derived from an insurance policy, there is no advantage in it at all.

Let us also consider one other point, of the Indian community in Nairobi being called on to pay Sh. 20 or Sh. 24 per male and female above the age of 21 years, which would amount approximately to £10,000. Against that we should compare the benefits we are supposed to get.

As far as I know, there has never been in this Council or outside any suggestion by anyone of the inefficiency of the medical officers in the K.A.R. hospital. There has always been appreciation and tributes paid to the efficient way in which they work. If there have been complaints against the Indian ward, it is in connexion with the accommodation, and there have been some adjectives used concerning the lack of a suitable ward and the fact that it is in an unfortunate condition and that it is a tin shanty not much better than a stable. For the sum of £10,000 we have to compare the efficient treatment we get now and which we will get when this scheme is in operation; and there is no difference.

The second question is the fact that I do not think there would be any improvement in the supply of food. The food will still remain as it is, and I do not think after the scheme is in operation that patients are likely to get an extra six or seven courses (which one would like to have or to expect to have for this money). The food supplied now is of good quality. Nor so far as clothing is concerned would there be any improvement, and it could not be expected that under this scheme patients would be given silk sheets or pillow covers or anything like that. I think the clothes supplied now are of ordinary quality, and after paying £10,000 I do not think there would be any improvement in that direction, so that again there is no benefit to be gained.

There may be a benefit in one direction alone, that we may have a better class of useful furniture or a new building, but that is not enough for the payment of £10,000.

But, so far as this Bill is concerned, my friends do not see any reason for it at all. They would appreciate the introduction of such a tax if it were purely an insurance scheme on a voluntary basis and with no compulsion at all. The people who want to derive a benefit should derive it under a voluntary system, but they do not want it to be compulsory.

The Bill itself is a very peculiar Bill. In clause 2, for instance, it says: "Asian means any person both of whose parents or either of them are or is of Indian origin or descent." That means that the scheme covers Indians only, and not Asians, for the word Asian means Chinese, Japanese, Goans, Portuguese subjects, and as it is here it means nothing. If it is intended to include Indians only, the word should be there: "Asian" does not cover all the inhabitants of Asian countries.

Referring to clause 4, I do not see any reason for the differentiation in the amount of the rate of Sh. 30 for Europeans and Sh. 24 for Asians, unless it is a question of a superiority complex. I suggest that some people suffer from it, and by paying an extra Sh. 6 want to be treated as superior persons. But in any such scheme as this there should be no difference, for the benefits to be derived are equal, so that the payments should be equal, unless in the minds of the people who have to administer this scheme the idea of service is something very different in the case of Europeans and Indians.

Regarding clause 6, the hon. mover has told us that the money received from the imposition of the tax will form part of the revenues of the municipality. This is a very unfortunate position. If separate funds were to be allocated for Indians and Europeans it should have been done in this Bill. Seemingly the position as it stands to-day is that in Nairobi Municipal Council and Mombasa Board Europeans have got a majority, so that they need not take the opinion of the Indian councillors at all.

[Mr. Isher Dass]

In this connexion, I would also state that as at present constituted the two municipal bodies with nominated Indian members do not represent the Indian community, and until such time as the elective system is introduced and the real opinion of the Indian community is represented there is no reason to expect the people to vote in favour of this measure.

If the amount collected under this scheme is to be allocated separately for Asians and Europeans, Asians in Nairobi and Mombasa are likely to get more benefit. But the question is that the whole amount is to be put into one fund, so that most of the European community in Nairobi who now have proper nursing homes and a European hospital would have more facilities to enjoy; even the grouped hospital scheme suggested some years ago and which was approved by Government does not seem to be coming to anything as far as Indians in Nairobi are concerned. So that under this Bill we fear that the whole amount of the tax will be utilized for the benefit of one community at the expense of the other. That is the reason why this scheme cannot meet with the approval of my community.

In connexion with clause 8 of the Bill, the imposition of this tax is not based on the capacity to pay, but in effect is based more or less on Europeans paying more and Asians paying less. It should have been based on the capacity to pay, and how the poor people will benefit under the scheme I do not know. The rich people who pay only Sh. 30, when they go to hospital, will have favoured treatment, and rich people will carry much more influence in the management of a hospital or nursing home than the poor people. They will get better treatment, more facilities, and be able to take advantage of the institutions, whereas poor people sometimes dread going into them for they think they are likely to die there.

We have also to take this thing into consideration; that the people who do not take advantage of the institutions should not be called on to pay for the benefit of the other people. The principle should

have been that people whose incomes do not exceed in the case of Europeans £50 a month and have large families should not be called on to pay at all, and in the case of Indians under £10 a month with large families they should not be called on to pay. If that principle were accepted on the basis of capacity to pay, there would have been some relief for the people.

Under these circumstances, I do not see any reason to accept this Bill.

Clause 11 lays down the procedure for recovery of the levy, and says:—

"Provided that the Governor may, on the application of the municipal authority, grant to any person or body of persons power to reduce or remit the rate in respect of any person liable for the rate who satisfies such person or body of persons that payment thereof will impose undue hardship upon the person liable."

The argument I have advanced is that this measure should have been based on the capacity to pay. Here the Governor in Council delegates his power to an officer who can never understand—nor can heads of departments on the other side of Council, and hon. Indian members also—the difficulties and humiliations to which an individual, whether European or Asian, is put to when he goes to an official to ask for exemption. All sorts of questions are asked, all sorts of things exposed, and then one has to depend on the whim of an official to whom powers have been delegated. If by reason of the uneven distribution of wealth or the uneconomic conditions under which we live a person is not in a position to pay, why should he be exposed to humiliation so far as the necessities of life are concerned?

Therefore the principle should be definitely laid down that payment should be based on the capacity to pay.

I have already referred to the Bill and my reasons for objecting to the Bill and in all sincerity I would remind the hon. mover that if you do pass this Bill on a compulsory basis and not on a voluntary basis you are creating a very unpleasant position which after six or seven months, or it may be even a year or two years, you will repent and withdraw,

DR. WILSON (Native Affairs): Your Excellency, there is just one point I would like an assurance on from the hon. mover and that is in clause 6. It is said that the hospital rate may be paid, or will be paid, into the municipal revenue. I should like to be assured that this hospital rate would not by any chance be used for any other purpose than for reducing hospital charges.

MR. MORTIMER: Your Excellency, I will deal first of all with the points raised by my hon. friend Mr. Isher Dass. He asked first of all whether Nakuru and Kisumu had been consulted upon the principle of this Bill. To the best of my knowledge the municipal board of Nakuru has not been consulted. If they wish to adopt the principles of the Bill when it becomes law they will be at liberty to do so. Kisumu, as of course hon. members are aware, is outside the purview of the Bill in that it is not a municipality.

We have been told that the Indian community as a whole are strongly opposed to the principle of this Bill. Of that, there is no evidence whatsoever than the statement from Mr. Isher Dass. The Indian members of the Nairobi Municipal Council have, on more than one occasion, expressed themselves as strongly in favour of the adoption at the earliest possible moment of a scheme for cheaper hospital treatment.

I should point out that clause 6 of the Bill provides that the European and Asian schemes may be operated quite separately, and that if a European scheme precedes in fact the adoption of an Asian scheme, then municipal funds shall be liable only for the portion of the cost of hospital or nursing home treatment of the Europeans.

The provision made for a compulsory rate has been severely criticized and we have been urged to make the Bill into a voluntary one. That, Sir, would be quite impracticable. No scheme of the kind contemplated would be possible if it was left for people to come in or go out of it just at their good pleasure. An essential factor of any such scheme is that the municipal council or board shall know beforehand almost precisely the amount of money which will be available for use under the scheme.

We were also given a dissertation upon general hospital treatment in the Colony and the details of possible schemes that might be adopted under this Bill. That, Sir, is of course quite irrelevant to the purpose of this debate and does not arise under the discussion of the Bill itself.

We were asked whether hospital treatment only was to be provided for or whether other services were included in the purview of the Bill. I would refer to the first portion of clause 6 whereunder provision is made for the payment by the municipal authority of sums in reduction of the rate charges—

"made for the accommodation and treatment of, and any other service rendered to, European and Asian patients resident within a municipality to which this Ordinance has been applied."

That leaves it open for provision to be made in any scheme that may be adopted by a municipal authority not only for the reduction of the cost of actual hospital treatment but also for contributions towards other medical services.

A question has been raised, Sir, as to the definition of "Asian" in clause 2. It is proposed to refer this Bill to a select committee, with the consent of Council, and that point might well be brought up on that occasion.

Under clause 4 the differentiation of the scale has been brought into question. Well, Sir, there are fewer Europeans in any municipality in this Colony than there are Asians. As a consequence the hospital treatment might well be supposed to come out at a cheaper rate per head for the Asians than for the Europeans. Consequently the rate to be charged against the Asians would work out at a lower scale than that to be charged against the Europeans, and I cannot see that in that there is any ground for complaint by the Asian community.

We have been informed that the Indian members of the various municipal bodies in the Colony are not representative of the Indian community as a whole, and have not the confidence of the Indian community, or words to that effect. That is the first intimation the

[Mr. Mortimer]

Commissioner for Local Government has had of that somewhat serious state of affairs and I can scarcely credit the statement that has been made.

It has been suggested that there is not enough hospital accommodation at the present for Asians in the municipality at Nairobi. That may be true or it may not be true—I am not prepared to say—but the fact remains that the adoption of any scheme for the Asians within the Nairobi Municipality will be based primarily upon the goodwill of the bulk of the Asian community. The Nairobi Municipality would not be so foolish as to embark upon a scheme of this kind unless they were assured that they could fulfil the obligations which they would be undertaking under the scheme.

We have also been told, Sir, that the payment prescribed by the Bill should have been based on the ability to pay. Well, Sir, the rate will be so small in general as to put no hardship upon the rank and file of the people in any municipality in the Colony. And there is provision for remission where the payment could reasonably be regarded as a hardship upon the individual ratepayer.

We have also been told that exemption from the payment of the rate should be left to the will of the ratepayer—that he should be the person to decide whether he is able to pay the rate or not. Well, of course, the adoption of such a principle would be quite impracticable and would vitiate the whole machinery of the Bill.

The hon. Dr. Wilson also asked if the money derived from the hospital rate would be used solely for the purposes for which it was raised. That of course is the intention, but it will not be so prescribed. The money will come into the ordinary municipal revenues and an assessment will no doubt be made from time to time on the incoming and outgoing under the operation of the scheme. If the rate can be reduced at any time in the future, no doubt it will be so reduced. If, on the other hand, the rate has to be increased because sufficient revenue has not been obtained, then the municipal body will have to consider what is to be done about it in order to keep the scheme financially solvent.

I think that covers all the points that have been raised in the course of the debate.

I would like to move, Sir.

The question was put and carried.

MR. MORTIMER moved that the Bill should be referred to a select committee consisting of the following:—

The hon. Commissioner of Lands and Settlement (*Chairman*),

The hon. T. A. Dennison,

The hon. Member for Rift Valley,

The hon. Member for Nairobi North,

The hon. Mr. Isher Dass.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I venture to question whether this Bill should go to a select committee, because during this discussion hardly a single point of detail has been raised. Points of principle have been raised and the proper step to take would be to thrash them out in this Council. The only question of detail that has been mentioned is the question of the remission or the reduction of the rates—and that has been provided for in the Bill.

Bills of this kind, which have been promoted to legalize schemes of this nature, have been gone into in very great detail by the persons responsible for the working out of the schemes and have received the approval of the municipal councils and chambers of commerce and I think that if we go into these in select committee we might be doing more harm than good.

MR. WILLAN: Your Excellency, the request has been made in this Council that this bill should go to a select committee.

LORD FRANCIS SCOTT: Sir, I would like to support the hon. and gallant member for Nairobi North in this particular appeal. I knew before we discussed it that a request had been made and I had imagined that the hon. Indian members would put up some suggestions whereby the Bill could be put up to a select committee. But actually what has been said has been in complete opposition to the Bill, root and branch. I do

[Lord Francis Scott]

not know why it should go into select committee, it is a waste of our time. I think the hon. Isher Dass wishes to voice his objections further to the principles it would be much better if he were to do it in committee of the whole Council.

MR. PANDYA: Your Excellency, I think that once the principle has been decided upon the questions of details if necessary should be allowed to be discussed in select committee; I think it is usually a sound and wise principle. Here is a Bill and we in Council have already agreed to the principle of it, but it could be very much improved in detail in select committee.

I have no opposition to the principle of the Bill itself, but the details have not been pointed out by the hon. member who spoke on the Bill. For instance there is the question of making a provision for separate voting by Indian and European members in the Municipal Council when the subject of imposing a rate comes up for discussion, and there are innumerable details by which the Bill could be made more workable. I do hope that in view of all these possibilities we shall agree to send to select committee this Bill.

MR. RENNIE: Your Excellency, I did not have the opportunity of studying this Bill until a few days ago and I must admit that when I read the Bill a large number of queries raised themselves in my own mind. I had intended to pass these queries to the chairman of the select committee to ensure that the various points I had in mind would be considered in select committee.

Section 6 to my mind could be improved considerably, and since the request has been made to Government that a select committee should be appointed I think that Government should accede to the request, especially as there are numerous points of detail which might well be thrashed out in select committee.

The question was put and carried.

ADJOURNMENT

Council adjourned until 10 a.m. on Thursday, 16th of November, 1939.

Thursday, 16th November, 1939

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Thursday, 16th November, 1939, His Excellency the Acting Governor (W. Harragin, Esq., K.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The Minutes of the meeting of the 15th November, 1939, having been circulated,

MR. RENNIE moved that the Minutes be amended by—

(a) the deletion of the word "the" following the word "immediately" in line 5 on page 3 and the substitution of the word "after" therefor;

(b) the deletion of the capital G at the beginning of the word "Government" in line 6 of page 3 and the substitution of a small g therefor; and

(c) the deletion of the word "report" in line 22 of page 3 and the substitution of the word "reported" therefor.

MR. WILLAN seconded.

The question was put and carried.

The Minutes as amended were confirmed.

ORAL ANSWERS TO QUESTIONS

No. 55—NATIVES ON LEAVE

LADY SIDNEY FARRAR: Will Government give an assurance that native farm employees on leave in their reserves will not be signed off by District Commissioners without reference to their employers, even when recruits are wanted for such purposes as the Pioneer Corps?

MR. HOSKING (Chief Native Commissioner): Government is prepared to instruct District Commissioners in the sense desired by the hon. member, and will do so.

No. 56—EXCHANGE REGULATIONS

MR. NICOL (Mombasa): Will the hon. Financial Secretary make to Council a clear statement explaining the position in regard to exchange regulations, the reasons therefor, and the procedure to be adopted by importers in order to have necessary foreign exchange made available for them?

MR. LOCKHART: I would refer the hon. member to the Defence (Finance) Regulations, 1939, to the Defence (Finance) (Amendment) Regulations, 1939, and to the exemptions and orders made thereunder.

The reason for the restrictions on foreign exchange is that His Majesty's Government in the United Kingdom wishes to acquire the maximum possible amount of certain foreign currencies, in order that funds may be available in the countries concerned to finance purchases of essential foodstuffs and war materials. In order that this object may be attained, it is necessary to regulate imports, and also to provide as far as possible that exports to foreign countries should be paid for in the currency of the country concerned and not in sterling. Any foreign currency made available from the sale of such exports, any foreign currency in the possession of private individuals, and any balances in foreign banks, must be made available to the Government through the banks in this country, which have been appointed authorized dealers in foreign exchange under the Regulations. The necessity for surrendering currency in this manner at present applies only to United States dollars, Canadian dollars, Belgas, Swiss francs, guilders, Argentine pesos, Swedish crowns, Norwegian crowns and French francs.

To give effect to the intention of the Regulations, it has been necessary to institute a system of import licences under Regulations published in Government Notice No. 960 of the 14th of November. Under these Regulations the importation into the Colony of all goods, with certain minor exceptions, is prohibited except in accordance with a licence granted by the Commissioner of Customs. When that licence has been granted, all that is necessary in order to obtain foreign exchange is for the importer to take a copy of his import licence to his bank, fill in the form of application for foreign exchange, and the bank will issue the exchange required. Foreign exchange can also be obtained on application to a bank to meet contracts entered into before the war and necessary personal or travelling expenses.

NO. 60—PRICE OF PETROL

MR. GHERSIE (Uasin Gishu): Will Government state what proportion of the increased price of petrol (viz. 30 cents per gallon) will be allocated to Government as additional revenue?

If the reply is that Government do not participate in the revenue derived from the increase in price, will Government state on what grounds the increase is justified?

MR. LOCKHART: No additional taxation has been imposed on petrol. The increase in price is justified on the basis of the increase in landed costs.

COL. KIRKWOOD: Arising out of that answer, Sir, may I ask whether Government will agree to appoint a committee to inquire into the landed costs of petrol and the justification or otherwise of the increase of 30 cents which has just been put on?

MR. LOCKHART: At the East African Governors' Conference, as Your Excellency is aware, I was authorized to negotiate with the petrol companies on behalf of the East African Governments in regard to the price of petrol. As to whether those negotiations required the supervision of a committee it is scarcely for me to suggest.

MAJOR GROGAN: May I ask whether the principle of replacement has been accepted as the basis of price fixation?

MR. LOCKHART: Your Excellency, the question of the principle of replacement costs to which the hon. member refers will have to be defined closely by him before I could answer that question.

PENAL CODE (AMENDMENT) BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the Penal Code (Amendment) Bill be read a second time.

This Bill, and the one which immediately follows it, the Criminal Procedure Code (Amendment) Bill, are the result of a Law Officers' Conference which was held earlier this year. Both these Bills have been referred to the Law Society of Kenya and also of Mombasa, and also to His Honour the Chief Justice of

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Kenya. Both of those bodies and His Honour the Chief Justice agree to them in principle. Actually, Tanganyika has already passed a similar Bill to this, and Uganda will do so before the end of the year.

Turning to the details of this Bill, clause 2 amends section 18 of the principal ordinance which defines the use of force in defending one's self or one's property. The present law with regard to that is unsatisfactory and, in fact, the courts at present are following the English principles. Therefore it has been considered that the most convenient way of getting over the present difficulty is to state in the law that the criminal responsibility for the use of force for the defence of property shall be determined according to the principles of English common law. That merely gives statutory effect to the present practice of the courts.

Clause 3 deals with the use of force in effecting an arrest, but I may say that considerable difficulty was found in drafting this new section 18A, in view of section 20 of the Criminal Procedure Code, wherein is defined how an arrest should be made. I think I must read the whole of the section:

"(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest."

Then we come to the sting in sub-section (3):

"(3) Nothing in this section shall give a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life."

There is considerable difficulty with regard to that section, especially in the case of stock thefts, and now I will quote from a judgment of the Court of Appeal in 1937. In that judgment, the Court commenting upon this section 20, said:

"This section has already been subject of judicial decision by this Court.

In *Rex v. Machage* (1935 E.A.C.A. 94) the owner of some sheep, one of which had been stolen and was being eaten by the thief, killed the thief as he was running away. Although the facts set out in the judgment might raise some doubt as to whether the accused there was seeking to make any arrest at all, the defence raised on his behalf according to the headnote was apparently to the effect that he killed the offender whilst seeking to effect his arrest. The Court then held, after pointing out the distinction between the law in England and in Kenya on the subject, that as theft is not an offence punishable with death or with imprisonment for life, a person is not entitled to cause the death of a thief in attempting to effect his arrest even though the arrest could not otherwise be effected.

This decision is conclusive of the question before us and therefore the appeal must be dismissed. In dismissing the appeal we would ask Crown Counsel to bring to the notice of the authorities the desirability of considering whether it is not advisable to bring the local law on this subject into agreement with the law in force in England."

The effect of that judgment is this. That man was trying to effect the arrest of a thief, but theft is not punishable with imprisonment for life or with death, and therefore he did not come within the saving provisions of section 20.

Then we come to the English law on the subject, and here again we are in difficulties, because with regard to effecting an arrest the law of England is this—I am now quoting from Halsbury:—

"If a person whom . . . a private person is illegally attempting to arrest upon a charge of . . . felony . . . flees and cannot be otherwise arrested, he may be killed and the homicide is justifiable."

So you see that the question of liability in England for killing a man in effecting his arrest is governed by whether the crime he has committed is a felony or a misdemeanour. For instance, under the law at home, suppose a burglar breaks into your house at night and you kill him. If he has actually stolen something you are exempted from liability

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because the crime he has committed is a felony, but if he merely attempts to burgle the house and you kill him you are liable, because the offence he has committed (of attempting to burgle) is a misdemeanour and not a felony. As one learned author said with regard to the law in England, it seems to follow that if a householder shoots and kills a man who has attempted burglary he would be tempted to place a silver spoon in the hands of the man to suggest a complete felony!

This Colony and the neighbouring territories unanimously came to the conclusion that it would not be wise to follow the law of England for the reason I have just stated. Therefore the only way around the difficulty was to put the onus on the court according to the facts and circumstances of each particular case, and that is why section 18A is drafted as it appears in the Bill.

Clause 4 should be read with clause 8 of the Bill. At the present time quite a number of magistrates, in cases where there are extenuating circumstances or where the accused on account of his youth should not be sent to prison or otherwise punished, give a sentence of "Cautioned but discharged." There is no legal sanction for such a sentence in the Penal Code or Criminal Procedure Code as drafted at present, so clause 8 (new section 33a) has been drafted, reading as follows:—

"(1) Where, in any trial before a subordinate court, the court thinks that the charge against the accused person is proved but is of opinion that, having regard to the character, antecedents, age, health or mental condition of the accused, or to the trivial nature of the offence, or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge."

That will be open to a magistrate in future, and clause 3 (4) is merely a consequential amendment on clause 8 in the Bill.

Clause 6 merely clears up an inconsistency between the Criminal Procedure

Code and the Penal Code. The present provision in the Criminal Procedure Code is that imprisonment for non-payment of a fine of more than Sh. 1,000 may extend to six months, whereas the Penal Code provides for nine months. Now the maximum punishment for non-payment of a fine is limited to six months, bringing this Code into line with the Criminal Procedure Code.

Clause 9 deals with sedition, and amends section 52 of the principal ordinance. This clause is what I call a clarification clause. If hon. members will refer to section 52 on the left hand side of the Bill, they will find first of all that it deals with sedition in sub-section (1). Half way down it goes on to say what is not a "seditious intention." Further on in the proviso it says that although it shall not be a "seditious intention" to do so and so, yet if acts and things are done in a certain manner they shall be deemed to be unlawful. The opportunity has been taken to clear up and clarify that section. After clause 9 becomes part of the principal ordinance, it will show clearly what is "seditious intention," and that an act, speech or publication is not seditious by reason only that it attempts "to show His Majesty has been misled or mistaken in any of his measures" and so on as in (a) to (d) of section 52.

Clause 10 enables a person who comes into possession of seditious literature unwittingly shall not be liable to a charge of possession of that literature if, as soon as he knows it is seditious, he hands it over to a proper authority, this being the nearest administrative officer or officer in charge of the nearest police station.

Clause 11 amends section 60 of the principal ordinance. That section at present rather overlaps the seditious section, 52, and so 60 has been re-drafted in order that it shall only deal with the publication of false views.

Passing on to clause 13, this deals with the wearing of uniforms declared to be for the exclusive use of persons performing services in the public interest. It is necessary to have control over the unauthorized wearing of uniforms, badges, etc., especially at the present time. Various organizations performing social services wear distinctive uniforms, badges

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or marks, and this clause is designed to prevent unauthorized persons wearing them.

Clause 14 deals with the offence of infanticide, and follows exactly the wording of the recent English Infanticide Act, 1938. This provides that in cases where the evidence justifies it a verdict of infanticide may be brought in instead of murder, where a woman causes the death of her child under 12 months of age, instead of as at the present time restricting it to the unlawful killing of the child by the mother of a child which has been newly born.

Passing on to clause 19, this protects the property of the Government and the property of the Kenya and Uganda Railways and Harbours. First of all, the Governor can by notice in the Gazette give directions that such property can be marked with certain marks, and the other provisions follow exactly the wording of the English Public Stores Act, 1875.

Clause 23 reproduces the whole of the Currency Ordinance which is incorporated in Chapter 43 of our Revised Edition. I have incorporated that, and repealed the whole of the ordinance in clause 27 of the Bill, which will reduce the number of our ordinances by one.

New section 339a provides for coins which are suspected of being counterfeit being impounded by a Government officer or any bank manager in the course of their duties and sent to the Accountant General; if it is counterfeit it can be destroyed.

Clause 24 puts a new section, 344A, into the principal ordinance, making it an offence to be in possession of or offer for sale articles bearing representations of coins or notes which are legal tender here or elsewhere. This implements an order made under the Customs Management Ordinance a few months ago prohibiting the importation of such articles.

Clause 26 deals with consolidation and reprinting of the ordinance, and follows exactly the wording of a similar section, as hon. members will remember, in the Electric Power (Amendment) Ordinance.

MR. DENNISON seconded.

MR. MONTGOMERY (Native Interests): Your Excellency, there is only one point I want to raise, and it is really for information. It is on clause 17, which repeals and replaces section 293 of the principal ordinance. Do I infer from that that witchcraft is no longer to be a crime? or will the Witchcraft Ordinance remain in force and we carry on under that?

MR. WILLAN: I apologise for not mentioning clause 17, especially as it is not mentioned in the "Objects and Reasons" to the Bill. The reason for re-drafting this section and taking out the present section 293 which relates to witchcraft, is that the provisions of that section are already covered in the Witchcraft Ordinance, and therefore there was duplication between the Penal Code and that ordinance.

The question was put and carried.

CRIMINAL PROCEDURE CODE (AMENDMENT) BILL.

SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the Criminal Procedure Code (Amendment) Bill be read a second time.

I will go straight to the details of the Bill, which has been drafted in conjunction with the last Bill.

Clause 2 puts in a new definition, defining the word "complaint" which is not defined in the present Code, although it is used on several occasions.

Clause 3 is an important clause; in fact, the most important clause, and one which I believe will be subjected to a certain amount of criticism. This makes a very fundamental change in our law, because it reduces the jurisdiction of magistrates to that appertaining to magistrates in Tanganyika. At the present time magistrates have unlimited jurisdiction as regards natives, except in certain cases such as treason, manslaughter and, in the case of natives, rape.

This clause remedies what I would call that unlimited jurisdiction, and now we are giving a first class magistrate power to impose imprisonment for a period not exceeding two years and a fine not exceeding £150, and corporal punishment

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not exceeding 24 strokes. With regard to second class magistrates, they can impose imprisonment not exceeding 12 months, a fine not exceeding £75, and corporal punishment not exceeding 12 strokes; third class magistrates have their jurisdiction increased in the matter of imprisonment from one to three months, with a fine not exceeding £25, as against £15 at the present time, and giving them power to award corporal punishment to juveniles not exceeding eight strokes.

As hon. members are aware, this clause implements the recommendations of the Commission of Inquiry held in this Colony in 1933, more popularly known as the Bushe Report. It is some time since that report was published, and I will refresh the minds of hon. members by reading extracts from that report with reference to this particular matter. I will first of all read from page 17, paragraph 45:—

"Administrative officers of all three territories deserve the utmost praise for the manner in which they endeavour to discharge what at times must be a difficult task. A district officer is an administrative officer first and foremost. Law and order in his district must be maintained. His is the responsibility for the proper policing and control of his district and an outbreak of crime is, as Mr. Wade, Chief Native Commissioner for Kenya, put the position regarding stock theft, the bane of his life. It is often difficult for him not to be aware of the details of the police investigation of crime—in some cases he has himself conducted that investigation. In such circumstances it cannot always be easy for him to assume a judicial role and to proceed calmly and dispassionately to apportion responsibility and arrive at a proper sentence."

Passing on to page 20, paragraph 50:

"Sir Donald J. Cameron, G.C.M.G., K.C.B., in his address to the Legislative Council of Nigeria on 6th March, 1933, in discussing a similar problem, said:—

"The old argument will no doubt be used, too, that, owing to his closer

daily contact with them, the Administrative Officer must know more of the habits and mentality of the natives than a judicial officer can, and must therefore be better equipped to correct their faults. This issue seems to be a very closely defined one. If the judgment of the court is to be the judgment of an officer experienced in the art of sifting and weighing evidence and is to be based solely on the evidence which has been laid before him in the case, it does not matter a great deal to me what he is called. Administrative officer or magistrate, or what the court may be called. It is sufficient that the court is a judicial tribunal and the trial officer a judicial officer. But if the decision of the court may properly be swayed by political or other non-judicial considerations within the knowledge of the administrative officer and is therefore not to be based solely on the evidence which has been led, then, in my judgment, the court has ceased to be a judicial tribunal and the officer has ceased to be a judicial officer. Change the system of law, if you will, and punish the people by administrative officers exercising a kind of parental correction because the people are primitive; but remember always, pray if you do so that you will thereby be depriving the natives of the protection of any judicial court and any judicial system of law. That has not in the past been the policy or the practice which has governed the acts of the Nigerian Government."

Passing on to paragraph 15:—

"With these arguments we (the Commission) find ourselves in complete agreement. We regard it as a fundamental necessity, from the point of view of law and order, that there should be a strong and adequate judiciary which the people of the country understand and respect. It is of equal importance that judicial work should be performed by persons with adequate experience who are trained in the weighing of evidence and the requirements of legal proof."

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In paragraph 52 they say:—

"On the question of the prestige of administrative officers, we desire to say this. There are in all three territories certain classes of offences which are triable by the High Court, and no one has suggested that by reason of that fact administrative prestige has suffered. In Tanganyika Territory magistrates have a considerably lower jurisdiction than their confreres in Kenya and Uganda, and many more cases are in consequence committed for trial. Yet the administrative officer in Tanganyika Territory enjoys the respect and affection of the natives whom he governs to no less an extent than do district officers in Kenya and Uganda." Passing on to page 23, paragraph 55:—

"The solution which we propose is to make it possible for the High Court to discharge properly the functions which it is its duty to perform. These functions, in so far as its exclusive criminal jurisdiction is concerned, ought to extend to the trial of all cases in which a sentence in excess of two years' imprisonment is proper. We therefore recommend that the jurisdiction of magistrates in Kenya and Uganda be reduced to the limits which obtain in Tanganyika Territory. We further recommend that magistrates in all three territories be empowered to try any non-capital charge which can, in the opinion of the trying magistrate, be adequately dealt with within the limits of his powers. All more serious cases will be committed for trial to the High Court after preliminary inquiry.

56. In Kenya the decrease in the existing powers of magistrates so far as natives are concerned will necessarily mean some increased work for the Supreme Court in its criminal jurisdiction. Such increase need not, however, be very great, for magistrates will still have considerable powers of punishment and the measure of control exercisable by the Attorney General over subordinate courts will tend to prevent unnecessary committals for trial.

57. We regard it as most important that trials by the High Court should be

held in the district in which the crime was committed and the witnesses reside. The High Court should be so constituted that it can hold sittings at frequent intervals not only at provincial headquarters but at district headquarters also."

Finally, paragraph 60:—

"We recommend that the strength of the Supreme Court bench be increased by one judge."

That has already been done, and I believe that the new judge will arrive next month.

"Such an appointment will enable the court adequately to travel the country on circuit at frequent intervals and to visit district headquarters, which at present it is unable to do. The additional judge should have his headquarters either in Nairobi or at some place on the 'Railway' circuit, as may be found most convenient."

I pass on to page 112, which contains an enclosure by, as he was then, Mr. MacGregor, Attorney General, dated the 28th August, 1933. He said:—

"The powers of punishment of magistrates in Kenya and Uganda should be reduced to the Tanganyika scale.

By section 10 of the Criminal Procedure Code subordinate courts of the first and second class may try a native for any offence other than treason, murder, manslaughter and rape, and may pass on him any sentence authorized by law. In Tanganyika a magistrate's powers are limited to two years' imprisonment. Experienced district officers in that territory are satisfied that such powers are adequate to enable them to maintain law and order (paragraph 54 of the Report). The Supreme Court of the Colony repeatedly has to reduce sentences—"

and he then refers to paragraph 46 of the Report wherein are given twelve examples, mostly in cases of stock thefts, where imprisonment has been awarded for three years, in some cases five, and all were reduced to two years or under by the Supreme Court—

"and the question recently assumed such proportions that the Judge took the opportunity of setting a case down

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for argument in open court and delivered a judgment which has been published in Confirmation Case No. 108 of 1933. I personally argued that case at a date prior to the sittings of the Commission, because I had for long felt that magistrates of subordinate courts abused their powers of punishment, not from any improper motive but from a lack of appreciation and understanding of the principles underlying punishment.

Speaking as Attorney General, and not, for the moment, as a member of the Commission, I have had for years to advise the Supreme Court that I was unable to support large numbers of sentences which in my opinion were so severe as sometimes to be almost savage. So far as I am aware, nowhere except in Kenya, Nyasaland and Uganda (subject in the last case to the magistrate sitting with assessors if he thinks a sentence of over two years is called for) do magistrates possess such powers. In Nigeria, under the provincial courts system, comparable powers were conferred on administrative officers, but that system has just been abolished."

Those are the reasons for the inclusion of clause 3 in this Bill.

Passing on to clause 5 on page four of the Bill, in the present law there is no clear distinction between "complaint" and "charge." Actually, the distinction is this: A person comes and makes a complaint and after the complaint has been made to the magistrate, the charge is then drawn up, and so this section, the new section 87, makes that distinction very clear.

Clause 7, at the top of page five, amends section 116 of the principal ordinance so that a search warrant can be issued not only with regard to any article with which a crime has been committed, but with regard to anything which it is necessary for the police to conduct an investigation. At the present time the police are handicapped because they might want, for instance, to seize documents, books of accounts and so on.

Clause 9 amends section 132 and adds section 132c, which is the present section

243. At the present time the law states that for every distinct offence there shall be a separate charge all according to whether it is tried on information in a magistrate's court or in the High Court. Well, actually, that is completely wrong and is not obeyed in practice. When an accused man is charged with more than one offence each offence is set forth in the paragraphs in the charge. There might be one, two or three paragraphs setting out each offence, and in the information the separate offences are contained in paragraphs called "counts." So this clarifies the position and lays down that:—

"Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged."

That, of course, must read later on with section 132c and 132b.

Section 132c merely reproduces section 243 which sets out the rules as to how the charges and informations are to be framed, and all that has happened here is that we have removed it from section 243 to 132c, which is its more correct position.

I come now to clause 13 on page 10 of the Bill. This is an important clause, and as hon. members will see it covers about two pages of the Bill—sections 173 to 180c. This deals with convictions for offences other than the offence with which the accused is charged. The new section 173 sets out the principle to be followed and then sections 175 to 180a deal with particular cases.

The general principle is, supposing the accused in charged with manslaughter, you cannot convict him of murder, because that is a more serious offence. The general principle set out in section 173 is that an accused man can be convicted of a minor offence, that is, say a man is charged with murder he could be convicted of manslaughter or committing grievous bodily harm.

With section 174 we deal with convictions for having attempted to commit an

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offence, and in section 175 onwards, we deal with particular cases. The only one I am going to refer to is section 176, which is about the middle of page 11:—

"When a person is charged with manslaughter in connexion with driving a motor vehicle by him and the court is of the opinion that he is not guilty of that offence, but he is guilty of an offence under section 15 of the Traffic Ordinance, 1928 — that deals with dangerous driving—he may be convicted of that offence although he was not charged with it."

That has been specifically put in—this new clause—the reason being as follows: Very often a person causes the death of another person by negligently running him down with a motor car. That person may be charged with manslaughter at the preliminary inquiry held in the magistrate's court and committed to the Supreme Court on a charge of manslaughter. If the prosecution fails to prove the charge of manslaughter the Supreme Court at the present time will not convict the driver of the lesser offence, and what happens is that he would have to go back to the magistrate's court and the proceedings started all over again with a charge of dangerous driving. This amendment will do away with that because he could be convicted by the Supreme Court for dangerous driving under the Traffic Ordinance if the charge of manslaughter failed.

Clause 15 incorporates new section 196a, which I am sure my hon. friend the Director of Medical Services will be glad to see in this Bill. The effect of this new section is this: It relates only to subordinate courts and it is designed to do away with the necessity of doctors travelling long distances to attend trials. As you see, now they will be able to give evidence before the nearest magistrate and in the presence of the accused, and the accused or his advocate will have the right of cross-examination. Thus, the deposition of a medical officer can be read at the trial. There are, of course, safeguards under sub-section (2) that if the court desires it, then the court can call that particular medical officer to attend the trial.

Clause 17 sets out a new provision which I think will be helpful to magistrates because it deals with the order of addresses in council by the prosecution and the defence. For instance, as set out in the new section 198a the prosecution opens the case and calls evidence, then the defence opens its case, and if the accused fails to call witnesses then the advocate for the defence closes the case and the prosecution has no right of reply. But if the accused calls witnesses then the prosecution has the right to reply. So, the prosecution's right of reply depends on the fact whether the accused calls witnesses or not.

Passing on to clause 21, in the middle of page 14, this is a new section dealing with preliminary inquiries. At the present time there is no duty resting on the magistrate to explain to the accused why he is brought up at the preliminary inquiry. Now he has to—

"read over and explain to the accused person the charge in respect of which the inquiry is being held, but the accused person shall not be required to make any statement in reply thereto."

The reason for that is that until the accused is on trial he is not required to make any statement.

Clause 22 merely ensures that the evidence shall be properly prepared for the trial in the Supreme Court.

Clause 23 is a re-draft of sections 219 to 221 of the principal ordinance. This also relates to the preliminary inquiries. The object of the re-draft of these three sections is first of all to make quite sure that when the evidence for the prosecution has been called the three alternatives shall be explained to the accused. These are the three alternatives. One is for the accused to say nothing and reserve his defence; the second is that he can give evidence on oath, and if he does give evidence on oath the accused may be cross-examined; and thirdly, he may make a statement, when he may not be cross-examined. The object of this section is to put clearly to the accused what the alternatives are.

The second object of this clause is that the magistrates shall be well aware that they have the power at the preliminary inquiry to discharge the accused if at the

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end of the prosecution case there is not sufficient evidence to commit the accused, or if the accused goes into the witness box and there proves a complete alibi on his own evidence or on that of his witnesses, then in such a case the magistrate will have power to discharge the accused.

The third object of this clause is contained in sub-clause 4 of the new section 220; it sets out the order of the addresses at a preliminary inquiry by the prosecution and by the advocate for the defence. These are the chief and principle objects of clause 23.

Now I can skip the whole of page 17 and come to clause 26.

At the present time, when the accused person is committed for trial by the magistrate to the Supreme Court, the magistrate frames the charge. He may commit the accused on a charge of murder. Well, there is nothing in the law at the present time when the depositions go in to the Attorney General's office for the Attorney General to say "This is not a case of murder but manslaughter," and there is no power under the law at the present time for the Attorney General to alter the charge and lay an information against the accused in the Supreme Court for manslaughter. Actually it is done and the Supreme Court acquiesces.

Now we give to the Attorney General power to charge the accused with any offence on the evidence disclosed by the depositions and so bring the law into line with the present practice.

Now we come to the bottom of page 21, clause 23 of the Bill. This clause adds a new sub-section to section 304, which reads as follows:—

"Nothing in this section shall be read as prohibiting the assessors, or any of them, from retiring to consider their opinions if they so wish; or, during any such retirement or at any time during the trial, from consulting with one another."

The reason for the insertion of that new sub-section is this: I think it was last year that the Court of Appeal decided in a case where the assessors had been allowed to retire to consider their verdict that that was quite illegal. Well,

another Court of Appeal this year decided directly opposite. They decided that it was competent for the assessors to retire to consider their verdict—and so we have two conflicting decisions in the same court. So it has been decided to put the matter beyond all doubt and to give the assessors power to retire and consult with one another before coming to their verdict.

Clause 35—it is rather a long clause, but there is nothing much in it. At the present time if property is seized under a distress warrant for the payment of the fine or for compensation, etc., and a third party claims the property as his, as the law stands at present it is the court broker who must make the objection to the property on behalf of the third party who claims the property. This is impracticable because the court broker does not know whether the third party's claim to the property is well founded or not.

The law has now been altered so that the third party must lodge his own claim; he must raise his objection and appear in court to substantiate his claim to the property.

Clause 36 merely extends the time for the payment of a fine from 15 to 30 days.

Now I come to clauses 37 and 38. Clause 37 is, I submit, going to assist the Attorney General's department considerably. What happens at the present time is that in the petition of appeal, some advocates do not state with particularity the grounds of appeal. For instance, the grounds of appeal may state that the decision of the magistrate was against the weight of the evidence, wrong in law, but that does not tell the crown counsel what he has to meet. Now this clause states:—

"When the appellant is represented by an advocate, the petition shall contain particulars of the matters of law or of fact in regard to which the subordinate court appealed from is alleged to have erred."

That, of course, will enable crown counsel to know what he has to meet, and I think it is fair to all parties and will also save the time of the court.

Clause 38 amends section 338 of the principal ordinance, which deals with appeals and their summary dismissal. The

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relevant part of present section 338 is as follows:—

"On receiving the petition and copy under section 336 the Supreme Court shall peruse the same, and if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily."

Well, you might think that all right—an appeal need not come up for hearing if the court has gone through the records and decided that there is no use for an appeal. But then we come on to the proviso which states:—

"Provided that no appeal shall be dismissed unless the appellant or his advocate has had a reasonable opportunity of being heard in support of the same."

A lot of time is wasted with frivolous appeals. The record could be perused by the judge in chambers, and if the appeal is brought on a matter of fact or against sentence, then a judge is quite competent to say that there is nothing in the appeal and that it can be rejected without being set down for hearing. It will save a lot of the time of the court on frivolous appeals and also the time of the Attorney General's staff. Passing on to clause 41, on page 25, this deals with inquiries into deaths. At the present time the powers as to whether an inquest should be held or not are vested entirely in the magistrate, and there is no higher authority who can direct the magistrate to hold an inquiry if the magistrate does not want to. So now the power is vested in the Attorney General, who can direct a magistrate to hold an inquest in a case where the magistrate has decided that no inquest should be held if the Attorney General thinks that in that particular case an inquest should be held.

Coming to clause 42, this follows a similar section in the Electric Power (Amendment) Ordinance.

MR. DENNISON seconded.

MR. MONTGOMERY: Your Excellency, I have a number of points of detail which I propose to bring before the select committee and to which I will not refer here at all. But there is one section I want to refer to and that is

section 3 which, as the hon. mover has said, is the most important in the Bill.

It repeals section 10 of the Principal Ordinance in which magistrates of the first and second class have unlimited jurisdiction over the natives. I submit that that is very necessary and should be retained. It is a very necessary part of the law and it has been the law to my knowledge for over thirty years and I have never heard of any complaint against it. I do not think, and I do not admit for one moment that it is a complaint if a judge disagrees with a magistrate as to the severity of the sentence. I do not admit that the magistrate is necessarily wrong. There have been no complaints of substance against this section in all these years and up to this very moment.

The Bushe Report advocated the repeal of this section for reasons of their own, possibly because it was in force in Tanganyika. But the very fact that no action has been taken for six years gives one to believe that this Government did not agree with it. I know that when the Report was published the Governors of Kenya and Tanganyika objected very vigorously and then the C.S. and the C.N.C. did the same. It appears that Government has successfully resisted the Colonial Office for six years and I think it is a great pity for us to give way just now.

It will cause inconvenience and hardship and considerable expense if this section is repealed. It has been said that one extra judge will cope with the work. I very much doubt it. Probably you will have to have a resident judge at Nakuru and Kisumu and possibly an increase in Crown Counsel, unless police officers will be allowed to prosecute in the Supreme Court, in which case you will have to have an increase in the number of police officers.

Let me give you two examples of how it will work badly. The Resident Magistrate in Nairobi is trying a native for theft and has found him guilty and is about to sentence him to 18 months when the police produce five previous convictions which means he should get more than two years. Instead of being able to finish the case off in two minutes

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he has to pass it on to the High Court and that means advocates, crown counsel and all sorts of Government expenses being involved.

In another case the District Commissioner in an out of the way district like say Kitul has before him a stock theft case. Instead of being able to settle it right off as now, for he knows perfectly well that one year is totally insufficient, he has to commit the man to the Supreme Court and there may be a delay of two or three months before the case is heard. And then the judge has to go to Kitul or the accused come to Mwachakos, either is expensive and I do not know which would be the more expensive.

There is another point which must not be forgotten. You are taking away powers which have been conferred upon administrative officers for over thirty years, and I think it is a bit hard and I do not think in these times of native political associations it would be a very wise move. I think they would soon realize that something had happened, that the District Commissioner had not the same powers as before and I think the native would wonder why.

Of course I am not going to vote against this Bill because of this particular reason, but I do hope that the point I have raised will be considered fully in select committee and that the committee will be able to put up such a strong case as to justify Your Excellency in making further representations to the Secretary of State.

Council adjourned for the usual interval.

On resuming:

MR. COOKE: Your Excellency, I am rather relieved to-day when I find myself to a great extent on the side of the hon. and learned Attorney General, because I felt yesterday that I had a pretty formidable antagonist when I ventured to criticize some of the things he said. I feel that probably there is a slight misconception about the provisions of this Bill, and when the Select Committee sits it will be found it is not so reactionary as some of us seem to think it is.

Under the present Ordinance, as the hon. and learned Attorney General has pointed out, administrative officers in subordinate courts have practically unlimited jurisdiction. It cannot be denied, and my experience extends to Tanganyika as well as this country, that a good many—at any rate a certain number—of administrative officers in this country, especially junior officers, take advantage of that unlimited jurisdiction to give sentences which are very heavy and, to a great extent, excessive. The bad effect was that the Supreme Court felt obliged to lessen those sentences, and therefore the subordinate courts lost both in dignity and prestige in the eyes of the natives.

Under this amending Bill, if it goes through, that will be impossible, because they will be restricted, and most of the first class magistrates are District Commissioners, to 2 years, so that the chances of a revision of sentences will be very much slighter than at present. This seems to me to be an argument in favour of the Bill.

I know my friends the Provincial Commissioners regard with a good deal of misgiving this reduction in their powers, but I think it will be found that it really is not so serious as they think. Under the present Ordinance which has been in force for about 30 years, I think they feel, especially in stock theft matters, that any reduction of their jurisdiction will be deplorable.

I shall confine myself to stock thieves. They have had a pretty good innings for 30 years, and I do not think anybody can say the thefts have ceased or even that they greatly diminished, in spite of the fact of this extended jurisdiction.

If I may take an instance, an instance of Kericho. Mr. C. M. Dobbs was there for about ten years. He had as his assistant for some of that time a very fire-eating administrative officer who has now risen to dizzying heights in the Colonial Service, and he made it a point to give very heavy sentences in these cases. The High Court—Mr. Dobbs was a very mild-looking gentleman—did not interfere with many of his cases, so he had a pretty good innings. Mr. Dobbs has left Kericho, but the stock thefts remain.

[Mr. Cooke]

It was the same way when we heard that the laibons must be deported. They have been, but stock thefts still occur.

It does seem to me that it is very easy to be very severe on the bench and very easy to utter threats from the floor of this Council. Some of my friends on the other side are sometimes very belligerent. But when they go into the native reserves they "roar with a monstrous little voice". I personally think it much better to have a quiet policy announced from the floor of this Council and carry that policy out with firmness and justice in the reserves; rather than make threats in the Council and do nothing outside. However that may be, it is slightly irrelevant for the moment.

I think it is foolish to say that natives are only impressed by force. The Swahili have a proverb—"Mtaratibu hushinda kwa nguvu"—which, as Your Excellency knows, means "Quiet methods are often better than forcible ones". I think you will find in the folk-lore of native tribes that the sunguru (the rabbit) always gets the better of the simba (the lion). So if you study native psychology you will find they do not always appreciate or are impressed by spectacular or forcible methods. It is far better that administrative officers should travel more in the reserves and get in touch with the natives than have this extended jurisdiction which they are so anxious to retain.

If I may use that awful word sublimation, the real difficulty is to sublimate the activities of the younger men of the Kipsigis, Masai and others to more peaceful employment. Personally, when I was at Wajir 15 years ago, I took a good many stock thieves and made them into tribal policemen. It was really a question of setting a thief to catch a thief. I think a lot of the younger men could easily be drafted into a Frontier Force, and they might be extremely useful in case of war on our lines of communication. Certainly it would be far better than being unemployed in the prisons of the country.

I suppose I have a soft spot in my heart, as many have, for stock thieves, because in any case it requires a certain amount of courage; and we have no less

an authority than Mr. Hitler, who says that the only people who possess any virility in the British Isles at the present moment are the Scots. (Laughter.) Well, they were the most inveterate stock thieves in the old days, and I do not think it is any exaggeration to say—I hope I shall be excused—that some of the more noble Scots houses owe their wealth of the past centuries to indulgence in successful forays across the border! (Laughter.)

I beg to support the hon. and learned Attorney General.

LORD FRANCIS SCOTT: Your Excellency, I rise to support the views expressed by the hon. member Mr. Montgomery.

I feel, though, in dealing with this Bill, the force of this Legislative Council so far as the official side is concerned is going to be brought to its zenith if on such an occasion as this, dealing with such a Bill, where we have a considerable number of experts on the other side, none is allowed to get up and express what they really feel on this subject. (Heard, hear.)

I am only an amateur in this business, though I will admit the impeachment of my hon. friend who has just spoken that my ancestors were experts as stock thieves. (Laughter.) As one once said, when swapping a bit of land on the borders of England with a Scotsman who complained of thefts of his stock perpetrated by the English, that he never heard that the English cattle were any worse than that of the Scots!

To come to the actual question in one of the quotations read by the hon. and learned Attorney General, he referred to something being in the interests of law and order. To my mind, that is the main question: we do want the law here to be in the interests of law and order. I am perfectly certain in my own mind that any diminution of authority of our district officers is contrary to the interests of law and order. It is on that fundamental principle that I oppose this clause 3.

I do not believe that a learned judge well versed in all the intricacies of the law is in any way so fitted to maintain

[Lord Francis Scott] The interests of law and order as a district officer who devotes his life to living among the natives, knowing their mentality and dealing with them in what I believe is a very fair and just way... I do feel that this is the most retrograde step that has come before this Council for a long time, and I trust we may be able to do something in select committee to make it better than it stands at the present moment.

Apart from the question of being against the interests of law and order, it is undoubtedly going to lead to very great expenditure for the country. We are told that we have already appointed an extra judge, so there will not be any extra expenditure that way but, knowing what has happened in the past, when we get him we shall be told we must have so many extra magistrates, so much extra travelling expenditure, so much extra expense in other ways. It will not be the end of the expenditure in just the salary of one judge.

It is said that the excessive penalties given by certain magistrates has lessened the reputation of the Administrative service. I submit that when the Supreme Court washes out decisions of magistrates on technical points that does far more to undermine the position of these administrative officers.

When you come to the reasons for making this alteration,

"This clause is designed to give effect to the recommendation of the Commission of Inquiry into the Administration of Justice in East Africa to the effect that the jurisdiction of magistrates in this Colony should be brought into line with the jurisdiction of magistrates in Tanganyika."

I consider that that is a very bad reason. This particular report did not receive the approval of almost any person I ever met who had experience in administration, and I see no earthly reason why Kenya should have to come into line with Tanganyika. Surely Tanganyika ought always to come into line with Kenya?

I will say no more on that subject, and will now refer to one other point, clause 38, which does seem to be designed for the purpose of helping judges who have

to hear these appeals and to take away a certain amount of the rights of the ordinary appellant in the courts. I hope in select committee that that section may be thoroughly gone into.

I have no more to say on this subject, but I do feel very strongly that this is an occasion when we should have a free vote, so that official members should have the opportunity of saying what they really think on this particular subject which affects very vitally their carrying out of their duties as servants of this Colony.

MR. PATEL (Indian Eastern Area): Your Excellency, I rise to support the principles of this Bill, including the amendment proposed for a reduction of the powers of magistrates.

When the hon. Member Representing Native Interests opposed the reduction of those powers, I wondered if he was advocating the cause of native interests or the cause of the retention of the powers of magistrates. Purely from the point of view of better administration of justice, I think this amendment was long overdue, and the reason that it has been in practice for the last 30 years is by no means a sound reason for retaining it now if we find it necessary to amend the Code.

One of the arguments advanced by the noble lord the hon. Member for Rift Valley, was that administrative officers knew the mentality of the natives, and therefore they were more fitted to try such cases. If that argument can be held valid and sound, I think any magistrate in London or any part of the world would know his own people much better than he would ever come to know natives in this country. Therefore there is no need in England or in any country to hold high courts: The magistrates should be sufficient to dispense justice in all criminal offences with powers to pass any sentence.

It is such a wrong argument to advance that it will be like throwing away the experience of centuries. It is dangerous, I think, to give powers to junior law officers to administer justice over natives in all offences with powers to pass any sentence which is not recognized in any country.

[Mr. Patel]

I fully associate myself with the remarks made by the hon. Member for the Coast, and I support the principles of the Bill.

DR. WILSON: Your Excellency, I did not intend to add anything to what has been said by my colleague the hon. member representing with me native interests, more particularly after the speech of the noble lord. But after what has just been said by the last speaker, I feel I must support what my colleague has already said.

I admit that I am shy in interfering or taking part in this debate, when there are so many more members of this Council better qualified than I to discuss the question, but I would like to confirm what the noble lord has said, that it is a great pity that with so many members opposite who are in a position to speak with authority and experience on this particular matter we are prevented from having in this Council the benefit of their opinions.

It may have occurred to some members of this Council that my colleague in speaking was putting it rather from the point of view of an administrative officer rather than from the point of view of the native, but that is the whole point. He has had experience at first hand of the natives, and knows perfectly well as so many of us do that what we want is that experienced contact between the administrative officer and the native to be brought to bear on the Government of this country.

I really do not know what the last hon. member was suggesting about London magistrates, but there we have a case in point. A London magistrate is living from day to day in the environment of the people whose cases he is trying, he knows his people intimately, and we know perfectly well that there is no more humane administrator of the law than a London magistrate. I submit that an administrative officer in this country is very much in that position. He knows his people, and is the man best qualified to deal with their faults.

I do not like to criticize the hon. Member for the Coast because he has had experience of the working of this system, so he tells us, in Tanganyika, where, he

says, it is perfectly satisfactory. But I do suggest that his incursion into the realm of past Scottish history and comparing the natives of this country with the ancestors of one or two of us on this side of Council has nothing at all to do with the point, and rather spoils the force of what might otherwise have been a good argument.

But there is one thing on which I do agree with him. I do consider that administrative officers should be able to travel more among their people. That means that if you relieve them of their magisterial duties to enable them to do that, we have got to have extra magistrates, and I know that particularly at this time we shall not get the extra officers, administrative or magisterial, to carry out this work. It will mean that administrative officers may be able to travel more, but the criminals, or possible criminals, will be kept waiting.

As I say, I am not qualified to discuss this point in detail, but I do hope that when the Bill goes to select committee it may be possible so to amend this particular clause that we may still be able to placate the Secretary of State for the Colonies while retaining what we believe to be the best system for the government of the natives of this country. I think, if I may say so, we may put ourselves in the position of the wise trying to correct the mistakes made by the good, though it may be stretching a point to describe the authorities responsible for the Bill as good. I hope the members of the select committee may be wise enough to devise some method of so amending this Bill that there will not be that delay in administering justice which there seems to be a danger of if the Bill goes through as it is, and at the same time ensuring that there will be no miscarriage of justice.

MAJOR GROGAN: Your Excellency, I recognize in common with others that there is a great deal to be said for this Bill, but I am entirely in accord with my colleague the noble lord in his objection to the principles underlying clause 3.

I thought it was generally recognized by everybody that the objective of all of us was more and more decentralization, more and more power and authority

[Major Grogan] and responsibility on the people conversant with the circumstances for which they are responsible. This clause tends in exactly the opposite direction.

It was suggested, if I understood him correctly, by the hon. Member for the Coast, that the unlimited, virtually, powers of administrative officers enjoyed in this country to-day have been misused, and had led to a very large amount of alterations of judgments, thereby leading to loss of prestige among the officers concerned. I took the trouble to look up the facts, and I find on reference to the Judicial Department Annual Report for 1938 that the number of cases which required confirmation was 1,159 and the number of cases confirmed without alteration was 1,067. In other words, there was an alteration of only 92 cases, less than 10 per cent. In all probability the alterations in the majority of cases were minor. I do not think that that is any indication that that power was improperly used.

What seems to be difficult to understand is that this Bill, which has been steaming in the stewpot for six years, should suddenly be laid on the table at a most inopportune moment, when there are a great many important matters to be decided, and I cannot see why legislation of this sort should not be postponed to a more reasonable occasion. (Hear, hear.)

MR. RENNIE: Your Excellency, I rise with considerable diffidence to intervene in this debate, because I feel that on this occasion my role should be that of the angel rather than that of the other person named in the same connexion! There are one or two points, however, which I think I might usually contribute to the discussion.

In the first place, I think some hon. members are perhaps unduly apprehensive as regards the effect of this provision being brought into force. As the hon. and learned Attorney General mentioned—he quoted from the remarks of a former Attorney General, Mr. MacGregor—there are only three countries at the present time which give their junior magistrates such powers as are possessed in Kenya. I have had experience in two countries where junior

magistrates have somewhat similar powers to those that are proposed in Clause 3 of the Bill. My experience has been that the administrative officer has quite sufficient prestige for his day to day duties as administrative officer although, as in the case of Ceylon, his powers as magistrate were in most cases limited to six-months only. I found no ill effect in that country from the comparatively low scale of punishment which the police magistrate could give.

We have heard from the noble lord that this is a retrograde step. I am not quite sure if we all agree with that particular statement. This is an age of specialization, and surely it is not a retrograde step to put the administration of the law into hands of specialists?

We have heard from another speaker of the London magistrate, and I make two points in that connexion. The first is that the London magistrate, unlike the junior magistrate who is also an administrative officer here, has no control in an administrative sense over the people who come up before his court. He does not obtain in some cases a prior knowledge of the case that comes up before him. He has not had to deal with that case, conduct the inquiry into that particular case, in his capacity as administrative officer. I myself found when working as a district officer that it was at times exceedingly awkward when I had to deal with a case on the bench. I had to try to forget everything I knew about the case I had dealt with as administrative officer. The London magistrate is different in that respect from our administrative officers here, and in another respect. His jurisdiction is limited to six months. We have had the remark made that he seems to do his job extremely well, and when we note that his jurisdiction is limited to six months we realize, I think, that it is possible for a junior magistrate to do his job well in this country, although his jurisdiction may extend to only two years.

The question of decentralization which was raised can also be argued both ways, it seems to me. Surely it is decentralization to take away the work which is being carried on by magistrates at the present time, to take away the higher part, the more difficult part, of that work

[Mr. Rennie] and put it on to someone who specializes in that particular type of work? That seems to me decentralization rather than the reverse.

I make these few points, knowing little about the conditions of this country, but thinking that perhaps my own experience in working a system such as is contemplated in clause 3 may serve to allay the apprehensions of some of the members.

COL. KIRKWOOD: Your Excellency, I am rising to support the Bill but I am also going to support the opposition for the alteration of clause 3.

It has already been stated that the powers the administrative officers have, have been in their power for the best part of thirty years. Also we have had the Bushe Report for some six years, I suppose the inquiry took place. It seems to me that if the administrative officers could carry on for thirty years and having a report which takes six years to consider whether the law should be altered or not, there can be no urgency.

In my experience of twenty-odd years in Kenya and some forty-odd years in Africa it is inadvisable to take away the powers or reduce the powers of the administrative officers, and I maintain that their powers are far too limited as they are. Nobody can say that because a case goes against them that they are over-severe or vicious in their sentences.

There is a point I wish to take up and that is the one made by the hon. Member for the Coast about Mr. Dobbs and the laibons when he said that the excessive power in the hands of the administrative officers did not prevent cattle thefts. Surely if that is correct and my interpretation is correct what is required is more power and more severe sentences and not to take away the power that already exists.

I would like to point out also that it is of course obvious to everybody that these sentences are subject to review so that in the long run no injustice can possibly take place.

One hon. member has quoted the fact that only a very small percentage of the cases are altered and I think with these facts in my mind I need not persevere

any longer until the Bill goes into select committee.

I would like, however, to support the appeal that Provincial Commissioners, and the Government officials generally, should have their political conscience restored to them for a moment this morning.

MR. HOSKING: Your Excellency, I had better say at once that I am speaking in support of the Bill before Council.

I am grateful to my hon. friend the Representative for Native Interests, Mr. Montgomery, for the case he has put up for the Administration, but I do not think the native aspect has been stressed very strongly in the present debate.

As regards the natives, the first principle of justice is that it is not enough to be just, you must also appear to be just. Those who have the interests of the natives at heart are of the opinion that the ermined and robed judge who has no previous knowledge of a case may appear to be more just than a District Commissioner who may have had to take part in the preliminary proceedings. That is a question of opinion and that opinion has been strongly forced upon us.

Turning to the brighter aspect of clause 3, there is no bar to administrative officers who pass the law examinations and who show inaptitude in judicial functions being created first class magistrates, and I trust that Government will see its way to making as many of these administrative officers as may prove to be suitable first class magistrates, so that in a way the authority of the administrative officers may be enhanced rather than diminished by the provisions of this Bill.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I would like to point out that the previous speaker is somewhat contradictory in his suggestions. He approves of the Bill and at the same time he wants the magistrates to have increased powers by making them first class magistrates. In other words, he is doing what he is told and supporting a Bill in which he has not very much faith himself.

I would also like to point out that it does seem strange that of the six persons opposite, hon. members of this Council who have spent most of their

[Major Cavendish-Bentinck] adult lives in the native reserves, so far we have only had one speaker from them and he, as I say, has been somewhat contradictory in his recommendations.

MR. WILLAN: Your Excellency, unlike the hon. the Chief Secretary I am not diffident on rising again because I rise entirely unrepentant.

Dealing with the remarks made by the hon. Member Representing Native Interests, Mr. Montgomery, who stressed the point that the administrative officers had had this more or less unlimited jurisdiction for thirty years, the hon. member went on to say that there has been no complaint. Well, I think the hon. member has entirely forgotten the terms of the Bushe Commission Report, or rather the terms for the Bushe Commission, which read as follows:—

"To inquire into the administration of criminal law in Kenya, Uganda and Tanganyika Territory in relation to the procedure and practice of:—

(a) the Courts (other than Native Courts); and

(b) Police Authorities, and to consider whether in regard to the procedure of such Courts or Authorities any alterations are desirable—

(a) in the case of natives; and
(b) generally."

There were complaints, and complaints were made and that was the reason for this commission coming out here, and that is the reason for this report.

Now, the hon. member went on to say that considerable expense would be involved if this clause 3 goes through. Well, of course there will be expense, but we are dealing with the administration of law and justice, and although his argument might appeal to my hon. friend on my right the hon. Financial Secretary, it has no appeal to me.

I cannot understand the remarks of the noble lord the Member for Rift Valley, supported by the other hon. Member Representing Native Interests, Dr. Wilson, who both stated, to my astonishment, that this change would involve extra magistrates. Well, I cannot follow that at all. Certainly it will in-

volve an extra judge and probably an extra crown counsel, but since we are taking away work from the magistrates I cannot for the life of me see how we shall need extra magistrates over and above those we already have now.

Then the noble lord went on to say, or he rather complained, about the Supreme Court, that the judges upset the magistrates on a technical point and that that does harm to the magistrates. So far as the law is concerned the term "technical point" is unknown to the law. A magistrate is either upset on a question of fact or he is upset on a question of law.

LORD FRANCIS SCOTT: "The law is a bass."

MR. WILLAN: That may be, but we meet here very often to pass them. We have passed sixteen bills this session. As I say a "technical point" is unknown to the law.

Then the noble lord went on to say that this Report (the Bushe Commission Report) did not receive the support of any person who has had any experience as an administrator. Well, this Report is signed by His Excellency the present Governor of Uganda, and surely he has had very wide experience as an administrator.

The hon. the Chief Secretary has dealt with the question of the London magistrates raised by the hon. Dr. Wilson.

The hon. Member for Ukamba in his usual clever and plausible arguments quoted figures of confirmation cases in 1938 as amounting to 1,159 and that of these 1,067 were confirmed. But he did not go on and qualify his statement that he did not know in how many of these 1,067 cases the sentences were reduced.

Finally, the hon. Member for Nairobi North I think made an inaccurate statement. He stated that only one speaker on this subject had knowledge of the native reserves and that he would seem to have been contradictory. That statement is incorrect. I think the hon. member had forgotten that the hon. Member for the Coast had spoken and the hon. Member for the Coast has had experience in native reserves both here and in Tanganyika.

The question was put and carried.

MR. WILLAN moved that the Penal Code (Amendment) and the Criminal Procedure Code (Amendment) Bills be referred to one select committee consisting of the following:—

The hon. Acting Attorney General (Chairman).

The hon. Chief Native Commissioner.

The hon. T. A. Dennison.

The hon. Member for Rift Valley.

The hon. Member for the Coast.

The hon. Member for Ukamba.

The hon. Mr. Montgomery.

The hon. Mr. A. B. Patel.

MR. DENNISON seconded.

The question was put and carried.

1938 SUPPLEMENTARY APPROPRIATION BILL

SECOND READING

MR. LOCKHART: Your Excellency, I beg to move that the 1938 Supplementary Appropriation Bill be read a second time.

This Ordinance is required in order to give legislative approval for excess expenditure over the Appropriation Ordinance for 1938. It will be seen from the schedule that the amount required is £367,870. That total is less formidable than it at first seems because it includes £231,747 which has been written off the accounts as a book entry. The balance has been covered by savings or additional revenue and, in fact, the year ended with a cash surplus of something in the order of £125,000.

MR. WILLAN seconded.

The question was put and carried.

TEA (AMENDMENT) BILL

SECOND READING

MR. WOLFE (Acting Director of Agriculture): Your Excellency, I beg to move that the Tea (Amendment) Bill be read a second time.

This is a very brief and formal measure to provide for an increase in the maximum acreage now to be planted in the Colony, due to the granting of 200 acres more under the International Restriction Scheme, and to allow the free movement of planting material of tea in East African territories. I beg to move.

MR. WILLAN seconded.

The question was put and carried.

ADULTERATION OF PRODUCE (AMENDMENT) BILL

SECOND READING

MR. WOLFE: Your Excellency, I beg to move that the Adulteration of Produce (Amendment) Bill be read a second time.

The original Bill was enacted in 1901 and is somewhat out of date as far as practical procedure is concerned. It has stood the test of time and as far as I have been able to ascertain from our records there has never been any prosecution under it. Prosecution under it has proved extremely difficult. As an example, lately we had a report emanating from merchants in London and the Colonial Office that a certain Kenya export product has been found to be adulterated. We traced the adulteration but we could not get a prosecution sanctioned by the Attorney General under this Ordinance for the reason that the procedure is impracticable.

Therefore, it was thought desirable to amend the Ordinance. The amendments consist only of a definition of the products for the purpose of specifying articles rather than leaving it as general as it is under the original ordinance; for the appointment of inspectors who would be officers of the Agricultural Department, and allowing them to take samples on the premises either after receiving a search warrant from a magistrate or, if they have reason to believe that the object of the law would be defeated, allowing them to enter without a search warrant and reporting to a magistrate immediately. The only other amendment is to give power to the Governor to order the publication of the name and address of the offender under this Ordinance after the first offence instead of waiting until he has committed a second offence. The reason for that is that we want to prevent adulteration and not merely to prevent a repetition of it.

MR. WILLAN seconded.

MR. PANDYA: Your Excellency, I have every sympathy with the principle of this Bill and the amendments desired by the hon. mover. I entirely agree with him that if you wish to have a law you must make it possible for action to be taken under that law. He has already

[Mr. Pandya] said that prosecution was found to be impossible, and therefore I am entirely in agreement with the principle of amending the law in a way in which prosecution would be possible if it is desirable that it should take place.

While I have every sympathy with the principle and the object of this Bill I am not in agreement with the provisions mentioned in this Bill which give power for prosecution which, in my own opinion, goes beyond the usual requirements and the necessity for putting into action the principles of this law.

In clause 4, section 5 (1) it mentions here that:—

"If a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that any produce so adulterated as aforesaid is on any premises he may grant a search warrant authorizing any Inspector named in the warrant, at any time or times within one month from the date of the warrant."

I fail to understand the reason for that "one month" and when the hon. member replies to the debate I hope he will make clear the necessity for that period of one month in which an inspector should go at any time to any place and exercise that search warrant.

The second point I should like to make is with regard to the provision which appears underneath—

"Provided that if it appears to him that any delay occasioned by obtaining such search warrant will defeat the objects of this section, any Inspector may exercise the powers of this subsection conferred as if he were in possession of a search warrant, but he shall as soon as possible report what he has done to a magistrate."

Now, in this particular provision power is given to an inspector whereby he makes himself the sole judge of the possibility whether in his opinion he should take immediate action because delay is going to defeat the objects of this section. I fail to understand how any individual inspector can be in a position to judge whether that particular section is going to be defeated. And then he may

exercise that power himself, without going to a magistrate, and search the premises!

I think this principle is most objectionable and while we are trying to do something which is necessary we are going to the other extreme in doing a thing which is very objectionable and most unnecessary.

There is no provision for any redress against wilful or misguided judgments by an inspector. In this particular instance we give power to the inspector to do just what he likes without making him suffer for what is done unnecessarily or perhaps with some sort of motive.

In opposing this particular provision I am not entirely relying on my own convictions or on the reports which people have given to me in regard to this particular section which might be abused, but I have had instances given to me in which it could be abused and, apart from other things, there is a letter which I received from an up-country miller which deals with this particular point. I will not take up the time of Council by reading all of the letter but I will read a small paragraph from it in which he says:

"This Bill appears to have been influenced by the people who have their own axe to grind, with a view to hit the small Indian mills primarily engaged in wheat and maize milling trade. Under this it would be possible for a wayside Agricultural officer under the influence or instigation of interested parties to search the mill of an Indian and harass him without incurring any liability for damages.

In my view the powers are being sought so that Indian-owned mills could be annihilated. The powers under this Bill are of a dangerous character and are likely to be vindictively used against Indian mills."

The point I wish to make in that is that this miller may be mistaken in his views in this particular matter and perhaps there may not be sufficient justification for putting it in such strong language, but the extract I have read shows to what extent there is a feeling with regard to the provision mentioned in this Bill.

[Mr. Pandya]

In view of this, when this Bill goes to select committee I hope the select committee will consider some alteration and some amendment in this particular clause.

With regard to clause 5, there is provision there for publishing of the name of the offender or offenders in any paper, not necessarily in the Gazette. The principle of making him pay for the publicity of his own offence appears to be a very novel one. It would be sufficient punishment, I think, if his name could be published in the Official Gazette, and I think the Gazette is a public document from which any newspaper could copy. So I do not understand the necessity of Government going to the extent of making an offender pay for the publication of his own offence. I think that is rather a very strong view to take in regard to punishment.

I hope these two or three points I have mentioned will be considered by the select committee.

MR. WILLAN: Your Excellency, on the last point raised by the hon. Mr. Pandya about clause 5, that it introduces a novel principle, certainly it introduces a novel principle for a first offence, but hon. members will see on the left hand side of the Bill that that has been the case for a second or subsequent offence since 1901—that is at least 38 years. And I might say that clause 5 dealing with the new section 10 is taken from a country not very far away from the country to which the hon. member belongs. Section 10 is taken from the ordinance in Ceylon relating to the adulteration of bread.

MR. WOLFE: Your Excellency, the hon. Mr. Pandya has asked why it is necessary to insert the period of one month's powers to be given under a search warrant. The only object of that obviously is to put a time limit to these powers. They cannot last indefinitely, and after a month has lapsed the inspector would have to get another search warrant.

As regards the power to search in cases where a delay is likely to defeat the object of the law without securing a search warrant, I am afraid that in our

experience there is a class of merchant who possesses an unearthly cunning and will, as soon as he becomes suspicious that his premises will be searched—and in certain cases it is difficult to avoid suspicion on his part because certain preliminary action has to be taken—he will remove all traces of suspicion and a prosecution would be quite out of the question. It is so easy to avoid that kind of thing by doing your work at night time and removing traces early the next morning, that is one example of avoiding it.

After all, it should be kept in mind that the only person who has any reason to fear the effects of this ordinance is the person who is committing the offence of adulteration. If he is not he does not suffer in any way even if his premises are searched. A search consists of nothing beyond entering the premises and inspecting the products and taking samples. I do not imagine that his conscience would be very much hurt or that his pocket would be very much hurt, and I do not think the question of damages for anything of that kind, which would not cost him very much, would be upheld in a court of law.

The hon. member put one question to which a reply has been given by the hon. Attorney General, but I would like to add that the object of this measure is to prevent adulteration and the strengthening of this clause relating to the publication of an offence is in consonance with that object, and its only motive is to add a more powerful deterrent to the ordinary deterrent of the penal clause of the Bill.

The question was put and carried.

MR. WILLAN moved that the Adulteration of Produce (Amendment) Bill be referred to a select committee consisting of the following:—

Mr. Wolfe (Chairman).

The hon. T. A. Dennison.

The hon. Member for Nyanza.

The hon. Member for Trans Nzoia.

The hon. Mr. J. B. Pandya.

MR. DENNISON seconded.

The question was put and carried.

**TRADING IN UNWROUGHT
PRECIOUS METALS (AMENDMENT)
BILL.**

SECOND READING

MR. WILLAN: Your Excellency, I beg to move the Trading in Unwrought Precious Metals (Amendment) Bill be read a second time.

Under the principal ordinance precious metals include gold and platinum, small quantities of which are very valuable and could easily be disposed of or obtained illegally. Under the present law, a person suspected to be in illegal possession of any of these precious metals cannot be arrested unless a warrant has been issued by a magistrate. The result is it takes time for application to be made to a magistrate for a warrant, and during that period the offender in possession of any of these precious metals, illegally, has time to abscond or to get rid of them.

Further, the nature of the offences under the Ordinance is such that offenders can only be detected by means of police traps, and those police traps would be useless unless the police had power to arrest without a warrant.

For these reasons it is desirable that the Ordinance should be amended making offences under it cognizable to the police.

MR. DENNISON seconded.

The question was put and carried.

**EUROPEAN CIVIL SERVICE
PROVIDENT FUND (AMEND-
MENT) BILL**

SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the European Civil Service Provident Fund (Amendment) Bill be read a second time.

This Bill is the result of a case—and, I may say, not an isolated case—of a sergeant of the Regular Army who was seconded for service under this Government. During his period of secondment he was still earning his Army pension, but at the same time he could have become a contributor to the provident fund, thereby involving this Colony in

payment to the fund from the public revenues a contribution on his behalf. Thus for the period of his secondment he would have obtained pensionable benefits under the Regular Army scheme and the provident fund benefits from this Colony.

This was never the intention of the principal Ordinance, and therefore paragraph (c) is added to section 10 giving the Governor power to exclude.

In the committee stage I shall move an amendment to Clause 2, because I have been informed by the Treasury officials that it was never intended and would be highly inconvenient if all exemptions under paragraph (b) had to be published in the Gazette. It is not done at the present time. It is only the intention that exclusions under paragraphs (a) and (b) should be notified in the Gazette.

MR. DENNISON seconded.

The question was put and carried.

**BRITISH NATIONALITY AND
STATUS OF ALIENS FEES
BILL**

SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the British Nationality and Status of Aliens Fees Bill be read a second time.

Under the Imperial British Nationality and Status of Aliens Act, 1914, the Governor has power with the approval of the Secretary of State to grant naturalization certificates. Under the same Act of 1914, the Secretary of State has power to make regulations which apply to Colonies, but such power does not extend to empowering the Secretary of State to prescribe fees with regard to granting these naturalization certificates. The question of fees is a matter which each Colony must deal with by legislation of its own.

This fact appears to have been overlooked in Kenya, because in 1921 fees were prescribed by regulation in this Colony purporting to be made under the authority of the Secretary of State, and fees have been collected under these

[Mr. Willan] regulations for the last eighteen years. This Bill not only prescribes the fees by independent legislation, and they are set forth in the schedule to the Bill and follow the fees in force in England, but clause 3 of the Bill validates the collection of all fees paid and collected since the 1st April, 1921, the date on which the original regulations came into force.

MR. DENNISON seconded.

MAJOR GROGAN: Your Excellency, I only rise to suggest to the hon. and learned mover whether or no it is possible to incorporate some proviso whereby the Governor in Council may be enabled to waive fees, such as the very heavy fee of Sh. 200 in special cases.

It is probably well known to many hon. members that owing to the change in the status of this country from a protectorate to a colony and the retention of some portion of this territory as a protectorate, there are a great many extremely hard cases. There are a number of cases in this country where people to all intents and purposes are British subjects and regard themselves as such and operate as such, now find themselves in the position where they have to pay £10 to be actually labelled officially what in fact they are.

There is one particular case in my constituency which I had the opportunity of bringing to your attention a little while ago, of the son of a Scandinavian. The father fought throughout the last war in the British forces, the son was born here, was educated here, he has been for three years a member of the Kenya Regiment, and now has been thrown out of the Regiment because he is not a British subject. He is not capable of becoming one at very short notice and, in any case, without the expenditure of £10. Unfortunately he was born three years before this Colony succeeded a protectorate.

There are many other equally hard cases, and I think the Governor in Council ought to have the power to waive fees in special cases.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I also wish to raise a

larger question on the opportunity offered by this Bill coming up. That is the question of obtaining naturalization within a protectorate and, I should like to add, a mandated territory, but that perhaps hardly comes within the purview of this Council.

This question has been taken up between this Government and the Imperial Government on several occasions and I have been informed that the matter is still receiving attention. I wonder if it is possible for this Government to take the opportunity now of stating that this matter has again been raised in this Council and to ask if anything has been done about it?

MR. RENNIE: Your Excellency, as regards the question of Government considering the waiving of fees, I myself am not quite sure what the position is in this respect, whether it is necessary for us to impose the same fees as are imposed at home. Until I can go into the question further I cannot make a definite statement one way or the other now. All I can say at the present time is that the point raised by the hon. Member for Ukamba will be considered.

MR. WILLAN: I have nothing to add to what the hon. Chief Secretary has said. This matter will be considered. At the same time I would point out that to become a naturalized British subject is a great honour and, speaking for myself, personally I do not think £10 a lot of money to pay for it.

MAJOR GROGAN: I never suggested any variation of the fee but merely a waiving in special cases.

MR. WILLAN: It would give power to the fee being lowered almost to a remission altogether.

Regarding the remarks of the hon. Member for Nairabi North, that is a point we cannot provide for here by legislation but is a matter for the authorities at home.

The question was put and carried.

ADJOURNMENT

Council adjourned till 10 a.m. on Friday, 17th November, 1939.

Friday, 17th November, 1939

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Friday, 17th November, 1939, His Excellency the Acting Governor (W. Harragin, Esq., K.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of the 16th November, 1939, were confirmed.

ORAL ANSWERS TO QUESTIONS

No. 52—ASAWA AND MUHOROZI DRIFTS

MR. KASIM asked:—

(a) Is the hon. the Director of Public Works aware that the Asawa Drift, situated between Kisumu and Sondon on the main Kisumu-Kisii and Tanganyika Roads, and the Muhoroni Drift situated on the trunk road from Nairobi to Kisumu and Uganda, remain impassable for hours during the rainy season, entailing great hardship and danger to lives of motorists?

(b) Will the hon. the Director of Public Works give an assurance that the necessary money will be included in the 1940 budget for proper bridges at these two places?

MR. STRONACH: (a) The answer to part (a) is in the affirmative with regard to hardship and impassibility of the drifts after heavy rain. Although the drifts in question are "impassable" at times, it is not agreed that they are a danger to life if reasonable precautions are observed. There are many drifts in the Colony which carry a heavier volume of traffic and thus merit replacement by bridges in advance of those mentioned.

(b) With regard to part (b) of the question, although provision has been included in my Draft Estimates for 1940 for replacement of the drifts with bridges, I cannot give any assurance that in the present circumstances provision will in fact be made in next year's Estimates for the replacement of the drifts.

No. 53—RESIDENT MAGISTRATE, MOMBASA

MR. NICOL asked:—

1. Are Government aware that owing to lack of staff, the Resident Magistrate is compelled to act as District Registrar of the Supreme Court, Mombasa, and that by a Circular dated 1st November, 1939, over his signature, only fifteen minutes per day are allotted for attestation of documents and serving of affidavits?

2. Do Government realize that, apart from the fifteen minutes referred to in (1), the Resident Magistrate is fully occupied in his own court from approximately 9 a.m. to 4 p.m.?

3. Do Government appreciate the injustice to the public which may be inflicted by the rigid adherence to this ruling?

4. Will Government take immediate steps to rectify the position?

MR. RENNIE:—

1. The answer is in the affirmative.

The Resident Magistrate took over the duties of District Registrar and Deputy Official Receiver on the 26th October, 1939, in addition to his own duties. On 1st November a Circular in the following terms was issued to all advocates in Mombasa:—

"Please note that owing to pressure of work and in order to facilitate the public and the advocates concerned, it is decided to take all attestations of documents, swearing of affidavits, etc., from 10 to 10.15 a.m."

2. The answer is in the affirmative.

3. The Government is advised that the Circular is not rigidly enforced in matters of urgency.

4. Steps have already been taken. It is proposed to appoint an Acting District Registrar as soon as the staff position permits.

No. 58—OFFICERS ON LEAVE

MR. COOKE asked:—

(a) Is Government aware that several married officers whose leave has been postponed are being put to considerable expense owing to their having

[Mr. Cooke]

sent their wives home in anticipation of leave, necessitating now the running of two households?

(b) And will they sympathetically consider paying the expenses of the return passages of these wives in those cases in which the husband's continued postponement of leave is considered to be in the interests of the country?

(c) And alternatively will they give an assurance that if the husbands bring their wives back at their own expense they will be given free passages to England with their husbands if and when Government grants leave to the latter?

MR. RENNIE:—

(a) Yes.

(b) and (c) A decision on these points can only be taken after the general question of granting leave in 1940 has been determined. This question is still under consideration.

MR. COOKE: Arising out of that will Government expedite the answer to that question?

MR. RENNIE: Expedite the answer to the question?

MR. COOKE: To (b) and (c).

MR. RENNIE: The first thing to expedite is the consideration of it and that consideration will be given as soon as Government is free from the consideration of the matters which are being discussed here at the present time.

No. 59—LEAVE POSTPONEMENT

MR. COOKE asked:—

(a) Has Government come to a decision regarding the granting of long leave to officers during the continuance of the war?

(b) And do they appreciate the fact that the reluctance on the part of some officers for purely personal reasons to proceed on leave will lead to serious congestion later on?

(c) And that it is unfair to junior officers to have to remain in subordinate positions because their senior officers are reluctant to proceed on leave?

(d) And will they give an assurance that no officer will be permitted to postpone his leave unless his presence is required in the interests of the country?

MR. RENNIE: (a) Not yet. The question is under consideration.

(b) Yes.

(c) This part of the question contravenes Standing Rule and Order No. 22 (V).

(d) No; other factors than the one indicated by the hon. member must receive consideration.

FLAX BILL

SECOND READING

MR. WOLFE: Your Excellency I beg to move that the Flax Bill be read a second time.

There is in progress a revival of the flax industry. It has had rather a cautious beginning because of the disastrous experiences of twenty years ago. It began with the production of seeds of pedigree strains for sale in Northern Ireland, and we kept in mind that in view of the reorganization of the basis of fibre production which promised at the time we should be likely to have a sale for fibre as well. This has materialized already in a small way with the impetus given by the grant from the Colonial Development Fund, and fibre is, as a matter of fact, ready for export. There is likely to be an additional impetus from the information we have received from Great Britain as to her requirements of substantial quantities of fibre from this Colony.

It is time, therefore, that the organization of the marketing of both fibre and seed should be taken in hand.

These control Bills with which Council is familiar are simple and workable. Each Bill is taken as a pattern for the next and so there should be no difficulty about understanding the provisions of the Bill. I should like to say that there appears to be a disposition in certain quarters to regard proposals for introducing marketing control of this kind as a dictatorial effort on the part of the Agricultural Department to impose on

[Mr. Wolfe]

an industry something which it does not want. That is not the case. The producers realize so well the benefits of systematic and organized marketing under legal control measures that whenever a specialized industry is established you find that the demand arises immediately for the sort of control from which the other industries have benefited. And that is the case with flax. Every flax grower at the present time has received a copy of the draft Bill and the Bill has been discussed at the meetings of flax growers in the five different flax growing districts. The draft Bill has received the assent of the meetings without a single vote being recorded against it. The measure, therefore, must be regarded as a thoroughly democratic one which the flax growers themselves want.

The form of control is the usual one of the creation of a statutory board for the industry with the provision for the appointment of an agent to carry out the business affairs of the industry and the secretarial work, the annual meeting of growers for the purpose of electing members to the board, and of receiving the report of the board and the agent and the passing of the accounts.

I think I need say no more for the moment. I shall probably have to answer some questions.

MR. WILLAN seconded.

LORD FRANCIS SCOTT: Sir, if the people engaged in the flax industry desire such a Bill and consider it necessary then I think we should grant their request. But there are one or two points in this which I would like to draw attention to.

The real meat in this Bill is the question of the appointment of an agent and I do suggest, Sir, that in sections 10 and 11, which deal with that, a slight amendment might be made.

It says:—

"The Board may, with the approval of the Governor in Council, appoint any person or body of persons to be an agent for the purposes of this Ordinance, and may in like manner revoke or vary such appointment."

That is all right, but in section 11 it says:—

"In the event of an agency having been appointed under the provisions of section 10 of this Ordinance the following provisions shall apply—(a) no flax grower shall sell or export any flax except through the agency."

Now, Sir, in the other Bills which we have had similar to this, dealing with pyrethrum and passion fruit and so on, there has been a certain amount of feeling over the question of the agency, of giving a monopoly to one particular firm and so on. So that that grievance should be got rid of, I suggest that in the Bill it should be possible to appoint more than one agency. In other words, that it should say that "in the event of an agency or agencies being appointed, etc." and then say that "No flax grower, etc. . . . except through an agency."

And similarly, in sub-section (c):—

"Any person aggrieved by any decision of the agency, etc." should read "by any decision of an agency."

My reason is not to say that they must have one agency or more than one agency. If the board when it is finally formed consider that a sole agent is best they can do so. On the other hand, in the question of flax it has been put forward that it is not a crop which it is necessary to market through one sole agent and that there are other agents who could also deal with it. And if it is permitted there should be more than one I think this would do away with a great deal of that particular grievance. One has to remember that there are firms in this country who have put a good deal of money in here and they feel rather sore if all these industries are put entirely in the hands of one particular competitor.

I do trust that Government will consider that proposal which does not alter the main object of the Bill at all.

The other point I wish to draw attention to is on the first page—section 3 and the proviso. That section 3 provides for the establishment of a board. Now before a proper board and the rules for the election of that board can be made you have to have a board in existence so

[Lord Francis Scott] that the Governor in Council, after consultation with that board, can make the necessary rules. Therefore, one has to have a temporary board and that proviso provides that—

"the first election of members of the board under paragraph (b) of sub-section (1) of this section shall be made by the Governor on the recommendation of the Director."

It has happened in another industry that a good deal of trouble arose from the fact that the temporary board originally appointed by the Governor in Council did appoint an agency and such like things and, afterwards, the people interested in that particular industry complained that the board did not consist of the people they had elected. I would like Government to give an undertaking that this temporary board would get out the rules as soon as possible for having a proper board elected under this Bill and that the temporary board should not appoint an agency until the elected board comes into existence.

There cannot be any great urgency for having an agency because there is practically no flax ready for export in the country at the present time. There will be, no doubt, during the coming season, but there cannot be any real urgency for appointing an agency at the moment.

I think that it would be unfortunate if the temporary board nominated by the Governor on the recommendation of the Director should take powers to themselves which might not be in accordance with the wishes of the industry when they have the opportunity of electing their own board.

These are the only two points I wish to make but I think they are both rather important ones if the Bill is going to work satisfactorily.

COL. KIRKWOOD: Your Excellency, I should like an assurance that the Bill will go to a select committee and that the third reading should not be taken until after Council meets sometime in December. I would like to have the opportunity of putting this before the

flax growers in my district before it is passed.

MR. WOLFE: They have all had it.

COL. KIRKWOOD: They have all had it. Yes, but that does not apply to all of them. There are some, approximately 100 producers, who are not in it at the moment.

I would like an assurance that the Bill will not be put through to-day and that it should come up for the third reading sometime after the 4th of December when Council meets again.

HIS EXCELLENCY: It is the intention of Government to send this Bill to a select committee in which case they cannot possibly report before.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I should like to support what has been said by the noble lord the Member for Rift Valley, especially in regard to sections 10 and 11 of this Bill.

I would like to ask the hon. mover whether section 10, as it appears in this Ordinance, is intended to refer specifically only to one agent or whether the wording can be interpreted to permit of more than one agent. In section 11 it seems pretty obvious that only one agent is intended.

We know there are arguments in favour of only one agency and equally there are arguments in favour of complete freedom; and there are arguments in favour of accredited agents or chosen agents with a limitation in numbers. The Chambers of Commerce would prefer complete freedom of trade and would like to see the disappearance from this Bill of sections 10 and 11. I would not go so far as to advocate that without going into the matter more thoroughly, but I would suggest that if a board is appointed surely that board is capable of deciding whether it wants one agent or more than one agent.

I know I shall be told that if you have a number of agents the difficulty is that they are inclined, possibly, to compete with one another and perhaps offer for sale produce emanating from the same source for which they are agents, in competition with each other in the same

[Major Cavendish-Bentinck] market. I shall also be told that the tendency is that some of these agents are people interested in the purchase and not only the purchase of the produce but in the sale thereof and in financing of producers, and in some cases they may be tempted to sell such produce not always at the very best price possible in order to recuperate themselves for any advances they have made, and that all such difficulties are got over by the appointment of a single agency.

I do not think, however, that one could entirely take this argument as accurate, as a number of the agencies we have in mind are people who have taken a great interest in this Colony for many years and have advanced money for various purposes over a long period of time, and I think their real interest is the maintenance of the industry, and therefore in securing the best possible prices for their clients. I do not think they are really tempted, as is sometimes suggested, to be short-sighted in their policy.

I should also like to support the noble lord in what he said as regards the fears in the City of London that have been expressed. I have seen letters myself from very responsible firms as to the increased tendency for this kind of legislation. You cannot get away from the fact that it is useful to encourage in this country the establishment of firms of standing who are in a position sometimes to finance undertakings and help industries, and I think if we continue this kind of legislation we may produce a state of affairs under which that class of firm might disappear from this country. I think we should bear this in mind when we deal with Bills of this nature. That is the only point I wish to make.

MAJOR GROGAN: Your Excellency, I support entirely what the previous speakers have said in respect of the objection of carrying this control beyond a certain point, and I am going a little further than that. I think one of the dangers to-day is this tendency of intensifying control. I always realized that my hon. non-bucolic friend opposite

has a passion for control, but it is not always advisable that we should give way to the tendency of the day.

There are certain cases where control is justified, and a conspicuous and classical example of that is in respect of pyrethrum. That is an industry which produces a standard product which has got to be sold in bulk, and has got to be sold to a certain specification in order to maintain the reputation of the country. But no argument of that sort can apply to flax because there are an infinite number of grades of flax and the growing of it depends upon all sorts of circumstances over which individuals have no control. But that does not necessarily preclude them from growing flax, because flax, though it may not be grown as the substantive crop may have some market, and I think it is quite unnecessary that a person who wants to grow flax should have to get special permission to do so.

It is not a long-term plantation crop. It is a crop which the ordinary farmer may or may not feel inclined to drop into his ordinary rotation, and it seems to me quite absurd that a man who thinks flax suits his crop rotation should not, without having to obtain the consent of a pompous board, get a little plant to deal with, for example, unretted flax which is now rapidly coming into general use.

I realize that there is some measure of control needed in the fact that the Colonial Development Board has contributed State funds towards the production and re-stimulation of an industry which has had a very unpleasant odour in this country in the experience of those in the past. But there is no possible justification for control to the extent of marketing it. There may be justification for control in respect of factories being put up which, presumably, will be for the purpose of treating anybody's flax and, I suppose, grading it.

It is a very complicated trade. I happen to have a very great friend with whom I used to spend a lot of time in England and who there is probably the biggest buyer from the various firms of flax and

[Major Grogan] select committee, because this Bill has been in the hands of flax growers for some months. It was discussed at the first meeting before the war broke out by the interim board. That board itself approved the draft Bill, and every meeting held in the districts has approved the draft too. If the purpose in asking for the select committee is merely to refer the draft Bill back to those growers, we shall get the same result as we have already got, and all that time will have been wasted.

MR. WOLFE: Your Excellency, on the point of providing for more than one agency Government is prepared to accept the proposal.

On the point of providing for an early election of members to the board, I may say that the requirements of this Bill were anticipated and that election has already taken place. At the last meeting of the board set up by the Agricultural Department to advise the department pending the appointment of the statutory board, the form of election as now incorporated in the Bill was decided on as well as that a meeting of flax growers should be called in each defined district to elect a member for my recommendation for the first statutory board. The last meeting took place only yesterday, and five members have been elected by the flax growers in each district, so that the recommendation which will go forward from myself for the first board will be the names put forward by the flax growers.

I was very sorry to hear the request for the appointment of a select committee. I understood that the committee would not be requested by hon. members on the other side of Council. There are urgent matters to be attended to which have been waiting for the first meeting of the statutory board. Flax is ready for export, there is the urgent question of seed supply for the next season, possibly requiring the importation of further seed at considerable expense, which must be discussed immediately. Nevertheless, Government has decided that a select committee should be appointed, and I shall have to arrange for a meeting of members who have been elected in anticipation of the establishment of the board under the Ordinance.

I would like to say, however, that I do not think there is any necessity for a

select committee, because this Bill has been in the hands of flax growers for some months. It was discussed at the first meeting before the war broke out by the interim board. That board itself approved the draft Bill, and every meeting held in the districts has approved the draft too. If the purpose in asking for the select committee is merely to refer the draft Bill back to those growers, we shall get the same result as we have already got, and all that time will have been wasted.

On the point of overdoing legislation of this kind, for control of industries, it is now an accepted principle that agriculture should be entitled to organized marketing in the same way as industry has organizations for selling and buying. We cannot deny the farmer if he wants organized marketing for securing better prices, for securing the division of his produce into proper grades by competent graders and so on. In this country, this form of organized marketing has undoubtedly proved of great benefit to producers, and because it is rightly recognized by them the request for this legislation and control came from the flax growers themselves. The suggestion was not made by my department to them. In these days we do not make such suggestions. But since the industry itself wants control and has asked for it, we cannot deny it to them.

As to the form of control being unsuitable for flax, I would only say that the extent of the control provided in the Bill is purely discretionary: it is in the hands of the statutory board. If they do not wish a sole agent, they will not appoint him. The point the hon. member brought up has already been considered by the provisional board.

The argument was raised by the board that flax does not lend itself to pooling, but it is not proposed to have pooling at this stage. It will only come when the growers ask for it themselves. The agent or agents, there is no doubt in my mind, will be appointed by the statutory board, and that is purely for export, and there will be no pooling of any kind.

The question was put and carried.

MR. WILLAN moved that the Bill be referred to a select committee consisting of:—

The hon. Mr. Wolfe (Chairman),
The hon. Mr. Dennison,
The hon. Lord Francis Scott,
The hon. Col. Kirkwood,
The hon. Major Grogan,
The hon. Mr. Isher Dass.

MR. DENNISON seconded.

The question was put and carried.

MATRIMONIAL CAUSES BILL SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the Matrimonial Causes Bill be read a second time.

The present law relating to divorce in this country was enacted as far back as 1904, and since then there have been two very important acts passed at home: one in 1925 and the later one as recently as 1937. That later one is more popularly known as the A. P. Herbert Act. This Bill now before the Council brings the law of this Colony relating to divorce, etc., into line with that at present in force in England.

This is a rather long Bill. I do not propose to go through it clause by clause, but merely to confine myself to the more important changes in the law of divorce which this Bill makes.

Passing straight away to clause 4 (a), this reads as follows:—

"Nothing in this Ordinance contained shall authorize: (a) the making of any decree of dissolution of marriage or of nullity of marriage unless the petitioner is domiciled in the Colony at the time when the petition is presented."

Under the present law, Chapter 170 of the Revised Edition, in order to present a petition for divorce, the petitioner must be domiciled in this Colony. At the present time no such requirement is necessary on a petition for nullity, but under the English law it has definitely been decided that on a petition for nullity the petitioner must be domiciled in the country in which that petition is

presented. Hence there is one change which we now make in clause 4 (a), that on a petition for nullity the petitioner must be domiciled in this Colony.

The proviso to clause 4 is new:—

"Provided that where a wife has been deserted by her husband, or where her husband has been deported from the Colony under any law for the time being in force relating to the deportation of aliens, and the husband was immediately before the desertion or deportation domiciled in the Colony, the Court shall have jurisdiction for the purpose of any proceedings under this Ordinance, notwithstanding that the husband has changed his domicile since the desertion or deportation."

That is put in in order to safeguard the married woman whose husband deserts her, who leaves the Colony or is deported from the Colony. Then, in spite of the fact that the husband may have changed his domicile the wife can still present a petition for divorce or judicial separation. The reason, of course, for putting in this particular proviso is that the domicile of a married woman on marriage becomes that of her husband, and she will retain that domicile right through marriage.

The first three lines of clause 5 are important:—

"No petition for divorce shall be presented to the Court unless at the date of the presentation of the petition three years have passed since the date of marriage."

That follows exactly the 1937 Act at home, and it does prevent a petition for divorce being presented during the first three years of marriage. I would ask hon. members not to read that clause by itself, but to read it with clause 7, which expands the ground for divorce.

We all know that some people, especially young people, rush into marriage and rush out again, and the first three lines of clause 5 have been put in as an attempt to discourage persons, particularly young persons, from frivolously or rashly undertaking the responsibilities of marriage. Some hon. members may say that hardship is created, because a girl marries a man and during the first six months of the marriage the husband

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treats her with cruelty, then deserts her, and she has got to wait three years before she can get a divorce.

I would point out, if any hon. members are inclined to think that or to ask that question, that this Bill does not prevent that girl from getting a judicial separation during the first three years. What is the present position? It is this. The girl is not able to get a divorce on the ground of cruelty or desertion, so she will be tied to the man for life but, under the relaxation in clause 7, she will be able to get a divorce for cruelty or desertion after three years. She has the alternative of being tied for life, or under this Bill, getting a divorce after three years.

I do ask hon. members to read clause 5 in the light of clause 7, and 7 in the light of 5.

There are two exceptions to this three year limit. The first one is the ground of exceptional hardship on the part of the petitioner; the second, exceptional depravity on the part of the respondent. Until the clause has been in operation some time we shall be unable to see how the courts will consider what either means.

Clause 6 deals with divorce proceedings after the grant of a judicial separation or other relief. Before the English Act of 1937, it was possible to bring a petition of divorce after a successful suit for judicial separation on the same or other grounds. That was only possible by case law at home, not statutory, and the Herbert Act has made that provision in the statute, so in clause 6 we are merely following the English law.

Clause 7 is possibly the most important clause in this Bill, because it sets out the extended grounds on which divorce can be granted. The ground at present is confined to paragraph (a), which is the present law, the ground of adultery. (b), (c) and (d) are new, and follow the English Act of 1937. They are as follows: A petition can be presented on the ground—

"(b) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition; or

(c) has since the celebration of the marriage treated the petitioner with cruelty; or

(d) is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition."

With regard to (b), the ground of desertion, possibly the Scots have shown themselves wiser in their generation than we Englishmen, for in Scotland divorce on the ground of desertion has been in force for at least 400 years. It is a ground recognized in most continental countries, even including France, which is a Catholic country. It is difficult to believe that we should perpetuate a law which would give a ground for divorce which is a single act of adultery and deny it on the ground of desertion which breaks up the whole marriage.

In (c), the ground is one of cruelty. Cruelty has been defined in the case of *Russell v. Russell* as:—

"Legal cruelty is conduct of such a character as to cause danger to life, limb, or health, bodily or mental, or such as to give rise to a reasonable apprehension of such danger."

One act of cruelty may be sufficient if sufficiently serious, but such a single act is seldom sufficient. A series of small acts may constitute cruelty.

The third ground is one of insanity, and the patient must have "been continuously under the care of people for at least five years immediately preceding the presentation of the petition." This again was taken from the Report of the Royal Commission on Divorce which, I think, sat at least 20 years ago. As regards this ground, in the last paragraph of this clause we are proposing to go further than they do at home. At home it is restricted to persons deemed to be under care and treatment in any mental institution in England. That would not fit in with the circumstances in this Colony, because as regards mentally-deficient Europeans most of them are sent to South Africa to mental institutions there, and therefore we have extended the paragraph over and above the law of England by stating that—

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"For the purposes of this section a person of unsound mind shall be deemed to be under the care and treatment while he is detained, whether in the Colony or elsewhere, in an institution."

That will cover the case of Europeans who unfortunately become insane and have to be sent to South Africa.

With regard to the whole aspect of clause 7, I will quote from a letter in *The Times* which appeared at the time of the A. P. Herbert Act:—

"It adds to the grounds of divorce any conditions which show that a continuation of the marriage relationship has in fact become impossible."

Missing out clause 8, which reproduces the present law, I pass on to clause 9. This deals with the duty of the court on the presentation of a petition for divorce and reproduces the English law of 1925 as amended by the A. P. Herbert Act of 1937. This clause deals with the duty of the court to inquire into, as far as they reasonably can, the facts alleged in sub-clause (2):—

"If the court is satisfied on the evidence that—

- (i) the case for the petitioner has been proved; and
- (ii) where the ground of the petition is adultery, the petitioner has not in any manner been accessory to, or connived at, or condoned the adultery, or where the ground of the petition is adultery the petitioner has not in any manner condoned the cruelty; and
- (iii) the petition is not presented or prosecuted in collusion with the respondent or either of the respondents,

the court shall pronounce a decree of divorce."

The crux of the clause is that the court must inquire into the fact as to whether there has or has not been collusion. If the court is satisfied that the petition is not presented in collusion with respondent, the court can grant a decree. This clause is intended to strengthen the hands of the court with reference to what is known as hotel cases.

Clause 13 deals with the grounds on which a decree of nullity of marriage can be made. There are four amendments to the present law in this. Paragraphs (a) and (b) are the same as the present law, and so are (d) and (e). Part of (c) is new, and the whole of (f), (g) and (h) is new. The second part of (c) is new, that a decree of nullity of marriage may be made on the ground that either party was "subject to recurrent fits of insanity or epilepsy."

The additional grounds on which a decree of nullity may be granted are restricted with regard to (c), (g) and (h) by the proviso at the top of page 5, that "the court shall not grant a decree unless it is satisfied"

"that the petitioner was at the time of the marriage ignorant of the facts alleged;

that proceedings were instituted within a year from the date of the marriage; and

that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds of decree."

Sub-clause (2) is new. It provides that when a decree of nullity is granted under (c) or (g) any child born of that marriage shall be legitimate. It is rather a curious provision, because the marriage when pronounced void is void *ab initio*, but it is desirable in the interests of the children.

Clause 16 deals with judicial separation. The only change is that such separation can be granted on the grounds set out in clause 7, whereas now the only grounds for a judicial separation are adultery, cruelty, or desertion for two years.

I pass on to Part V of the Bill, clause 21, which introduces a new ground for divorce, namely, on the ground that one of the parties to the marriage has not been heard of for seven years and is presumed dead. This clause brings our law of divorce into line with the criminal law relating to bigamy, which is seven years continual absence, and also into line with the law of probate, where the practice is to presume death if a person is not heard

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of for seven years by people who would have heard from him if he had been alive.

Clause 29 is new, and makes provision for amendments in maintenance orders, settlement of property, and so on.

Clauses 32 and 33 deal with the King's Proctor. Clause 33 introduces for the first time in this Colony the office of King's Proctor in relation to divorce under the law of this Colony. At the present time the King's Proctor here only functions under the Indian and Colonial Divorce Jurisdiction Act, 1926, and the English Act. If this clause remains in the Bill, it will bring our law into line with that of England, and the King's Proctor will have powers of intervention with regard to a decree *in solido*.

Finally, clause 36 provides for the making of rules by the Rules Committee, and until these are made the rules in the schedule to the Bill will stand. As hon. members will see, they are very extensive, I think they run to about 71. I do not propose to refer to any of them, they merely relate to matters of practice and procedure and other matters of detail.

The Bill has been fully discussed with both the law societies of Kenya and Mombasa, and both have agreed *in toto* with it.

MR. DENNISON seconded.

LORD ERROLL: Your Excellency, I had intended to expatiate at some length on this Bill, but hon. members will be relieved to hear that I have a very sore throat and shall be unable to do so. But, to be consistent, I feel that I must here, as in another place, protest very strongly against the provisions of clause 5 (1):—

"No petition for divorce shall be presented to the court unless at the date of the presentation of the petition three years have passed since the date of marriage."

Hon. members will probably recall that when the Herbert Act was first passed by the House of Commons, the period stood then at five years; when it went to the House of Lords it was changed to three years. There is very little doubt about it that if it had only to do with the House of Lords, it would have been expunged

entirely, but it was felt that if this had been done those less enlightened gentlemen in the House of Commons would probably have thrown out the Bill in its entirety.

That does not alter the fact that it is, to my mind, a barbarious section, and one that is very likely to lead to greater immorality.

There are a number of other things in this Bill which I was going to talk about, chiefly the question of domicile, but as the measure is going to select committee I need not mention them here.

The hon. and learned Attorney General praised the Scots for their foresight in these questions. I only wish this law would come into line with Scottish law as regards clause 14 (1), which allows for six months between the decree *in solido* and the decree absolute. The Scots for many years have been in advance of the English law, inasmuch as there is no such thing as this prolonged lapse between the decrees.

Any other remarks I have to make I will reserve for the select committee.

LADY SIDNEY FARRAR: Your Excellency, I rise to support the Bill before Council, and I cannot say too strongly how important the provisions are, especially as set forth in clause 7. However, it is to be regretted that in Kenya we could not for once have gone further than the Scots, and have had the courage to go further than the English law, for I submit is really regrettable that we have not included in the provisions of clause 7 openly the need for the provision that divorce could take place on proof of incompatibility of temperament.

Most of us realize that in case after case incompatibility of temperament gives a very real ground for cruelty, but it can hardly be quoted as such. I do think that properly provided for and safeguarded as this ground can be in other countries, it would have been a very great improvement to have included it in this Bill. We realize again and again that this omission, the need for divorce in certain cases of incompatibility of temperament, does lead to an undesirable position and faked or hotel cases.

[Lady Sidney Farrar]

I ask Council if it is impossible now to ask the select committee to consider the introduction of this additional ground for divorce, that in the near future this Ordinance should be amended to include it.

MR. GHERSIE: Your Excellency, I have a number of points on which I wish to oppose this Bill in its present form, but as I understand it is going to a select committee perhaps it would be wasting the time of Council to recite them at this juncture.

The noble earl brought up the question of amending clauses 4 and 5. The question arises on the subject of domicile of a Kenya born girl who has been deserted by her husband and whose husband was merely resident in Kenya, but domiciled and now living outside the Colony. I want the question of domicile clarified, as I have still to be satisfied that the Kenya born girl is sufficiently protected under the proposed Ordinance.

Further, I do not agree with clause 5, as I considered the restriction in regard to a petition for a divorce, namely, three years after marriage, far too long a period.

MR. ISHER DASS: Your Excellency, I rise to support this Bill. But I should be very glad if the hon. and learned mover could inform Council if the provisions of this Bill also apply to the Indian community, particularly to the section of that community which professes Hinduism? If it does not, what are the reasons? Also, is it a fact that Hindu marriages in this country are not recognized as legal and, in order to legalize those marriages, will Government introduce such legislation?

MR. SHAMSUD-DEEN: Your Excellency, in order that there shall be no misunderstanding about the few remarks made by hon. colleague, I should make it clear that if any attempt was made to include Hindus in this Bill the Mohammedans would certainly not like to be included in it. I think something has to be done as far as the Hindu community is concerned, and whether included in this or a separate Bill we ought to put things right, because at the

present moment, as far as my knowledge goes, all Hindu marriages are illegal in the eyes of the law, and their children considered to be illegitimate, and therefore cannot be entitled to any inheritance.

As far as this Bill is concerned, I think it a great improvement on the old English law which, in my opinion, has been very crude and antiquated. I personally think the Mohammedan marriage law about the best in the world, although introduced more than thirteen hundred years ago. I do not know if the hon. and learned mover has read the book *Marriage in the Melting Pot*. If not, I am prepared to lend him a copy, and he will see that although efforts are being made to bring the English law up to date it is still very obsolete.

MR. WILLAN: Sir, I accept that offer!

Your Excellency, various points of detail have been raised during the course of the debate, and they will be considered in select committee.

With regard to the remarks of the hon. member for Nyanza, she welcomes clause 7 but wishes to go further than the English law and insert in it a provision covering a petition presented for divorce on the ground of incompatibility of temperament. I do not think we can go as far as that. Nowhere is it stated that divorce is a release from misfortune and is not a crime.

On this question of domicile I am very glad the hon. member for Uasin Gishu has raised it, because it is a difficult question, and one in which international law has got to be considered. As far back as 1895 the Privy Council in a divorce case held that, according to international law, the domicile for the married pair affords the only true test of jurisdiction to dissolve their marriage. So we in Kenya are not free agents, we have to conform with international law.

With regard to that, I would point out to the hon. member that a very unfortunate set of circumstances arose in India in 1921. What happened was this. The Indian Legislature in 1869 passed a law relating to divorce which did not restrict people from getting a divorce on

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the ground of domicile. A number of marriages were dissolved between persons resident in India but domiciled in England. A considerable number of decrees were pronounced.

Then in 1921 what happened was that one man who got a divorce in India rather suspected that his Indian divorce was not legal because he was domiciled in England. He went home to England and instituted fresh divorce proceedings there. In the course of that case it was then decided that his previous divorce in India was invalid because he was only a resident there and not domiciled. The result was, of course, that Imperial Parliament had to pass an Act which validated all the divorces which had been given under the 1869 Indian Act.

With regard to the hon. member Mr. Isher Dass, as to whether this Bill applies to the Indian community, I would refer the hon. member to the definition of marriage in clause 2:—

"Marriage means the voluntary union of one man and one woman for life to the exclusion of all others."

If there are any Indian communities in which marriage is confined to the "voluntary union of one man and one woman for life" of course they would come under the provisions of this Bill.

Finally, with regard to the remarks of the hon. member Mr. Shamsud-Deen, I would call his attention to Chapter 171 of the Revised Edition, which has been the law of the Colony since 1920, which relates to Mohammedan divorce and succession.

The question was put and carried.

MR. WILLAN moved that the Bill be referred to a select committee consisting of:—

The hon. Mr. Willan (*Chairman*),
The hon. Mr. Lacey,
The hon. Mr. Mortimer,
The hon. Earl of Erroll,
The hon. Lady Sidney Farrar,
The hon. Mr. Chersie,
The hon. Mr. Isher Dass.

MR. DENNISON seconded.

The question was put and carried.

Council adjourned for the usual interval.

On resuming:

BILLS

IN COMMITTEE

MR. WILLAN moved that Council resolve itself into Committee of the whole Council to consider clause by clause the following Bills:—

The Compulsory Service (Amendment) Bill.

The Kenya Defence Force (Amendment) Bill.

The 1938 Supplementary Appropriation Bill.

The Tea (Amendment) Bill.

The Trading in Unwrought Precious Metals (Amendment) Bill.

The British Nationality and Status of Aliens Fees Bill.

The European Civil Service Provident Fund (Amendment) Bill.

MR. DENNISON seconded.

The question was put and carried.

Council went into Committee.

His Excellency moved into the chair.

The Compulsory Service (Amendment) Bill was considered clause by clause.

Clause 7

MR. WILLAN: I beg to move two amendments in clause 7. First of all that the word "service" which appears in line 7 thereof be deleted and there be substituted therefor the word "serve".

The second amendment is in the last line immediately after the word "Ordinance" there be inserted and added the following words: "or any other law for the time being in force in the Colony." That is a consequential amendment on account of the Military Units Ordinance which we passed the other day.

The question was put and carried.

The question that the clause as amended stand part of the Bill was put and carried.

The Kenya Defence Force (Amendment) Bill was considered clause by clause.

Clause 4

MR. WILLAN: I beg to move two amendments to clause 4, one in sub-section (1) of the new section 22A and the second in sub-section (1) of the new section 22r.

Referring to the first amendment which I propose, it is that immediately before the word "Every" in the first line of sub-section (1) to new section 22A, there be inserted the words "Notwithstanding the provisions of section 3 of this Ordinance." The reason for that amendment is this. In section 3 the liabilities of the members of the Kenya Defence Force who are called out for active service are defined, and without this amendment the new section 22A may seem in conflict with section 3.

The second amendment is that the words "Where any person has been called out and mobilized under section 21 of this Ordinance or" be deleted from lines 1 and 2 of sub-section (1) of the new section 22r and substitute therefor "Where any person subject to the provisions of this Ordinance has been called out and mobilized under section 21 of this Ordinance or has become a member of a unit established under the Military Units Ordinance, 1939, or where any person." This meets the point raised by the noble lord the Member for Rift Valley at the second reading.

The question was put and carried.

The question that the clause as amended stand part of the Bill was put and carried.

Clause 6

MR. WILLAN: I beg to move that clause 6 be amended as follows:—

by inserting therein a paragraph lettered (a) to read as follows: "(a) by inserting immediately after the word 'when' which occurs in the second line of paragraph (h) thereof the words 'undergoing peace training or when'; and by re-lettering the present paragraphs (a), (b) and (c) as (b), (c) and (d)."

Paragraph (h) of sub-section (1) of section 31 will then read as follows:—

"Regulations will be made for fixing the rates of pay and allowances and issues of rations to members of the Defence Force when undergoing peace training or when called out under section 21 of this Ordinance."

This meets the point raised by the hon. and gallant Member for Nairobi South that we should be able to prescribe regulations for people undergoing more intensive peace training to be paid.

The question was put and carried.

The question that the clause as amended stand part of the Bill was put and carried.

The 1938 Supplementary Appropriation Bill was considered clause by clause.

The Tea (Amendment) Bill was considered clause by clause.

The Trading in Unwrought Precious Metals (Amendment) Bill was considered clause by clause.

Clause 2

MR. WILLAN: I beg to move that the word "whom" in the fifth line of clause 2 be deleted and there be substituted therefor the word "who".

The question was put and carried.

The question that the clause as amended stand part of the Bill was put and carried.

The European Civil Service Provident Fund (Amendment) Bill was considered clause by clause.

Clause 2

MR. WILLAN: I have three amendments to clause 2. The first one is that the comma and words "by notice in the Gazette" which occur in the third line be deleted; the second amendment is that immediately before the word "exclude" in paragraph (a) be inserted the words "by notice in the Gazette"; and the third amendment is that immediately before the word "exclude" in paragraph (c) there be inserted the words "by notice in the Gazette."

[Mr. Willan]

The reason for these amendments was stated during the second reading of this Bill.

The question was put and carried.

The question that the clause as amended stand part of the Bill was put and carried.

The British Nationality and Status of Aliens Fees Bill was considered clause by clause.

Schedule

MR. WILLAN: I have one amendment to propose to the Schedule, in the third paragraph: That the dash and the word "Administering" be deleted from the last line thereof, and there be substituted therefor the words "or administering"—with a small "a". That corrects a typographical error, so that it now reads as follows:—

"Taking a declaration of alienage or of retention, acquisition or resumption of British nationality or administering the oath of allegiance, Sh. 2/50."

The reason for this, actually it is a mistake that has been perpetuated in our law since 1931 and the actual intention is that a fee of Sh. 2/50 be charged for taking a declaration of alienage or a declaration of retention, or a declaration of resumption of British nationality, and also a fee of Sh. 2/50 for administering the oath of allegiance.

The question was put and carried.

The question that the Schedule as amended stand part of the Bill was put and carried.

MR. WILLAN moved that the following Bills be reported without amendment:—

The 1938 Supplementary Appropriation Bill,

The Tea (Amendment) Bill,

and the following Bills with amendment:—

The Compulsory Service (Amendment) Bill.

The Kenya Defence Force (Amendment) Bill.

The Trading in Unwrought Precious Metals (Amendment) Bill.

The European Civil Service Provident Fund (Amendment) Bill.

The British Nationality and Status of Aliens Fees Bill.

The question was put and carried.

His Excellency vacated the chair.

Council resumed its sitting.

His Excellency reported the following Bills without amendment:—

The 1938 Supplementary Appropriation Bill,

The Tea (Amendment) Bill,

and the following Bills with amendment:—

The Compulsory Service (Amendment) Bill.

The Kenya Defence Force (Amendment) Bill.

The Trading in Unwrought Precious Metals (Amendment) Bill.

The European Civil Service Provident Fund (Amendment) Bill.

The British Nationality and Status of Aliens Fees Bill.

THIRD READINGS

MR. WILLAN moved that each of the seven Bills be read the third time and passed.

MR. DENNISON seconded.

The question was put and carried.

The Bills were each read the third time and passed.

GOLD ROYALTY

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

"Be it resolved, that before re-introducing the 5 per cent royalty on gold, the gold mining industry be given the fullest opportunity of representing their case to Government."

In moving this motion, I must first state how amazed I was when I heard your communication from the chair, Sir, that Government had already decided to introduce this royalty without giving the hon. members of this Council an opportunity of reviewing the position again. I submit, with all due respect, that

[Mr. Gherrie]

it merely goes to show a lack of thought and consideration given to matters of this nature by Government.

All hon. members are aware that the price of gold has been fixed at Sh. 168 per fine ounce, Sh. 20 higher than the price ruling before the outbreak of war. This may seem a very handsome increase, and perhaps it would be were it not for the fact that production and realization costs have increased, not in proportion but out of all proportion to this increase in the price of gold.

It might interest hon. members to know that the insurance rate due to war risks has been increased from Sh. 3 to Sh. 80 per cent, and I have it on very good authority that the requirements for mining in regard to steel have already increased 20 per cent in this Colony. I have already been informed that there is a meeting to take place shortly in London whereby the price of raw steel will be fixed, and it is suggested, that that price shall be a 25 per cent increase, and that that fixation will only be for a period of three months.

I am still dealing with steel products. We realize that the cost of manufacturing must increase, and we are all aware of the increase in sea freight by 33-1/3 per cent. Steel products in this Colony have increased 20 per cent, mercury has gone from Sh. 4/6 to Sh. 10/6 a lb., say 150 per cent, and we can very well imagine what will happen in regard to acids, cyanide, zinc, and explosives. I think I can rightly say that the cost of materials have already increased something in the nature of 33-1/3 per cent, but for the basis of my argument I am prepared to accept 25 per cent. I think it can be assumed that the cost of material in relation to the total costs of a mine on a very conservative estimate would be 50 per cent of the total cost, in which case if materials increase 25 per cent we should have an overall increase cost of 12 1/2 per cent. In addition, there is 4 per cent increase in regard to war risk insurance, and I am disregarding increased air freight and refining charges and so on. That gives 16 1/2 per cent

increase in costs against an increase in the price of gold of 13 1/2 per cent. Gold rose from Sh. 148 to Sh. 168.

I submit in all sincerity that if the gold industry went back to the pre-war price of gold and normal costs, we should be far better off than we are to-day.

You also stated in your address, Sir, that you proposed to increase the rate regarding income tax. Surely, if you consider the mines are making large profits, that is a legitimate channel through which to obtain your pound of flesh, if you think it exists. You made a further statement that one of the reasons for introducing this legislation was to bring legislation regarding the mining industry into line with Tanganyika. I submit in the first place that Tanganyika has no income tax, and I suggest that it is entirely wrong to tax any one industry through two different channels. I should hate to suggest that because the price of flax or pyrethrum had gone up you should put a royalty on either one of those products.

Looking at it from a purely business point of view, if business was to-day making something in the nature of 5 per cent net profit one might consider that, under the circumstances, it was paying reasonably well. But you propose to take 5 per cent not from net profit but from the actual gold won. What business can stand on a 5 per cent premium or charge against its turnover?

I have endeavoured to convey to you how unfair the introduction of this royalty would be under the present circumstances, and I am now going to endeavour to convince you how stupid, how immoral, this suggested tax is, and how it will react very unfavourably on certain individuals.

Visualize two miners, or mines as the case may be, whom we will call A and B. A produces 100 oz. of gold from 100 tons of ore. B produces the equivalent 100 oz. of gold from 500 tons of ore because he is working a low grade proposition. I am not going to suggest that B's costs are five times those of A, but it is perfectly obvious they are considerably higher. He requires more

[Mr. Gherrie]

machinery, labour, he has got to transport five times the tonnage and it has to be brought up daily to the surface of the earth. Where is the equity if those two individuals pay exactly the same amount as far as the royalty on the gold is concerned? One could possibly afford to pay more, but with the other you make a difference between profit and loss and close that property down.

I have often heard it said that during a war one requires foreign exchange. What better method is there of obtaining it than by the production of gold? I have always understood it was the policy of Government to foster this young industry and encourage it to expand, not to strangle it, but you can believe me, Sir, if this war lasts any length of time we can quite easily visualize the cost of materials going up 50 per cent to 100 per cent, and unless the price of gold goes up correspondingly with it a great number of your Kenya producers, you can rest assured, will go completely out of production.

It comes back to one thing again: Government once again has broken its pledge to a certain industry in this Colony. They gave a definite undertaking that this royalty would not be put on again until the 30th September, 1940, and by a stroke of the pen it is introduced again. I consider it most immoral.

To conclude, I suggest it will be premature to reintroduce this 5 per cent royalty. The whole matter should be suspended and the position reviewed at a later date in the light of events and experience. When that is done, I suggest you do ask those who are actively engaged in the mining industry to be present, so that they can consult and confer and give necessary collaboration.

LADY SIDNEY FARRAR: Your Excellency, I beg to second the motion. I am not going to add anything to the amazing array of figures put before you by my hon. friend the Member for Uasin Gishu, for as the answer to it I feel sure he will receive an equally devastating response in kind from the hon. Financial Secretary opposite!

(MR. LOCKHART: No.) I am rather disappointed!

But I will stress one aspect of the question. The backbone of the Kenya mining industry is the small miner at the present time. For a period of years he has had as bitter a struggle as the farmers have had in the last ten years in this Colony. Again and again he has sunk what little capital he could scrape together of his own or from his friends or by a year's work with the bigger mining companies, and sunk that capital in prospecting, not in actual development but prospecting for gold.

I know there is one argument brought forward very frequently on the subject of gold production, and that is that as against farming you need do very little towards producing that gold: the gold is already in the earth, and you have only to get it out, not to plant it. That actually is a very great disadvantage, because once you have got it out there is nothing left behind, and you have got to find more. That is where the majority of the capital of the small gold miner vanishes. Only in a very few cases are they fortunate enough to find payable quantities of gold during their prospecting. Here and there small men have made a reasonable profit, but in the majority of cases the small gold miner in Kenya has made no more than a bare living, very much on the same scale as the ordinary wheat or dairy farmer in this Colony and in very much more unconventional surroundings and without even the background of a permanent home.

The gold mining community pays income tax. It is paying the tax if it has any profits at all. The miner, unlike the farmer, is dependent on the purchase of expensive machinery imported on which, directly or indirectly, he has to pay heavy freight charges and rail from Mombasa to Kisumu. Speaking generally, the labour employed on the gold fields is better housed and better paid than labour anywhere in the Colony, with the exception of the Kericho tea companies.

On the other hand, we are assured, as my hon. friend the mover pointed out just now, that gold production is generally regarded as an essential service

[Lady Sidney Farrar] to be kept up and, as far as is humanly possible, to be increased in the present emergency. Before the war we understood the waiving of the royalty was a measure agreed to in this Colony or for this Colony to foster a young industry which was of value not only to the community as a whole, but was of Imperial value as well. Yet now, of all primary producers in the Colony—and we are given to understand these primary producers are going to be assisted in every possible means now to increase production—this one industry is picked out for payment of what one can only call a super tax, and this young and very far from established industry has now got to produce some £30,000—this is the estimate—out of an estimated amount of £200,000 to meet the necessary increase in revenue at the present time.

In other words, the gold mining industry is to bear a 15 per cent increase of the burden to be put on the Colony this year. Your Excellency, I submit that this is a matter which requires very, very careful consideration in consultation with the miners concerned, particularly the small miner, who will be the hardest hit by the reimposition of the flat rate of 5 per cent royalty.

MR. LOCKHART: Your Excellency, the hon. Member for Uasin Gishu first complained that arbitrary action has been taken. In point of fact, we are debating the question now. No order has yet been issued regarding the royalty, and when it was taken off this Council was not consulted then, and I do not recollect any protest from the hon. Member for Uasin Gishu.

The hon. member also says that it is being done as a result of lack of thought. There might have been lack of thought—there has been no lack of paper, for this file in front of me is full of papers and figures on the question. I do not propose to quote them, but I could quote figures contained here in a letter from the East African Chamber of Mines dated the 11th September, which show that in fact the reimposition of the royalty is quite justified on the figures they give. The figures the hon. member quoted are hypothetical, and deal with

a state of affairs that may or may not occur. We are dealing with the state of affairs as they exist to-day.

Talking about the royalty, it is not, of course, a tax at all, but a payment for somebody else's property which has been taken. If you take somebody else's property and make money out of it, whether minerals, trees, stone or anything else, you are expected to pay something for it, and that is the universal custom all over the world, except for the moment in Kenya.

The hon. member asked whether there was any business which could stand a levy of 5 per cent on its turnover. The answer is, of course, the gold business, and it does stand it everywhere. It does in Tanganyika and in Uganda.

There has arisen as a result of the war, or as a result of the depreciation in sterling, what is locally called a premium on gold. In Rhodesia, the Government there have taken 100 per cent of it; in Australia, 50 per cent, on a figure between Sh. 146 and Sh. 168. There was a copy of a letter sent to me on behalf of the local industry in regard to the position in West Africa where the Governments were urged on behalf of the mining industry not to impose any special taxation, but that letter also pointed out that the industry was paying Sh. 12/6 an ounce on gold already. In Kenya at the present time they are paying nothing.

The hon. member said quite rightly that the industry was given to understand that this 5 per cent royalty would be waived until the 30th September, 1940, and that this is a breach of faith. There is something in that, but the alternative to this tax we are considering was taxation of this gold premium in some other form—it has been considered and discussed by the Commissioner of Mines with the industry informally on the gold fields—say 50 per cent on the surplus over Sh. 150. That is half of what is done in Southern Rhodesia and in the Union, and rather less than in Australia.

That gives Sh. 9 an ounce instead of Sh. 8/40, and also if the price goes above Sh. 168 it would mean 50 per cent instead of a 5 per cent royalty on the increase.

[Mr. Lockhart]

There has been a complete alteration in the situation as between the date the decision was taken—and I may say to the industry that had that decision not been taken in their favour at the time perhaps they would now be considered for a premium tax as well. The alteration from the day the price went from Sh. 146 to Sh. 168 has completely altered the situation for reasons not contemplated by either party at the time, but if the industry prefers to contribute by means of 50 per cent of the premium we shall be prepared to consider it.

I am unable to see myself that the industry has any reasonable complaint, but the motion before Council asks that the matter should be discussed with the industry before any action is taken. This Government is always prepared to discuss any matter with any responsible body such as the mining industry. I have to say that the resolution is accepted.

But it is accepted with this reservation: that if the decision of Your Excellency in Council, where the decision will rest, goes against the industry, then the royalty will be reimposed as from the date on which it would otherwise have been reimposed, and the date in contemplation is the 1st December. That is, if the decision goes against the industry the effect of discussion and negotiation will not prejudice the revenue.

MAJOR GROGAN: Your Excellency, in view of what I understood to be the acceptance of the principle of this motion, I have not very much left to say, otherwise I would have taken the occasion to traverse and expose the underlying fallacies upon which my hon. friend the Financial Secretary stood on the other side.

There is one point I would wish to draw the attention of all to and that is this: this question must not be considered only in the terms in which it has been discussed, but must be considered in relation to what would be the effect of this proposal, not only on this country but on the gold supply of the Empire as a whole, because a royalty—a percentage royalty—quite regardless of the value of ore around which it is assessed,

is one of the most childish forms of taxation that has ever been devised by the mind of man, and an extraordinary example of the elaboration on paper, as distinct from thought, which persists in the circles in which my hon. friend opposite moves.

There is no question in my mind whatsoever that with a gold field such as ours, which is really still in the exploratory stage, that a royalty of this kind would inevitably have the effect of precluding the use of a very large proportion of the lower grade ores and have the effect of reducing what the actual output of gold would otherwise be.

Hon. members here will probably have some sort of an idea of what importance I attach to gold as an article. But as long as we have got it we have to realize that it is one of the most valuable assets in the British Empire at the present time, in so far as it provides exchange in the United States so long as the United States is prepared to hand over bombers and other very useful provisions of war in exchange the most useless commodity known to mankind, gold.

MR. GHERSIE: Your Excellency, first of all I wish to apologize in that in my opening speech I should have given notice under Standing Rule and Order No. 43 that I am interested in the mining industry.

I am very grateful to the hon. Financial Secretary who is prepared to accept the motion and reconsider the matter. In view of that I really have not much more to say in my reply.

I would, however, like to point out that most of the hon. member's correspondence appears to have come from the Chamber of Mines, at least that is what it seemed to me in his reply. But I must point out that the Chamber of Mines, although an eminent body of people, represents what I might term the larger mines in Kenya, in number probably only three. There is another association and that is known as the Kenya Mining Association, which represents some 40 small properties which produce over half the output of Kenya gold.

MR. LOCKHART: Your Excellency, may I rise on a point of explanation. The representations were from a joint meeting of the East African Chambers and the Kenya Mining Association.

MR. GHERSIE: Thank you. You probably have one letter from the association to which I am referring.

I would like to point out that this Kenya Mining Association does represent the genuine small worker who has sunk his all in this goldfield and, incidentally, who is the fellow who has really developed it. I would also like to point out just for one moment that in 1933 a number of large companies arrived in Kenya for the purpose of exploring and developing the Kenya goldfields. Since 1933 not a single large company has come to this Colony and a great number have gone as you are aware, but the industry has carried on and actually the production of gold has gone up slowly but surely each year, and that production is due entirely, or mainly anyhow, to the small worker.

I would like to point out that I think it is very unfair to make any sort of comparison between the South African gold fields or the Rhodesian or Australian or any other goldfield with Kenya. The Kenya goldfield is very much in its infancy and has not got to the stage of having ore reserves. After all, all established goldfields do have ore reserves in sight, and if you pick up the reports of the South African mining companies you find that they extend to something like thirty years, whereas in this country I doubt if any of these mines can see more than two years ahead and the majority only a few months. If you want to encourage gold production in Kenya you must encourage the people who are prepared to work to expand their activities.

You base your case on the fact that gold has gone up 20 per cent. I submit that you have got to take into account the fact that materials are steadily rising in price, and it is as well that this should be qualified. I have here a report from an eminent firm of stockbrokers in Johannesburg, dated the 15th of September, a report submitted to Barclays Bank. It states:—

"The falls in the non-producers have been heavy this week but the prices have in most cases reacted from the lowest levels touched on Tuesday. Holders took the view that if the war lasts the length of time on which the War Cabinet is basing their policy, namely three years or more, the mines in this category would close down. More working capital could be raised by loans from interested parties to finance further exploratory work but the production stage could not be reached owing to the essential portions of the reduction plants being unobtainable from England."

That is the view they are taking and that is one of the fields you quoted and, therefore, I suggest that you should accept the opinion of the people who are in closest touch with the gold mining industry in South Africa. They state that in regard to mines not already in production there is no likelihood of their going into production during the period of the war despite the increase in the price of gold.

The question was put and carried.

ADJOURNMENT

Council adjourned till 11 a.m. on Monday the 4th of December, 1939.

Monday, 4th December, 1939

Council assembled at the Memorial Hall, Nairobi, at 11 a.m. on Monday, 4th December, 1939. His Excellency the Acting Governor (W. Harragin, Esq., K.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of 17th November, 1939, were confirmed.

PAPERS LAID ON THE TABLE

The following papers were laid on the table:—

BY MR. RENNIE:

The Draft Estimates of the Revenue and Expenditure for 1940 together with the accompanying Memorandum.

Schedule of Additional Provision No. 3 of 1939.

BY MR. WILLAN:

Select Committee Report on the Penal Code (Amendment) Bill.

Select Committee Report on the Criminal Procedure (Amendment) Bill.

Select Committee Report on the Matrimonial Causes Bill.

BY MR. LOCKHART:

Colonial Development Fund, Statement for the quarter ended 30th June, 1939.

BY MR. HOSKING:

Annual Report on Native Affairs, 1938.

Summary of Receipts and Expenditure of Local Native Council Funds, 1938.

BY MR. WOLFE:

Select Committee Report on the Adulteration of Produce (Amendment) Bill.

BY MR. MORTIMER:

Select Committee Report on the Municipalities (Hospital Rate) Bill.

ORAL ANSWERS TO QUESTIONS No. 51—RATES OF PAY—K.D.F. AND KENYA REGIMENT

MAJOR CAVENDISH-BENTINCK asked:—

What is the reason for the differentiation of rates of pay as published in Government Notices Nos. 672 and 673, both dated 28th August, 1939? Why is a C.Q.M.S. in the Kenya Regiment worth Sh. 1/10 a day more than a C.Q.M.S. in the Kenya Defence Force? Why is a newly joined Second Lieutenant in the Kenya Regiment to receive Sh. 2/74 a day more than a newly joined Second Lieutenant in the Kenya Defence Force? Why does a married major of 17 years' service serving in the Kenya Defence Force receive the same rate of pay as an unmarried Major of 17 years' service serving in the Kenya Regiment?

MR. LOCKHART: At the time that these rates of pay were decided upon it was considered that some differentiation as between the higher ranks of the Kenya Regiment and of the Kenya Defence Force was justified in view of the difference in the duties which these forces were designed to perform and the difference in their period of peace time training. The duties on which the Kenya Defence Force was employed on the outbreak of war were such that its members were able to keep in touch with their ordinary civil occupations and they were generally on duty near their homes. The members of the Kenya Regiment are on full time military service.

BILLS

FIRST READINGS

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

The Fish Protection Bill.
The Marketing of Native Produce (Amendment) Bill.

MR. WILLAN gave notice that the subsequent reading of these Bills would be taken later in the Session.

ADJOURNMENT

Council adjourned till 10 a.m., Tuesday, 5th December, 1939.

Tuesday, 5th December, 1939

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, 5th December, 1939, His Excellency the Acting Governor (W. Harragin, Esq., K.C.), presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of 4th December, 1939, were confirmed.

ORAL ANSWERS TO QUESTIONS**No. 61—M.O., THOMSON'S FALLS—LAIKIPIA AREA**

LORD FRANCIS SCOTT asked:—

Is Government aware that the Medical Officer who has been serving the 475 Europeans, the natives employed by them, and the Indians resident in the Thomson's Falls-Laikipia area has been removed, and that to-day there is no Medical Officer available to serve the above-mentioned people or the whole of the Samburu tribe?

Will Government take immediate steps to rectify this situation?

DR. PATERSON (Director of Medical Services): Government is aware that there is no medical officer in the Thomson's Falls-Laikipia area. In extension of this reply, it may be stated that there has never been a Government medical officer stationed in the area referred to. The doctor to whom the question refers was not a Government medical officer, but a private practitioner to whom the Government paid a small retaining fee. This practitioner was recently offered full-time Government employment elsewhere; he accepted this offer, and has in consequence left the Laikipia District. Government understands that there is one medically-qualified European resident in the district whose services are doubtless available in an emergency; possibly two.

With regard to the second part of the question, Government would observe that it appreciates that the position is not

satisfactory, but regrets that it is not in a position to ameliorate it at the present time, and would not in any case be prepared to post a Government medical officer to the area. Government will, however, be prepared, when the estimates are being examined by the Standing Finance Committee, to consider any proposal which may then be placed before it as likely to improve the situation without uneconomical expenditure of public funds.

LORD FRANCIS SCOTT: Your Excellency, arising out of that very unsatisfactory answer, does Government now consider that it is not necessary to have a doctor there when last year it did consider it necessary to subsidise a doctor to carry out the duties?

Further, does Government consider the health and well being of large numbers of British nationals so very much inferior to the health of foreign refugees?

DR. PATERSON: The answer to the first part is that Government did consider it desirable that there should be better medical services in that area, even at the present time. The answer to the second part is that in the present circumstances it is much more important that there should be a full-time medical officer in charge of these particular refugees than in the Laikipia area. In the interests of public health alone, it would be extremely unwise to leave some 6,000 or 7,000 people without medical supervision.

LORD FRANCIS SCOTT: Does Government not consider it equally unwise to leave many thousands of British subjects in this area without medical treatment?

MR. SHAMSUD-DEEN: Arising out of that question, I would ask the hon. Director of Medical Services what are the difficulties in the way of securing the services of a medical officer whom he has just stated is available in the district?

SCHEDULE OF ADDITIONAL PROVISION No. 3 OF 1939**REFERRED TO STANDING FINANCE COMMITTEE**

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

That Schedule of Additional Provision No. 3 of 1939 be referred to the Standing Finance Committee.

Hon. members will note that this Schedule is in respect of the period from 1st July to 30th September, 1939, and involves an amount of £93,879. If savings and sums recoverable by way of reimbursements and increased revenue are deducted, the net additional provision is £35,400. Of this sum, £15,728 was incurred in respect of emergency defence measures.

MR. WILLAN seconded.

The question was put and carried.

MATRIMONIAL CAUSES BILL**SELECT COMMITTEE REPORT**

MR. WILLAN: Your Excellency, I beg to move that the select committee report on the Matrimonial Causes Bill be adopted.

As hon. members will see from the report, it is practically a unanimous one with one exception. The report is short, and none of the amendments is at all controversial.

The first amendment is a new definition to be inserted in clause 2 of the Bill defining the term "His Majesty's Proctor" which is contained in two or three of the clauses. It is felt desirable that, under this Bill, His Majesty's Proctor should be the same person as the King's Proctor appointed under the Kenya (Non-Domiciled Parties) Divorce Rules, 1928, formulated under the Indian and Colonial Divorce Act of 1926. That is the Solicitor General. So, under this Bill, His Majesty's Proctor will also be the Solicitor General.

The only other amendment is to delete the word "minor" from the definition of "minor children" in clause 2 of the Bill. When the select committee came to examine the provisions of the Bill, it was found that although it defined "minor children", nowhere in the Bill

was the expression "minor children" used. Actually, if we turn to clause 22, we find that the court can settle damages for the benefit of the children, and in clause 28 the court "may from time to time, either before or after the final decree, make such provision as appears just with respect to the custody, maintenance and education of the children." So we use the expression "children" in the Bill itself in several clauses of which I have given instances, and they obviously refer to children who have not reached their majority. If we take out the word "minor" and define children as is now proposed we shall remove an inconsistency.

MR. GHERSIE: Your Excellency, it is with regret that I have to say that I cannot support the report of the committee which examined this Bill. While I am prepared to admit that the amending Bill has many desirable clauses, I feel that the whole object, the clarifying of divorce in this Colony, will be defeated if the question of domicile is left undefined.

Although I find myself in a minority of one, I may state that I do not think it would be interpreted to mean that I am entirely out of step, because on this particular issue my colleagues on the select committee agree with me and have recommended that a memorandum should be prepared on the subject and submitted to the Secretary of State. I would be prepared to agree with that procedure were it not for the fact that the submission of the memorandum would not prevent the Bill from becoming law and, if it became law, I anticipate considerable difficulty in introducing the necessary amendments.

I state in my minority report to that of the select committee:—

"Clause 4 provides that no person can petition for divorce or nullity of marriage unless domiciled in the Colony at the time the petition is presented. In my opinion an effort should be made to effect an amendment so that the question of domicile would not be raised in regard to cases where the marriage has actually taken place in the Colony."

[Mr. Ghersie]

My chief concern in this instance is to protect the Kenya born girl. The courts in Kenya invariably exercise jurisdiction in regard to civil cases where contracts have been entered into in Kenya, and I maintain there should be no exception in regard to a matrimonial contract. Why should a Kenya born girl have to pursue her husband from one country to another in order to set aside a marriage contracted by her with him in this country, only to find as she proceeds with her petition that her husband has again changed his domicile to some other country? She would finally become financially exhausted and destitute. Why draw a distinction and allow our courts to hear a petition for a judicial separation when the petitioner is only resident and not domiciled in the Colony? Surely the function of the courts should be to protect people in Kenya?

The proviso to clause 4 reads:—
"Provided that where a wife has been deserted by her husband, or where her husband has been deported from the Colony under any law for the time being in force relating to the deportation of aliens, and the husband was immediately before the desertion or deportation domiciled in the Colony, the Court shall have jurisdiction for the purpose of any proceedings under this Ordinance, notwithstanding that the husband has changed his domicile since the desertion or deportation."

Why not go a step further, and give a wife the right to appeal to the court of the Colony for help if she is married here? In any case, why limit the proviso to desertion? The least Government should insist upon is that the husband whose domicile fixes the domicile of both, should be compelled at the time of the marriage to declare his domicile and that should be inserted in the marriage certificate.

Before a wife can petition for divorce, she must prove that her husband is domiciled still in Kenya. Domicile has nothing to do with citizenship. Take an example. A Kenya girl marries. The husband, after committing an act of

adultery, goes say to Ireland, and acquires an Irish domicile, and in Ireland there is no such thing as divorce except under very exceptional circumstances. The law should be that if a marriage takes place in Kenya the Kenya courts can dissolve that marriage without due regard to the domicile of the parties either at the time of the marriage or afterwards.

With all due deference, I submit that we on this side take a more serious view of the problem than the average civil servant who looks forward to retirement overseas. We have made our homes in Kenya, and it is our duty to protect the youth of Kenya.

It would be a cardinal mistake if the Bill becomes law without such a necessary amendment. Domicile, after all, is nothing but a question of choice. It is a simple matter for a husband married outside the Colony to prove acceptance of a Kenya domicile, but it is a different proposition for an innocent wife to prove the domicile of her husband. If a husband married in this Colony then leaves for Australia, and there commits an act of adultery, the Kenya girl should have the right to obtain a divorce in this Colony and should be able to prove that adultery by an affidavit.

With regard to clause 5, I think it is a retrograde step, and the present law should either remain or the period in the Bill reduced to one year.

A marries B, and six weeks after the marriage A commits adultery. B cannot sue for a divorce inside a period of three years, unless the judge is prepared to give an earlier divorce due to one cause, exceptional hardship, or exceptional depravity, on the part of the respondent. The judge might hold that there is no exceptional hardship, and the wife must then wait three years before receiving the relief to which she is justly entitled. The only help the judge gets from this Bill is that he must take into consideration the interests of the children of the marriage and whether there is a reasonable probability of reconciliation.

If a husband were to give a wife cause to sue for a divorce on the grounds of adultery, she would be obliged to leave

[Mr. Ghersie]

him immediately. Then she would have to maintain herself and her child, if there is one born later, until the expiration of three years. She is not in a position to ask for maintenance, because she is not deserted, nor has she lodged her petition. We know that even after three years she may obtain a decree nisi, and six months after the decree is absolute. In the meantime, that girl may meet somebody she is genuinely fond of, her previous marriage being a tragedy. What is the girl to do during those four years?

I realize the argument in favour of three years, the possibility or probability of reconciliation. I submit that that applies to the minority of cases, but it is our duty to legislate for the majority. I appreciate that the Bill contains many improvements on the present law, but if no amendment is made to the sections to which I have referred I shall be compelled, reluctantly, to oppose the Bill.

EARL OF ERROLL: Your Excellency, while supporting the report of the select committee, I should like to make it quite clear at the beginning that I am entirely in agreement with the views of the hon. member for Uasin Gishu on the question of domicile, and I think I can say also that the majority of the select committee did realize there was in fact very great hardship in this question of domicile.

Where I disagree with the hon. member is merely on a matter of procedure. He considers the amendment should be moved now to this Bill, so that the question of domicile can be cleared up. But it was very obvious in the discussions which ensued in the committee that any amendment moved now or approved by this Council would probably be disallowed by the Secretary of State. It would also entail a great deal of correspondence between the Imperial Government and the Dominions Governments. In fact, this Bill would be held up for a considerable time, probably for a matter of several years.

It must be remembered that this happens not to be one of the Bills the Secretary of State is forcing on this Colony: it is a Bill we feel we want

because we think it confers certain benefits on a majority of people in this country. It allows for divorce for desertion, divorce for cruelty, divorce for lunacy, and it is a Bill, as I have already said, which we do want. But this question of domicile is a most important matter, and I do feel that it wants to be gone into more deeply.

It does not arise in the case where a Kenya girl marries a man domiciled in Kenya, because she can automatically obtain a divorce under this Bill; nor in the case of a Kenya born girl married to a man with English domicile, because she can get a divorce under the Indian and Colonial Divorce Act, 1926. Where hardship does occur is where she marries a man with Dominion domicile, and I think at this time, and during these troublous times especially, we have to try and safeguard our girls in this country against this, because we must realize that we may have Dominion troops coming here—we do not know—and if a marriage occurs a girl, before she can get a divorce, has to go to New Zealand, Australia, Canada, or South Africa to obtain it and, of course, in the great majority of cases, in this country, she would be unable to afford to do so.

Several suggestions were put up in the select committee to try and remedy this. One was that a residential qualification should be sufficient, but it is quite obvious that if a residential qualification would be sufficient for divorce that divorce would not be admitted in other countries, and the girl who obtained a divorce under these means would, if she married again elsewhere, be liable to a charge of bigamy. After all, I do not think that anyone here would wish to turn Kenya into an African Reno, which would happen if residential qualification were the only thing to prove.

Another suggestion was that on marriage the bridegroom should declare his intention of being domiciled in Kenya. There are various reasons, obviously, against that, which need not be gone into, but the chief one, to my mind, was that the very next day the man could go and declare that he is domiciled elsewhere, so that would not cover the point at all.

[Lord Erroll]

There was a suggestion that we could not possibly ask the Dominions Governments to review their legislation because it has never been done before. That is a very poor argument indeed, and I see no reason on earth why we should not attempt to do so. Adam and Eve, I understand, never went through the marriage ceremony, but that has not prevented us from having marriage laws which we are now trying to rectify. It is my intention, and I think the intention of the hon. member for Nyanza, to submit a memorandum to Government which we hope will be transmitted to the Secretary of State, urging the Imperial Government to find out from the Dominions Governments whether they would be prepared to come into line with their laws on the question of domicile.

We realize fully that this is a very serious matter indeed.

The only difference between the hon. member for Usin Gishu and the other members of the select committee is, as I said before, a difference of procedure, and I believe if we can get this Bill through now it will be to the greater good of the greater number, and for that reason I have not supported the minority report.

LADY SIDNEY FARRAR: Your Excellency, I should like to support what has been said by the noble earl as to the reasons which led us not to support the minority report.

I find myself faced with the need for what the hon. Member for Usin Gishu proposes, but there are two disadvantages. On the one hand, there is the delay in bringing into force the provisions of clause 7 which have been referred to, which form a very great step forward in the divorce laws of the Colony and in respect of our Kenya girls. On the other hand, there is the very difficult problem presented by this question of domicile. On consideration, I have no option but to decide that the advantages in introducing the Bill as it now stands outweigh the disadvantages of this problem of domicile, and for this reason only I have not supported the minority report, so far as paragraph (a) is concerned, of the hon. Member for Usin Gishu.

I do not agree with him on paragraph (b) at all.

I should like to support the remarks of the noble lord in that we hope to present a memorandum to go home to the Secretary of State on the question of domicile, urging that the Dominions Governments should come into line with some form of approved legislation on this subject. I therefore reserve the right at a later time, I hope, to support an amendment to the Bill which I hope will be introduced widening the powers under clause 7.

MR. WILLAN: Your Excellency, on this question of domicile, as I pointed out to the members of the select committee, from the legal point of view the position is this: the domicile for the time being of a married pair affords the only true test in jurisdiction to dissolve their marriage.

Here we have this Bill which will deal with people domiciled here. We have the Indian and Colonial Divorce Act, 1926, of England which enables people resident here but domiciled in England or Scotland to get a divorce here. But there are these difficulties, I admit, with regard to people domiciled say in Australia, New Zealand, South Africa and Canada, but that is not a matter which the Government of Kenya can overcome. Each of these Dominions is self-governing, and we cannot provide for people domiciled there getting divorces here.

On the second point raised by the hon. Member for Usin Gishu, that in clause 5 (1) the period of three years should be amended to one year, this was thoroughly thrashed out in select committee and it was decided to leave it at three years. As I stressed on the second reading of the Bill, one must read clause 5 with clause 7: we have widened the grounds for divorce under clause 7 but restricted the time under clause 5. If one reads clause 7 (c) of the Bill, divorce can be obtained on the ground of cruelty. One can quite imagine a case where the wife is treated, as she imagines, cruelly by her husband, on one occasion only. In a fit of pique she files her petition for a divorce six months after marriage. The

[Mr. Willan]

divorce takes place, whereas if she had time to reconsider the matter and wait three years probably she would not have taken proceedings and the marriage would not be broken up. I again stress that clause 5 must be read with clause 7.

The question was put and carried.

PENAL CODE (AMENDMENT) BILL

SELECT COMMITTEE REPORT

MR. WILLAN: Your Excellency, I beg to move that the select committee report on the Penal Code (Amendment) Bill be adopted.

This is a short report and a unanimous report and actually only amends the Bill in three respects.

The first is to the new section 18A in clause 3 of the Bill which deals with the use of force in effecting an arrest. There is a drafting error there and with the amendment it now reads:—

"Where any person is charged with a criminal offence arising out of the lawful arrest, or attempted arrest," etc.

That is done in order to protect people who are legally arresting other persons.

Clause 15 of the Bill has been deleted. That clause proposed an amendment to section 229 of the Penal Code which deals with assaults causing actual bodily harm. That offence is punishable at the present time with five years imprisonment with or without corporal punishment, and clause 15 proposed that the corporal punishment part of the section be deleted. The select committee came to the unanimous conclusion that corporal punishment should be retained. That results in the consequential re-numbering of clauses 16 to 27 as clauses 15 to 26.

Passing on to the third amendment, this occurs in clause 16, now re-numbered clause 15, which deals with stock thefts. Actually, the marginal note in that section—255—is "Stealing Cattle". Well, as the section deals with horses, mares, mules, camels, etc., obviously this is wrong, and all this amendment does is to substitute the word "stock" for the word "cattle."

MR. DENNISON seconded.

The question was put and carried.

CRIMINAL PROCEDURE CODE (AMENDMENT) BILL

SELECT COMMITTEE REPORT

MR. WILLAN: Your Excellency, I beg to move that the select committee report on the Criminal Procedure Code (Amendment) Bill be adopted.

As hon. members will see, there is a minority report by three hon. members of that committee, which deals with clause 3 only of the Bill. Otherwise these three hon. members entirely agree with the other four members with regard to the amendments proposed in this report.

Paragraph 1 of the report deals with clause 5 of the Bill which inserts a new sub-section to the new section 87 in the Principal Ordinance, dealing with complaints made to magistrates and charges.

Under the Justices of the Peace Ordinance (Chapter 21 of the Revised Edition) a person can make a complaint to a justice of the peace and that justice of the peace can issue a warrant or summons which is returnable to a magistrate. We want to make it clear that we are not interfering with that jurisdiction and therefore this new sub-section has been inserted in this report.

Passing on to clause 9, which is on page 9 of the Bill, this deals with section 132c (f) which reads as follows:—

"When a person is charged with any offence under section 257, 258, 259 or 260 of the Penal Code it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular times or exact dates."

These sections of the Penal Code deal with offences of theft by public servants, servants or agents in respect of any property. There is no restriction. Well, Sir, this section 132c (f) as drafted would only empower prosecution for the gross amount of property when the property stolen is money, because it is obvious that the words "gross sum" can relate to money only, so that if a servant steals money on several occasions then, under this section as at present drafted, you can put in the sum total stolen. But, when

[Mr. Willan] you come to the question of cattle stolen over a period of two months—so many head of cattle, you might get 30 head of cattle—this does not apply. Therefore, the select committee came to the conclusion that an amendment is necessary on the facts given to them as a result of an actual case where the prosecution was put into difficulties because I think 21 head of cattle were stolen, not all at one time but on various dates, and they were unable to identify what particular head of cattle were stolen on particular dates. This amendment overcomes cases like this by substituting the word "property" for the word "sum." This sub-section will now read:—

"When a person is charged with any offence," etc., "it shall be sufficient to specify the gross amount of property", etc., "without specifying particular times or exact dates."

Passing on to clause 14, on page 12 of the Bill, paragraph 3 (a) of the report admits a drafting error. Paragraph 3 (b) inserts a new section in that clause 13, and that new section will read as follows:—

"When a person is charged with the offence of stock theft under the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under section 10 of the Stock and Produce (Levy of Fines) Ordinance, 1933, he may be convicted of that offence although he was not charged with it."

We have had in the court cases where people have been charged with stock thefts under the Penal Code, but the courts have held that the offence has not been proved—that is, the theft has not been proved—although possession has been proved, and yet the courts held that they would not convict under section 10 of the Stock and Produce (Levy of Fines) Ordinance for being in illegal possession of that stock. So this section has been inserted to empower the courts to convict for an offence under section 10 of this Ordinance although the main charge is that of an offence of a stock theft under the Penal Code.

Paragraph 4 inserts a new clause 21 (with the consequential re-numbering of the remaining clauses) amending section 204 (1) of the Principal Ordinance.

This amendment is put in on account of clause 3 of the Bill—that is, the clause which reduces the jurisdiction of magistrates. The only new wording in section 204 (1) is in lines two and three: "a submission is made by the prosecutor." These words are new and their object is as follows: When the jurisdiction of the magistrates is reduced there may be cases in which the accused person has previous convictions against him. Well, of course, the magistrate knows nothing about this, or ought to know nothing about this, and if as a result of the trial, a summary trial, he convicts the accused, he is only entitled to give him two years. Then the prosecutor produces previous convictions and says that two years is insufficient. As the law stands at the present the magistrate has to start the proceedings again from the beginning with a preliminary inquiry. Now, with this amendment, the prosecutor, who knows of the previous convictions, or of any other special circumstances, will be able to get up before the magistrate at the beginning of the proceedings and say: "I submit that this case should be taken by way of a preliminary inquiry and be dealt with by the Supreme Court," and the magistrate will have no other option but to do so.

I need say nothing about paragraphs 5 and 6. Five is a consequential amendment on paragraph 4 and 6 is a drafting amendment.

Now I come to paragraph 7, which is a re-draft of section 338 in the Bill contained in clause 38 on page 24 of the Bill. This new section 338 deals with the summary rejection of appeals. In section 344 of the Code it is laid down that an appeal shall be before two judges unless the chief justice otherwise directs. Now we are providing that a judge in chambers can summarily dismiss an appeal if the appeal is merely brought on the grounds that the conviction was against the weight of evidence.

The Code provides in section 344 that appeals should be heard by two judges, and section 338 provides that a single

[Mr. Willan] judge in chambers can summarily reject an appeal, so we must ensure that there is no conflict between sections 338 and 344.

This is certainly an innovation so far as this Colony is concerned, but there are precedents for it in other colonies and actually in Tanganyika they passed a similar amendment some three months ago and in Uganda they will pass the same amendment before the end of this year.

Paragraph 8, the final paragraph, deals with a drafting error.

MR. DENNISON seconded.

LORD FRANCIS SCOTT: Sir, I was a member of this select committee, and, as will be seen from the report, I agreed with all the recommendations with one exception.

When I spoke on the second reading I raised doubts about section 38, which dealt with the summary dismissal of appeals. I should like to say that after going into this question very thoroughly in select committee I was satisfied that no injustice would be inflicted by the retention of that section.

But I am still completely unrepentant as to my views in dealing with clause 3. As I said previously, what we want is the maintenance of law and order in the country and I consider that this amendment, embodied in this Bill, would have the reverse effect. The tendency to-day is to ignore facts, and these facts are that different races have reached a different stage of civilization.

Now, Sir, everybody of every race, of whatever standing they may hold, is entitled to an equal amount of justice. But that does not mean that the methods of administering that justice need necessarily be uniform for all races. In a country like this the impact of modern civilization on uncivilized natives is bound to have a disturbing effect and anyone who has read that very cleverly written book "Red Strangers" sees there a picture which, I think, very ably describes the doubts and perplexities which are inflicted upon the native peoples when they first came into contact

with our methods and with our system of punishment for offences which, by their own customs and under their own laws, they punish in a very different way.

I know it is impossible to put the clock back, but I believe that when we first came to countries like this it would have been far better to have had a separate code dealing with these offences, because they would have understood that better than our system of locking up people for long periods in prison, for they consider that useless.

The tendency now is to go even further and put everything on a more judicial basis with regard to the methods of administering justice than before. That, to my mind, will have an ill effect. Delays are bound to be caused. We are told that by having an extra judge all will be well. We have already got that judge in this country; he was voted for in the last estimates. And I presume then, that there will be too much work and that we shall want another judge and that will mean extra expense.

But apart from that, in many of these offences it is necessary that they should be tried with the greatest expedition and that the penalties should be inflicted at once without any unnecessary delays, but under this proposed amendment that will not be done.

I have never been a native administrator, and I would never have dared to give vent to my views if it had not been for the fact that I have got the support of three distinguished gentlemen, apart from those actually serving in this country to-day, who have been native administrators in different parts of the world, and their views are set forth plainly in this report—the Bushe Report. I refer, of course, to gentlemen of such standing as Sir Henry Moore, who has been appointed Governor of this Colony, Sir Armigel Wade, who was the late Chief Secretary, and previously the Chief Native Commissioner, and Sir Bernard Bourdillon, who, at that time, was the Governor of Uganda and has now been appointed the Governor General of Sudan.

These three gentlemen express their views very plainly in this document and they are all strongly opposed to this

[Lord Francis Scott] alteration of the law. So, supported by the views of such distinguished gentlemen, who since then, since the publication of the report, have been considered worthy by His Majesty's Government of further promotions—and so presumably they are efficient people—I beg to move, as in the minority report, that section 10 in the Principal Ordinance be retained in the Bill.

I do feel that when somebody has just been appointed Governor of this Colony and when he has expressed his views so very strongly on paper in his capacity of Acting Governor of the Colony at the time, it does seem extremely discourteous that, in the interval between his appointment and of assuming that appointment, we should pass in this Legislative Council a section with which he definitely disagrees.

I beg to move this amendment: That section 10 of the Principal Ordinance be retained in the Bill.

MAJOR CAVENDISH-BENTINCK formally seconded.

HIS EXCELLENCY: The amendment is that the report of the select committee on the Criminal Procedure Code (Amendment) Bill be amended in the following particular: That the following clause be inserted therein—

"That clause 3 of the Bill be amended by deleting the figures 10 which appear in line one thereof."

MR. COOKE: Your Excellency, I suppose I should rise with great diffidence because since I last spoke in this Council I notice that in a leading article by that thoroughly virile and pugacious journalist and friend of mine, Mr. Coudrey, it states that the only person who knows anything about natives in this country, apart from himself of course, is my hon. friend Mr. Montgomery. I understand that Mr. Montgomery voices the opinions, or claims to voice the opinions, of the senior administrative officers in this country. Well, perhaps he voices the opinions of the unvoiced gentlemen on the other side of the Council and various other administrative officers, but I cannot

agree that he voices the opinions of all junior administrative officers of this country because one or two of them have seen nothing to take exception to in this particular clause.

I know that some people think—and I have a great deal of sympathy with that point of view—that the hon. members on the other side of Council should have been permitted to express their opinions in this Council, but I feel that they had every opportunity of expressing those opinions at the recent meeting of the provincial commissioners, and if they felt really strongly on that matter they could, I suppose, have put a very strong memorandum up to Government on that particular point. My hon. friend the Provincial Commissioner for Nyanza is a great exponent in drawing up memoranda.

There are a few people in this country who think that the natives are only impressed by swashbuckling gentlemen with a kiboko in one hand and a pair of handcuffs in the other. I do not know much about the natives myself—(MAJOR GROGAN: Hear, hear!)—but I feel that firmness and consistency and even-handed justice, impresses them far more than spectacular methods of that nature.

I agree with the noble lord the hon. Member for Rift Valley that locking up for long periods is not a good thing. I entirely agree, and that is one of the reasons why I am opposing this extended jurisdiction to subordinate courts.

Some people seem to think that this amending ordinance emanates from the fertile brain of Sir Seymour Bushe, Mr. MacGregor and others, but surely it is the accumulated experience of our own jurists throughout the centuries that these particular safeguards are necessary, and that the idea is not only to punish crime but to protect innocent people. I think everybody on this side of Council will agree with me that the African is just as entitled to that protection as any European, Indian or Arab in this country! I cannot understand how it is that if these subordinate courts are so efficient *vis-à-vis* the high courts that the hon. gentlemen on this side of Council have not pressed for this extended

[Mr. Cooke] jurisdiction to Europeans because, surely, we do not deny to the Europeans of this country what we have granted to the natives, the marvellous privilege of being put into prison by subordinate courts for over two years!

We are witnessing to-day that age-long struggle between the administrative law and the rule of law. Sometimes we hear that the "law is a hass" and complaints are made of its delays. But, in spite of this, I would rather put myself on its side for it is it, and it alone, that has saved us from the unspeakable tyrannies of Nazi Germany and of Soviet Russia.

I beg to oppose the amendment.

MR. MONTGOMERY: Your Excellency, I am not going over the arguments again, I only rise to comment that the hon. Member for the Coast prefers to take his opinions about native peoples and affairs from junior inexperienced officers rather than from senior officers.

I support the amendment.

MR. HOSKING: Your Excellency, I beg to oppose the amendment and support the majority report. In doing so I would like to make as clear as I can the attitude of the Administration to it.

As I see it, we would willingly divest ourselves of all magisterial powers if only we could be satisfied that discipline and administration in the districts could still be adequately maintained. If our support has been half-hearted it is because we are opposed to half-hearted measures. We have shown our support of the theory of divorce of the executive from the judicial in our system of indirect rule. Our chiefs and local native councils and tribunals have entirely separate functions, and though chiefs still serve on some of the tribunals they are gradually being weeded out from those tribunals. Anyhow, they hold no magisterial powers in their capacity of chief.

We favour the principle of complete divorce of the judicial and administrative functions and are solely concerned with the proper administration of the tribes for which we are responsible. It is not in any way a question of our prestige. Our prestige is safe in the hands of those who

are at times our most severe critics and who in the recent debate have rallied to our support.

If there was in every district a judicial officer who was not only learned in the law but also versed in the mentality of the native witnesses and accused who came before him, I am sure that there is hardly one of the administrative officers who would not welcome him or, if he were not willing to do so in the first instance, would soon come round to that point of view.

Stock thefts are the curse of the native reserves, and these offences are the most prevalent between natives. It is thefts by the Masai from the Kipsigis, by the Kipsigis from the Kisilil, by the Nandi from the Elgeyo, and vice versa, that is the curse in the disciplining of the reserves. We do not desire to give the savage sentences our forefathers used to give in England—even only a few years ago—for such offences, but we do require that justice should appear to be just and should be prompt.

We are worried on the question of delays that may arise. We are told that an extra judge will be provided and we hope that he will be able to cope with the work and I trust that if one extra judge cannot cope with the work then more will be provided.

From the native point of view, justice, as I said before, must appear to be just. These delays militate against the appearance of justice. To have to try a case, as a native thinks, twice, and to have to remand the accused to prison, and to keep in touch with the essential witnesses and retain in custody stock which is the subject of the case—all these are irksome to the native and there is a grave fear that unless justice can be prompt as well as just, the native may take the law into his own hands and that the injured party may retaliate by counter raids and thefts and place more reliance in violence and witchcraft than in the law.

I have the greatest respect for the law and would willingly see, as I say, all administrative officers divested of that aura of fear which accompanies all those who have to punish crime, so that they

[Mr. Hosking] can get on with their real work, which is native betterment, and welfare, and administration.

All we ask in the Administration is that justice should be as prompt as it always has been in the past, and should appear to the native to be as just as it always has been. (MAJOR GROGAN: Hear, hear.)

MR. PATEL: Your Excellency, I rise to support the majority report and to oppose the minority report.

I fail to understand why magistrates can be competent to try certain matters where natives are concerned if they are incompetent to try non-natives for such matters. I submit they should be competent to try matters where the natives are concerned, and they should be competent to try non-natives also. There has been a practice in this Colony for a long time that the magistrates' powers should be restricted on certain matters where non-natives are concerned, but I think it is right that the same power should be given where the natives are concerned also.

It is often found that there are certain drawbacks in the legal system, and also there are certain hardships, but the experience of centuries has found, and it is admitted by eminent authorities, that whatever the drawbacks in the legal system on the whole it works according to justice and equity. If these principles which have been formulated by the experience of centuries by eminent authorities are to be applied, then there should be no differentiation in the application of the law at all.

I think, on the whole, that the confidence which the law creates will only be guarded if the law is administered without any differentiation between the natives and non-natives in this country. If the legal system is to create confidence in the minds of the natives then I think they should be treated on the same basis as the non-natives as far as administrative justice is concerned. In fact, I think that further restrictions in the jurisdiction of magistrates should be made in the case of natives rather than of non-natives because the non-natives can put their case very

carefully, while natives would not be able to do so.

A person trying natives should be one who understands the principles of the law even more than in the case of the non-natives. Moreover, where the native is concerned he should get his hearing before a person who understands the principle of the law rather than before one who has hardly any experience in it. I think in most of the Empire countries the magistrates' powers are more restricted than in this country. Therefore, I think the minority report is out of date and should not be supported.

MR. WILLAN: Your Excellency, I have Your Excellency's authority to state that Government must oppose this amendment. If people will harden their hearts I have no more hope of convincing them than has my hon. friend the Member for the Coast.

I have no quarrel with the noble lord the hon. Member for the Rift Valley in moving this amendment, but I must say that I am surprised that it has been supported by one of the hon. Members representing Native Interests, because in the terms of this amendment it would seem that we are denying, or attempting to deny, to the natives the privileges which we have given to ourselves and which we have given to the Indian members of the community in Kenya.

With regard to the Europeans, we have taken exceptional care to provide in our code that no European shall be tried, or rather shall be sentenced to more than six months imprisonment by a magistrate. We have gone further: we have carefully provided that in every other case that a European shall be tried by a judge and a jury of five or twelve as the case may be. With regard to the Indians, we have provided that no magistrate shall have power to sentence them to a term of more than twelve months imprisonment.

Now, we come to the least civilized community and by far the most numerous in Kenya—there are about 3,000,000 of them—and we are handing them over to the tender mercies of administrative officers on this question of justice. I feel strongly on this point—I have no quarrel with the administrative officers, I was one

[Mr. Willan] myself once—but when you come to the question of law and justice it appears to me that not only in this Colony should justice be blind but that it should be colour blind as well!

We have in this Colony the curious situation of a member representing native interests who, on the one hand, advocates handing over these natives to the tender mercies of amateurs with regard to the administration of justice and, on the other hand, ignores the judge, the man who is fully trained in the law and has a full knowledge of the law, who can differentiate better than anybody between false and true evidence, and who by his long training, has been brought up to weigh and sift evidence. I do think it is rather an anomalous position that I, the Acting Attorney General of this Colony, should be taking up the cudgels on behalf of the natives with regard to the administration of justice against a member representing their interests.

DR. WILSON: Your Excellency, after the challenge by the hon. Acting Attorney General I must say that I support this amendment in the interests of the natives. Had I had any doubt at all before all those doubts have been removed by the speech of the hon. Chief Native Commissioner. I failed entirely to gather from that speech any opposition to the amendment. In fact, he seemed to be in support of the amendment. I want to say at once that I am not speaking for the maintenance of the prestige of these administrative officers, we can leave that to them. And as to these swashbucklers with kibokos and handcuffs, I have not the foggiest notion where they are to be found. I have not seen any administrative officers with handcuffs, and they have only carried a kiboko—

MR. COOKE: Your Excellency, on a point of explanation, I was not referring to the administrative officers, I was referring to certain people in the old days who answered that description and they were certainly not administrative officers.

DR. WILSON: Well, I will withdraw that.

There are one or two remarks made by the hon. Acting Attorney General I would like to comment upon. I suppose he was speaking in a sarcastic manner when he talked about handing over these natives to the tender mercies of the administrative officers. But that is what we want to do. Their tender mercies are better than the blind justice which he talked about. (Unofficial Members: Hear, hear.) What we want is a fair-minded justice and not too much law; everybody who knows the natives of this country knows perfectly well that the natives want that themselves. They don't want—and I want to make this perfectly clear—any criminal codes with too severe sentences.

What we want is that these 3½ million natives should have a fair chance of seeing that justice is done, and that is what we are out for. We know perfectly well that justice cannot be done to these 3½ million natives if they are left to the few judges we have now, and it is quite certain we are not going to get enough additional judges. That is where the racial distinction comes in: there are not 3½ million non-natives to have justice dealt out to them—the judges may be sufficient for their needs, but not for 3½ million natives.

MAJOR GROGAN: Your Excellency, I rise to support this amendment. There is a French saying, a very good one, that "the best is the enemy of the good". I rather feel, in connexion with this issue, that we are hitching our wagon to a star of theoretical justice and thereby involving ourselves in the risk of causing serious injustice to a very large number of other people. Intermittent delays of the law, and references to courts, and so on, which cause a large number of people such as witnesses and prosecutors, etc., to be subjected to all kinds of inconveniences which, in the aggregate, can easily exceed any possible risk of injustice to the accused.

I listened, with sorrow I may say, to the touching address of the hon. Chief Native Commissioner, because nothing more pathetic than the contrast between him as Jekyll in Council and Hyde in committee would be difficult to imagine. As far as the other questions raised by the hon. Attorney General are concerned

[Major Grogan]

those, of course, quite naturally are the point of view of a gentleman who sits in an office and deals in abstract law and who does ignore, in common with other hon. members who have spoken, the fact that there is a basic racial difference between the various components of human society.

As the noble lord the hon. Member for Rift Valley pointed out, there is an increasing tendency for people to fail to recognize the realities of life. They live in a sort of dream world, of fraternity, equality and so forth, which, when attempted to be applied has led to social catastrophe.

I beg of you, Sir, quite seriously, to agree that this issue should be postponed for further consideration or reference to the Secretary of State. It is well known to all of us here that the large majority of members on the gramophone side of Council are entirely opposed to this measure, and I think I can say that, almost with one exception, there is complete unanimity on this side. The fact that some of our Indian colleagues are against this amendment makes it doubly advisable to take it very seriously.

We have it under his own sign manual in the form of a very brilliant essay on the subject that the new Governor, due to arrive in a few days, is entirely opposed to these new proposals, and it is impossible to imagine a more complete, brilliant, or destructive criticism of the suggestion. After all, there is, without any sort of question, throughout the entire country a very large amount of feeling against this new proposal, and there is no urgency about the matter. It has been simmering for six years, and it can simmer for another six months without serious damage to anybody.

I think it would be a very good thing if the issue were put quite clearly to the Secretary of State, that the new Governor is opposed to it, the bulk of the Administration is opposed to it, the unofficial element is almost universally opposed to it, it may be supported by a few Indian gentlemen. If he has to force it down our throats at the instigation of some pedantic gentleman who came out here for a few months, let us have a full

pantomime dress rehearsal of the Governor introducing a measure that he detests, and insisting on Government support which detests it against the universal wishes of the community they are supposed to govern.

COL. KIRKWOOD: Your Excellency, I rise to support the minority report. As I said in my speech on this particular Bill the other day, I see no reason to alter a practice that has proved efficient and which has been dealt with very easily by administrative officers for 30 years. The Bushe Report has been held up for six years, and I see no reason why it could not be held up for a few weeks longer. The point was made by the hon. Member for Rift Valley that the Governor-Designate, Sir Henry Moore, once Chief Secretary in this Colony under a previous Governor, is arriving in a few days. It has been pointed out that he has recorded his disagreement with the suggestion contained in clause 3 of the Bill. It would be interesting to have Sir Henry Moore in this Council again and to find out if in the last two years at the Colonial Office he has altered his views.

I should also like to stress again the fact that there are many gentlemen on the other side of Council with 30 years experience of this subject, and they are debarred from speaking. It is to be lamented that this morning, when we are discussing this Bill, and especially the implication in clause 3, it can be taken as a censure upon the administrative officers of the Colony while their seniors, the most experienced officers, who are the provincial commissioners—some of whom have served the best part of their lives here and have long years of the administration of justice to natives—are debarred from speaking.

It is a tragedy, it is Gilbertian, and I cannot understand why there is not more uniform action on this side of Council to bring about a crisis to stop this direct ruling from the Colonial Office in the Colony. Unfortunately, it has been announced that Government cannot see its way to accepting the minority report, but I hope that before Council adjourns means will be found, and I believe they will be, to stymie this Bill for the present.

MR. NICOL: Your Excellency, I had no intention of intervening in this debate at all but, after listening to the arguments from both sides of Council, I would urge, in view of the expressed support of the minority report by both representatives for native affairs—the hon. Members Mr. Montgomery and Dr. Wilson—that this matter should be put back for further consideration of the case. In the meantime I personally support the minority report.

MR. ISHER DASS: Your Excellency, I rise to oppose this amendment.

The noble lord, the hon. Member for Rift Valley, is excited by the words commencing in the fourth line of the minority report:

“as to retain the powers of subordinate courts over natives.”

He believes that what is good enough for Indians and Europeans is not good enough for natives, and therefore is excited, and his feelings as far as justice to natives can well be gauged by the line I have quoted.

I can appreciate the conception of justice for Africans held by the hon. member for Kiambu, it can be very well gauged by the book he wrote some years ago “Cape to Cairo”, in which he advocated his conception of justice for Africans . . .

MAJOR GROGAN: On a point of explanation, I am not the hon. Member for Kiambu!

HIS EXCELLENCY: I think the hon. member means for Ukamba.

MR. ISHER DASS: I shall have to deal with the speech of the hon. member attempting to represent native interests, Dr. Wilson. Dr. Wilson has very kindly accepted the challenge of the hon. Chief Native Commissioner but, in fact, he omitted to mention how many native institutions or native chiefs or organizations representing native interests he had had time to consult and to express their views. Whether you are nominated or elected to represent certain interests or certain people on such an important issue as is now before Council, which has been considered by the Imperial

Government and the Bushe Commission, you should have ample time to consult your constituents, and at least be able to speak on their behalf, and in speaking to his conception of justice the hon. member would have done better if he had said he had consulted so many natives and they were of opinion that this clause should be retained. Then we would know how he came to support the amendment. But his contention does not hold any water at all.

So much has been said about the Governor-Designate who is coming shortly, with the suggestion that this matter be held up until his arrival, because he was one of the members of the Bushe Commission and is an authority on the native administration. In connexion with this, all I can say is that this Bill is not the outcome of any individual here, nor of the hon. Attorney General, nor of the Governor. There was a Commission appointed some years ago which went through the whole question and made recommendations to the Imperial Government, where the matter has been discussed, and Sir Henry Moore has been an official at the Colonial Office for some years now. He must have known of all these conferences and recommendations to the local Government to bring about this legislation. Therefore any idea that the matter be delayed until his arrival does not hold any water at all. It is just another trick to side-track a reform long overdue, and in these circumstances I see no reason to delay the matter or to support the amendment. I strongly oppose the amendment, and hope every member with the interests of the natives at heart will oppose it.

EARL OF ERROLL: Your Excellency, I am in entire support with what the majority of hon. members on this side have said, and I add my plea to that of the hon. Member for Ukamba that consideration of this Bill be put off. In order to try and attain that I would, under Standing Rule and Order No. 29 (2), move that the debate stand adjourned until the arrival of the Governor-Designate in the Colony.

LADY SIDNEY FARRAR seconded.

HIS EXCELLENCY: A motion for the adjournment of Council?

EARL OF ERROLL: Or of debate.

HIS EXCELLENCY: Yes. At the moment the position is that we have a motion before Council to the effect that the select committee report on the Bill be adopted. To that there has been an amendment moved to the effect that clause 3 of the Bill be amended by deleting the figures 10 which appear in line 1 thereof. There is now a motion to the effect that the debate on the original motion be deferred until the arrival of the Governor-Designate, and that has been seconded.

MR. SHAMSUD-DEEN: On a point of order, can such a motion be moved by any member at any time?

HIS EXCELLENCY: It can be moved at any time that the debate on any subject be adjourned.

MR. WILLAN: With Your Excellency's authority, I rise to speak on the motion proposed by the noble earl, the hon. Member for Kiambu, and merely state that Government cannot accept that motion.

MR. SHAMSUD-DEEN: Your Excellency, I have a very open mind on this question, for the simple reason that it does not affect the Indian interests at all.

HIS EXCELLENCY: The hon. member realizes that the motion before Council at the moment is that the debate be adjourned until the arrival of the Governor-Designate?

If no hon member wishes to speak I will put the question: that this debate be adjourned until the arrival of the new Governor.

The question was put and lost by 11 votes to 24:

Ayes: Earl of Erroll, Lady Sidney Farrar, Mr. Gherrie, Major Grogan, Col. Kirkwood, Col. Modera, Messrs. Montgomery, Nicol, Lord Francis Scott, Dr. Wilson, Mr. Wright—11.

Noes: Messrs. Cooke, Davenport, Daubney, Dennison, Fazan, Hebden,

Hodge, Hosking, Isher Dass, Kasim, Lacey, Lockhart, McKean, Mortimer, Pandya, Patel, Dr. Paterson, Messrs. Rammell, Rennie, Shamsud-Deen, Stronach, Tomkinson, Willan, Wolfe—24.

The debate on the amendment moved by the hon. Member for Rift Valley was resumed.

MR. SHAMSUD-DEEN: On a point of order, Your Excellency, is there not a Standing Order for the usual adjournment of Council for an interval during the morning?

HIS EXCELLENCY: I know of no Standing Rule and Order for that particular purpose!

MR. SHAMSUD-DEEN: Your Excellency, I must apologize for having risen before the division, but it was due to the fact that when the declaration was made that Government was not going to accept the motion I thought it was only a waste of time for Council to take a vote and divide on it.

As regards this amendment, I have an open mind on this, for the simple reason that it does not affect Indian interests at all. But I must say that I am very much impressed by the arguments so far advanced by those opposing the amendment, because after all it does appear to me to be some sort of quarrel between summary trials by junior judicial officers and the high courts. What I am very much concerned about is not the efficiency or integrity or capability of the administrative officers, but I feel that our laws to-day are in such an awful muddle! (Laughter.) Very few administrative officers as a matter of fact, I think I can say, with the exception of the Supreme Courts in Nairobi and Mombasa, and possibly the hon. Attorney General, can tell you what laws are in force to-day and what have been repealed. Few of the law books have been brought up to date, and as a result of that there have been instances, I think I am right in saying, of people having been convicted under laws long ago repealed!

(Mr. Shamsud-Deen)

Therefore, it is much safer to leave this matter in the hands of the Supreme Court who have a special staff to keep their law books up to date—(laughter)—and who take the trouble to find out what is law and what is not. (Laughter.)

I must say that the debate this morning has been very amusing indeed—(laughter)—inasmuch as the representatives of native interests have actually supported the amendment. I would only put one question.

If there were proper native representatives sitting in their place, would they have done the same as the present hon. members have? I submit it is one of the curses of the system of nomination, especially of nominating people who do not know what their principals require and what their interests are.

The question of the amendment moved by the hon. Member for Rift Valley was put and lost by 10 votes to 23, one member not voting:

Ayes: Earl of Erroll, Lady Sidney Farrar, Mr. Gherrie, Col. Kirkwood, Col. Modera, Messrs. Montgomery, Nicol, Lord Francis Scott, Dr. Wilson, Mr. Wright—10.

Noes: Messrs. Cooke, Davenport, Daubney, Dennison, Fazan, Hebden, Hodge, Hosking, Isher Dass, Kasim, Lacey, Lockhart, McKean, Mortimer, Pandya, Patel, Dr. Paterson, Messrs. Rammell, Rennie, Stronach, Tomkinson, Willan, Wolfe—23.

Council adjourned for the usual interval.

The debate on the original motion was continued.

MR. MONTGOMERY: Your Excellency, I beg to move the amendment tabled in my name:—

That the Report of the Select Committee on the Criminal Procedure Code be amended—

(a) by inserting immediately before paragraph 1 thereof, a new paragraph as follows:—

"1. That clause 3 be amended by deleting the word "two" which occurs in the eighth line thereof and by substituting therefor the word "four";

and

(b) by renumbering paragraphs 1 to 8, both inclusive, as paragraphs 2 to 9 respectively.

I am not going over all the ground that has been discussed this morning. This is a straightforward issue and, in fact, only means that I want an increase in the jurisdiction of first class magistrates so that they will be able to deal with cases up to a maximum sentence of four years. First class magistrates in this Colony are resident magistrates, Provincial Commissioners and such other officers as the Governor may from time to time appoint. It will get over a whole lot of difficulties, which I am quite certain will ensue, if there are a larger number of first class magistrates with adequate powers, and I think four years would be more or less adequate.

In this morning's debate a strong argument in favour of my amendment was given by the hon. Acting Attorney General when he introduced the amendment to section 204, in which he visualized that a magistrate, instead of being able to deal summarily with a case and dispose of it would have to refer it to the Supreme Court, and, therefore, have to go through a long preliminary inquiry. Surely this is going to mean extra work and time.

In Select Committee the hon. Acting Attorney General did tell me that in the matter of administrative justice, expense would not be brought into the question at all. Well, I agree with him there, but if you can get adequate justice and show a saving surely it should be considered and if this amendment goes through you will not have to have so many additional judges, Crown counsels, and so on and so forth! I am not concerned with the Administration, but the whole of the farming community and in fact most of the country, except the legal element, are in favour of this amendment.

(Mr. Montgomery)

I hope Government are prepared to accept this because it does make things easier in cutting out the unlimited powers of magistrates in respect of natives.

LORD FRANCIS SCOTT seconded.

MR. WILLAN: Your Excellency, I regret very much that I am authorized to state that Government cannot accept this amendment because it does show a refreshing softening of the heart on behalf of the hon. Member Representing Native Interests. He shows that he is at least veering round, not the whole way, but veering round towards the opinion which I expressed earlier in Council this morning.

MR. MONTGOMERY: On a point of explanation, it is a case of a little cake is better than none at all.

MR. WILLAN: I quite agree, and therefore it is all the more regrettable that Government is unable to give the hon. member his little piece of cake.

The hon. member stated that my remarks on the amendment to section 204 supported his argument. Well, I cannot quite follow that because, actually, all that that amendment means is that the proceedings will start with a preliminary inquiry or as a trial according to the seriousness of the offence, or according as to whether there are previous convictions or other special circumstances involving the accused. So, actually the amendment to section 204 will involve no extra work or extra time on the part of the magistrates.

Then the hon. Member Representing Native Interests said that this amendment had the support of the farming community. I do not know whether he means the European or the Native farming community!

LORD FRANCIS SCOTT: Sir, I regret very much to hear my hon. friend the Attorney General say that Government is unable to accept this. I did really think that if we did come down from the whole cake and only ask for a little crumb like this it would have been granted.

I would like to say in support of this that first of all we have had the argument put forward by the hon. Chief Native Commissioner on the previous amendment which was moved and which certainly supports this amendment and we have had the views expressed by Sir Henry Moore in a memorandum on this in the Bushe Report in which he puts forward three possible ways of dealing with this question. In one he says that if the powers of Administrative officers—

“are restricted to a maximum of two years’ imprisonment, with a proviso that in cases where, after conviction, previous conviction or convictions are proved, imprisonment may be awarded up to say, a maximum of seven years.”

which is a great deal more than is asked for in this amendment.

MR. PATEL: Your Excellency, I oppose the amendment. I think the amendment proposed goes against all the experience of the Empire countries in which the power given to the Courts is according to the standing of the Courts. Four years’ power for first class magistrates I think is not given in any other country as far as I know. It will be very serious to give first class magistrates power to impose sentences of four years. In my submission two years is an excessive power but we have had it in this Colony for so many years that one may not like to disturb it. At the same time I must say on behalf of the Indian community who are also affected by this amendment, that they strongly oppose an increase in the powers of the magistrates from two to four years.

The amendment was put and negatived.

HIS EXCELLENCY: The original debate is now resumed, that is that the Select Committee Report be adopted.

EARL OF ERROLL: On a point of order, Sir, isn’t there another amendment?

HIS EXCELLENCY: That has not been moved yet.

MR. DENNISON: Your Excellency, I beg to move that the amendment standing in my name be adopted. The amendment is with regard to clause 3 of the Bill which reads as follows:—

(i) by inserting immediately before paragraph 1 thereof a new paragraph as follows:—

“1. That clause 3 be amended (a) by inserting immediately after the word “fine” which occurs in the twelfth line of section 7 contained therein the commas and words “, or costs, or compensation,”; (b) by inserting immediately after the word “fine” which occurs in the thirteenth line of section 8 contained therein the commas and words “, or costs, or compensation,”; (c) by inserting immediately after the word “fine” which occurs in the thirteenth line of section 9 contained therein the commas and words “, or costs, or compensation,”; and (d) by inserting immediately after the word “fine” which occurs in the last line of sub-section (2) of section 11 contained therein, the commas and words “, or costs, or compensation,”; and

(ii) by renumbering paragraphs 1 to 8, both inclusive, as paragraphs 2 to 9 respectively.

A court may also award costs or compensation as well as a fine, and when a court sentences a man to pay compensation or costs it may, in default of him paying that compensation or costs, sentence him to prison. This has the effect of automatically increasing the jurisdiction of the magistrates to a certain extent; for example, a first class magistrate may give a sentence of two years with so much costs or compensation, and in default of payment six months. That has the effect of raising the jurisdiction to two years and six months and this, I might say, is a piece of the cake that we have heard so much about.

MR. LACEY seconded.

COL. KIRKWOOD: Your Excellency, I rise to support the amendment just proposed. I think it is very illuminating that two members on the other

side of Council, at the risk of excommunication or being threatened with dire results, should have dared to move an amendment to this Bill. I would like to draw attention to what is happening! Your Excellency has refused to receive any amendment or give any consideration to what is practically a unanimous decision of the Elected Members . . .

MR. WILLAN: Your Excellency, on a point of order, what has this got to do with this amendment?

COL. KIRKWOOD: Do you propose that this should be deleted from the records of Council?

I still support the amendment before Council. I assume that this one is going to be accepted for, I do not think, from our experience here this morning, that any hon. member on the other side of Council would have the audacity to oppose it. I have no doubt that the hon. gentlemen object to the Gilbertian position facing them this morning: We have on the other side of Council, officials of very many years’ experience in the handling of this Colony and their advice would be of great help to Your Excellency if they were permitted to give it. But they are not permitted to give that advice—they dare not—and when it comes to voting it is indicated to them which way they ought to vote. As soon as this farce is finished the better it will be for the peace of the Colony.

The amendment was put and carried.

MAJOR GROGAN: Your Excellency, I beg to move another amendment:

That the Preamble to the Bill be amended by the deletion of the words “Be it enacted by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof” and the substitution thereof of the words “Be it enacted under duress by the Governor of the Colony of Kenya, against the advice and without the consent of the Legislative Council thereof.” (Laughter.)

LADY SIDNEY FARRAR seconded.

MR. WILLAN: Your Excellency, if I may say so this is what I would call a frivolous amendment. I would merely add that this amendment is against the facts as recorded in this Council this morning. When the two amendments moved by members on the other side of Council were voted on they were defeated by 24 votes to 11 and 23 to 10 respectively.

MAJOR GROGAN: It is well recognized with regard to recommendations in this Council that the voting has nothing whatever to do with opinions.

The amendment was put and negatived.

The debate on the original motion was resumed.

MR. WILLAN: Your Excellency, I do not think there is anything I need say in reply. The debate has centred round clause 3 and I think it would only be wasting time if I were to say anything further.

The question that the Select Committee Report on the Criminal Procedure Code (Amendment) Bill as amended be adopted was put and carried.

ADULTERATION OF PRODUCE (AMENDMENT) BILL

SELECT COMMITTEE REPORT

MR. WOLFE: Your Excellency, I beg to move that the Select Committee Report on the Adulteration of Produce (Amendment) Bill be adopted.

There are only two amendments to the Bill of any significance recommended by the Select Committee. The first is that under clause 4—

"When the power of search without a search warrant has been exercised . . . if the magistrate considers that the Inspector in making such search acted without reasonable cause he shall report to the Governor all the circumstances of the search together with his views thereon."

The object of that will be that the perpetrator of that offence, that is of instituting a search without sound cause, shall receive a severe reprimand and he will probably not do it again.

The other amendment is to give power to publish the offence in the Official Gazette in the first instance and in the case of a second offence to publish it in the public Press.

MR. DENNISON seconded.

The question was put and carried.

MUNICIPALITIES (HOSPITAL RATE) BILL

SELECT COMMITTEE REPORT

MR. MORTIMER: Your Excellency, I beg to move that the Select Committee Report on the Municipalities (Hospital Rate) Bill be adopted.

The Report of the Select Committee is a unanimous one with the exception of the fact that the hon. Member for Nairobi North was unable to attend the meeting of the Committee and feels that he is therefore unable to sign the Report. But he has informed me that he would have been quite prepared had he been in Council now to have supported the recommendations of the remainder of the Committee.

The Committee had in its meeting the advice and help of the Hon. Director of Medical Services and of the Town Clerk of Nairobi.

The Committee proposes that clause 2 be amended and that the definition of "Asian" be enlarged to make it clear that Goans are included as Asians for the purposes of this Bill, and further, to give authority to Your Excellency to include within that definition of "Asian" other communities or racial groups in any particular municipality. That power will be applied to individual municipalities. For example, if in Nairobi it is desired to include in the definition of "Asian", Comoro Islanders who happened to be residing in Nairobi, that would not apply to Mombasa unless the notice specifically applied it.

The definition of "Europeans" it is proposed to amend by the introduction of the words "pure Europeans" in order to remove any ambiguity in the application of the Ordinance.

In clause 5 the Committee consider that it is desirable that municipal authorities should be required to inform, by

[Mr. Mortimer]

public notice, rate-payers within their area of the benefits they might expect to derive from the imposition of the rate. Of course, in practice this would be done, but in order to put the matter beyond doubt it is proposed to make provision for advertisements to appear in the public Press of the scheme to be applied in any particular area.

It will be noted that by re-drafting the clause the proviso in the original Bill is now included in sub-clause (1).

Dealing now with clause 6 the Committee recommend that the clause as originally drafted be deleted and a new clause substituted therefor. During the debate on the second reading of this Bill some misgivings were expressed about the payment of the proceeds of the rate into ordinary municipal revenues, and an assurance was desired that the money from this rate would be only used for the purposes for which the rate was levied. The Committee considered this point very carefully and decided that it would be undesirable, for several reasons, to have the proceeds of the rate paid into a special fund, because, for one rather obvious reason, it might occur that during the first year of the operation of the Ordinance there would be a deficit and authority would be required for the municipal authority to be able to pay from its ordinary funds any amount required to make up that deficit.

The re-draft of clause 6, therefore, provides in sub-clause (1) that the proceeds of the rate, although to be paid into municipal funds, shall be used solely for the purpose of reducing the rate of hospital or nursing home charges and for any other purposes prescribed by the Ordinance, any shortage being made up from municipal funds.

Sub-clause (2) is an amendment of the original clause which provided that if in any municipality a European rate was imposed in advance of an Asian rate then the municipal funds should be used only for the benefit of Europeans. The Committee now proposes that that clause be amended to make a similar provision in the event of a rate being imposed upon

Asians in advance of a rate upon Europeans.

In the select committee the suggestion was made that the Bill should contain provision to ensure that the rate would not be applied to Asians unless the majority of Asian councillors in the particular municipality had expressed themselves in favour of the application of the Bill. An amendment of that kind could not be accepted, because it would be subversive of the principles of local government, which require that the majority vote of the particular local governing body shall be the determining factor in any decision. But, in order to allay the misgivings of the hon. member who introduced the question, the Town Clerk of Nairobi undertook to ask Nairobi Municipal Council for authority to express in writing his own view that the proposed rate would not in fact be imposed on Indians contrary to the wishes of the Indian representatives on the Council. On this understanding the objection to the Bill was withdrawn. It subsequently transpired, however, that the Municipal Council of Nairobi was not prepared to make such a statement as it saw no necessity, the Indian councillors having expressed themselves in favour of the Bill at an earlier stage of the Council's deliberations.

It should be made clear that the Council's reticence in giving the assurance was not due to any objection to the principle involved. In placing the matter before the General Purposes Committee of the Council, the Town Clerk said he had assured the select committee that if Council were convinced that the Asian community did not desire the provisions of the Bill to be applied to them the Council would not endeavour to force upon them a scheme to which they objected. The General Purposes Committee signified their approval of the views expressed by the Town Clerk, and this statement was embodied in the report which was subsequently adopted by full Council. In confirmation of the attitude of Nairobi Municipal Council I will quote the words of the Deputy Mayor. Speaking on behalf of the European community he said:

[Mr. Mortimer]

"I say that they are going to grab at this with both hands. If the Indian community do not want it they need not have it."

It must, of course, be obvious to anyone that no municipal authority would be so foolish as to attempt to force a community service of this kind upon an unwilling community. I trust, therefore, that the hon. Indian members of this Council will accept the situation and will support the Bill with the amendments now proposed.

The final amendment is to clause 8, and is of a drafting nature.

MR. DENNISON seconded.

MR. SHAMSUD-DEEN: Your Excellency, I think it my duty to make the position clear as far as I am concerned. I am a member of Nairobi Municipal Council, and will repeat what I said in that Council.

I said there as I say here, that I have no knowledge of the fact that the Indian community is opposed to this rate being introduced, but the trouble is that the scheme is fraught with difficulties and so many details that the Indian community know nothing about. As far as my knowledge goes, no public meetings have been held to acquaint the general public as to what the scheme in detail is going to be, the rates, and the proportion of comforts and consideration that they will receive.

I will go to the extent of saying that as far as medical treatment is concerned, there is no differentiation whatsoever, but the conditions prevailing in the present hospital have been so different to the European hospital that even one-tenth of the fees charged the Indian patients, considering all the domestic conveniences and furniture and space and so on comprise a high charge. If under this Bill the Asian community is going to be called on to pay certain rates, and the accommodation and furniture and space and those sort of things remain the same and they still have to pay the same amount as in the present hospital, then there is something to be said for them.

I have been off the Municipal Council for two or three years, and have never heard the details of the scheme, but I have been informed by the Town Clerk and other members that other Indian members of the Council had been informed and had approved of them. I personally am satisfied that this is an enabling Bill, and there is no reason or danger whatever in it if passed. It will be an optional thing and, as the hon. Commissioner for Lands and Settlement said, no municipality would be foolish enough to pass the Bill over the heads of the Indian community if the latter did not desire it.

The only reason the Council was reluctant to give the assurance in writing was that such an assurance would probably wreck the whole Bill. Otherwise, as far as I can judge their attitude, they are not going to foist the Bill by force on the Indian community.

MR. MORTIMER: Your Excellency, I have nothing to say in reply, except to emphasize that this is purely an enabling Bill, and permits any municipal authority to apply the scheme which in turn shall be fully advertised.

The question was put and carried.

FISH PROTECTION BILL

SECOND READING

MR. DENNISON: Your Excellency, I beg to move that the Fish Protection Bill be read a second time.

This is mostly an enabling Bill; in fact, there are only two clauses which are not. The requirements of the Bill could no doubt have been met by amending the existing Ordinance, but we are endeavouring nowadays to consolidate as much as possible.

One of the main reasons for the Bill is that the rules made under the existing Ordinance in 1932 came to the Legal Department last year with proposed amendments. It was the considered opinion of the Legal Department that the rules and amendments were to a great extent *ultra vires*, but it was thought necessary to have them, so this Bill was drafted to consolidate the law and give the necessary rule making power.

[Mr. Dennison]

The Bill was drafted in consultation with the Provincial Commissioner, Nyanza, the fishery inspector of Nyanza, and the Game Warden. All were in complete agreement with the provisions of the Bill, which I submit are in no way controversial, and will consolidate the law and make the law regarding the protection of fish easier to work than it has been.

Clause 2 is purely a definition clause, but in the present Ordinance there is no definition section at all. For instance, the term "fishery inspector" is widely used in the rules, but has no legal standing whatever so far as can be ascertained, and it is considered necessary to have a definition setting out the types of fish which are protected.

The main clause is 3, giving rule-making powers, and here I would point out that there is no great difference from the present Ordinance. Paragraphs (a), (b), (d), (e), (f), (g) of sub-clause (1) are taken completely from the existing Ordinance. The remaining paragraphs (c), (h), (i) give power to make rules for various matters found by experience to be necessary and desirable.

Sub-clause 2 is very necessary, as the rules made under the Ordinance will require various acts to be done by various people such as administrative officers, fishery inspectors, and so on, such as trout warden. The rules can only be made in respect of a declared area, not in respect of the whole Colony, by the Governor in Council, and in point of fact, at the moment rules have been drafted and are under consideration and will come into operation immediately this Bill passes. They will apply only to Lake Victoria, and it is difficult to apply them elsewhere.

Clause 4 extends the penalty from a maximum of £30 to a minimum of a £50 fine, as £30 is rather a low figure nowadays where it may be a question concerning wilful and consistent disobedience of the rules or a second or third conviction under the Ordinance itself.

Clause 5 follows the law at home, and makes it an offence to kill or capture fish by means of explosives. There is a saving clause, in clause 6, that where scientific bodies or persons want to use explosives they can do so with the consent of Your Excellency.

Clause 7 makes provision for the proper authorities to enter land or premises for the purpose of preventing or detecting offences. Actually this power was given by the 1932 rules, and although not exercised to any extent it was one of the rules considered *ultra vires*. The clause goes on to give further power to arrest without a warrant and search any suspected person, with the protection that the person arrested shall be brought before a magistrate with all speed.

Clause 8 is in point of fact the same as the present law and contains no material difference.

Clause 9 is new, making it an offence to obstruct officers and others controlling fish, and this was found to be a necessary clause, as the delay occasioned by obstruction often defeats the end of a law such as this.

Finally, clause 10 repeats the Fish Protection Ordinance, Chapter 163 of the Revised Edition.

MR. WILLAN seconded.

The question was put and carried.

MARKETING OF NATIVE PRODUCE (AMENDMENT) BILL

SECOND READING

MR. DENNISON: Your Excellency, I beg to move that the Marketing of Native Produce (Amendment) Bill be read a second time.

This Bill is not in the slightest degree controversial, and is necessitated entirely by reason of the definition of "native produce" contained in the principal Ordinance.

This definition says:

"Native produce means any produce grown or produced by natives."

Live stock and products from such stock are not included. It has been found desirable from time to time to make

[Mr. Dennison] rules dealing with the marketing of native produce, especially in the native reserves. The object of this Bill either had to be met by amending the Ordinance or bringing in a special Ordinance. It is necessary for the Governor in Council to have power to make rules, especially dealing with live animals and their products in the native reserves. Clause 2 simply amends the definition of native produce to include "live stock and the meat and all other products derived from such live stock".

Clause 3 is a consequential amendment following on clause 2, and clause 4 amends section 10 of the principal Ordinance in a very necessary manner. As the law stands at the moment, every licence granted under the Ordinance must be published. It was not the intention to publish anything other than an exclusive trading licence, and this clause contains the necessary amendment.

Clause 5 amends section 16 (c)—section 16 being the rule-making power—by extending the rule-making powers of the Governor in Council, to govern the procedure at auctions of native produce. Rules will be made for organizing and controlling those auctions.

MR. WILLAN seconded.

The question was put and carried.

BILLS

IN COMMITTEE

MR. WILLAN moved that Council resolve itself into Committee of the whole Council to consider, clause by clause, the Fish Protection Bill and the Marketing of Native Produce (Amendment) Bill, and also to consider one amendment to the 1938 Supplementary Appropriation Bill recommended to Council by His Excellency under Standing Rule and Order No. 88.

MR. DENNISON seconded.

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

His Excellency moved into the Chair. The Fish Protection Bill was considered clause by clause.

The Marketing of Native Produce (Amendment) Bill was considered clause by clause.

MR. WILLAN moved that the 1938 Supplementary Appropriation Bill be amended by the deletion of the figure "3" which occurs in Item XXX of the Schedule and the substitution thereof of the figure "5".

The question was put and carried.

MR. WILLAN moved that the Fish Protection Bill and the Marketing of Native Produce (Amendment) Bill be reported without amendment and the 1938 Supplementary Appropriation Bill with amendment.

The question was put and carried.

His Excellency vacated the Chair.

Council resumed its sitting.

His Excellency reported the Fish Protection Bill and the Marketing of Native Produce (Amendment) Bill without amendment and the 1938 Supplementary Appropriation Bill with amendment.

THIRD READINGS

MR. WILLAN moved that the following Bills be read the third time and passed:—

The Matrimonial Causes Bill.

The Penal Code (Amendment) Bill.

The Criminal Procedure Code (Amendment) Bill.

The Adulteration of Produce (Amendment) Bill.

The Municipalities (Hospital Rate) Bill.

The Fish Protection Bill.

The Marketing of Native Produce (Amendment) Bill.

The 1938 Supplementary Appropriation Bill.

MR. DENNISON seconded.

The question was put and carried.

The eight Bills were each read the third time and passed.

ADJOURNMENT

Council adjourned till 10 a.m. on Monday, 11th December, 1939.

Monday, 11th December, 1939

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Monday, 11th December, 1939, His Excellency the Acting Governor (W. Harragin, Esq., K.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of the 5th December, 1939, were confirmed.

ORAL ANSWERS TO QUESTIONS

No. 62.—RESIDENT LABOURERS
ORDINANCE

MAJOR CAVENDISH-BENTINCK asked: When does Government propose to bring into force the Resident Labourers Ordinance?

MR. RENNIE: The Secretary of State for the Colonies has approved of the issue of a Proclamation to bring into force the Resident Labourers Ordinance, 1937, as amended by Ordinance No. 18 of 1939, but before such a Proclamation can issue, a survey of the area to be set aside for occupation by discharged resident labourers is necessary. Steps to this end are being taken.

LORD FRANCIS SCOTT: Sir, can we be given any idea as to how long this anticipated survey will delay matters further?

MR. RENNIE: Your Excellency, as some hon. members are aware, the Survey Department at the present time is labouring under considerable difficulties as a number of its members are working with the military forces. Government has, however, asked for the release of certain of these members, and provided that the members are released by the General Officer Commanding the first task of the people released will be to carry out this survey. It is impossible at this date to say exactly how long the survey will take. But, as I say, the first task of the released members will be to carry out this survey.

K.U.R.H. SUPPLEMENTARY ESTIMATES

SECOND OF 1938

SIR GODFREY RHODES: Your Excellency, I beg to move that the second supplementary estimates, K.U.R.H., 1938,

be adopted. This is a formal motion to record the final figures for the year 1938. That year, as hon. members know, has already been covered fully by me in the annual report, and I do not, therefore, propose to take up the time of Council any longer except formally to move the motion.

MR. DENNISON seconded.

The question was put and carried.

FIRST OF 1939

SIR GODFREY RHODES: Your Excellency, I beg to move that the first supplementary estimates, K.U.R.H., for 1939 be adopted.

The principle item of interest in these estimates is the increase in revenue which has taken place, a sum of about £200,000 above the estimate as originally drafted. The reason for that increase is due firstly to the fact that we had of necessity to estimate rather conservatively at the beginning of the year, but chiefly because the imports have been much larger than we anticipated, and I believe that the Colony too has found that its revenue has benefited also for this reason. In addition to the improvement in imports, the internal traffic carried by the railway has been exceedingly satisfactory and that, I think, is a very good sign indeed and provides a very useful stabilizing factor in all our estimates at the present time.

Hon. members will see on page 6 in the table "Railways—Revenue Account" that the figures quoted there make allowance for the sum of £100,000 in rebates to coffee and cotton. These rebates were agreed to at the beginning of the year and these industries have expressed their gratitude for the assistance that has been given to them.

There is just a chance that we have rather over-estimated the revenue that we are likely to get at the end of the year, but that will depend rather on what ships come in between now and the end of the present month. We are hoping, however, that the final result will be very close if not the same as shown in the estimates.

On the expenditure side there is nothing particular to record.

In the next table, below this one, the "Railways—Net Revenue Account"—the only item there I want to refer to is on

[Sir Godfrey Rhodes] the left-hand side—"Write-off of Dead Assets" which shows an increase of £33,500, and on the opposite side the "Released and Retrieved Material" item which shows an increase of £41,500. These two items refer to the sale of six old Garrett locomotives carried out during the year.

The Harbour estimates have nothing particular to record, and I now turn to the table on page 9 which deals with the "Combined Net Revenue Appropriation Account." That table shows how we are proposing to allocate the extra money that we have earned. We have to cover a deficit in the Harbours of £7,928; we show a contribution of £100,000 to the betterment fund; and we have to show a small amount on account of the reserve for depreciation of investments and for the superannuation fund. There is carried forward a rather large figure, £116,580, to the coming year. The reason for that is that we anticipated some difficulty in finding sufficient money to meet all our requirements during 1940 and therefore we are carrying forward rather a larger sum than usual.

I do not think that any of the other tables call for any comment and therefore I beg to move.

MR. DENNISON seconded.

The question was put and carried.

K.U.R.H. ESTIMATES OF REVENUE AND EXPENDITURE, 1940

SIR GODFREY RHODES: Your Excellency, I beg to move—

"That the Estimates of Revenue and Expenditure of the Kenya and Uganda Railways and Harbours for 1940 be adopted."

Now, I think that hon. members will agree with me that, at a time like the present, there is an air of unreality and a sense of futility and a waste of time in discussing in great detail these estimates which, for reasons outside our control, may hardly be worth the paper on which they are printed. I will, therefore, make my remarks as brief as possible and will deal with the main points only. Of course, if any hon. member requires further information, I am quite sure they

will ask questions during the course of the debate, I will do my best to answer these questions.

The first point I wish to deal with is the note at the beginning of the memorandum on these estimates where I have stated that only the known items of extra cost have been included. We have not attempted to guess what the future costs are likely to be as a result of the war, but certain facts as now known only have been inserted in these printed estimates.

On the revenue side we had thought of adjusting the estimates since these were first drafted on account of the depreciation in the maize position, but I understand that they are likely to be improved by the cotton position over what we allowed for in our estimates, and we have, therefore, made no adjustments hoping that the one will cancel out the other.

Again, we shall not know in 1940 to what extent the import position will be affected by the present conditions. We have import restrictions and we have of course, too, the extra costs of commodities which are to be purchased. But at the same time I am very glad to be able to say that we anticipate a much better price for the cotton crop in Uganda and for some of the crops in Kenya and that possibly may help us. But the position in that respect is very obscure and it is quite impossible for the present to make any real attempt to give an idea of the position. We have designed our estimates on very conservative lines, as usual, but I think it has been particularly necessary to do so this time in the present circumstances.

Under the heading "Revenue" we have allowed the sum of £50,000 for rebates to the coffee and sisal industries and to the cotton industry, but the coffee and sisal industries have been informed that these rebates will be discontinued after the end of June. The total amount expected to be paid under this head is: coffee £24,500, and sisal £6,500, and cotton, if the price is below 6d. in the middle of December, the rebate will then be £19,600. I have, however, every reason to hope that the price this year will be above 6d., in which case that rebate will not be granted.

[Sir Godfrey Rhodes]

The figures of revenue have been based on our existing rates and we hope we shall be able to maintain those rates at their present low level during the coming year. Our chief anxiety is the fact that costs are likely to go up and we may be forced to take action on that account. We have every hope, however, of being able to keep down our rates to their present very low level.

On the expenditure side of that table the only item requiring particular attention is the item "Locomotive Running Expenses", where an increase of £30,000 is shown. That is due chiefly to the extra cost of coal.

In the table below—the "Net Revenue Account"—there is one special item to which I should call attention and that is the last figure—"Balance carried to Combined Net Revenue Appropriation Account, £31,538", which is arrived at after meeting all our loan charges and writing off dead assets, etc.

Coming to the next table—"Harbour Revenue Account"—I may say that Harbour revenue has been estimated on exactly the same basis as the Railway with the exception that the Harbour account does take notice of the reduction, or rather the anticipated reduction next year, in maize for export, but no additional revenue has been allowed for in the improved position of the cotton industry.

You will see in the small table at the bottom of the page where it shows the Harbours, Net Revenue Account, that we have budgeted for a deficit of £8,012. On that account it has not been possible to offer any rebates to the cotton or sisal industries as far as the Harbours are concerned.

May we turn back to the table on page 5 which summarizes the position of the two services, that is to the table called "Combined Net Revenue Appropriation Account"? On the right-hand side we see the amount brought forward in 1939 to which I made reference in the previous motion, £116,580, and the balance brought forward from the Net Revenue Account of the Railways, £31,538. On the left-hand side is the deficit from the Net Revenue Account (Harbours) of

£8,012, a small contribution to the Reserve for Depreciation of Investments of £5,000, Reserve for Superannuation Fund, Accrued Gratuity of £21,000, and the usual contribution to the Betterment Fund of £100,000, leaving a small balance unallocated carried forward of £14,106. That I think is a very satisfactory position.

I will now pass over the abstracts which have been covered very fully in the memorandum and marginal notes and I will refer only to pages 49 and 50, where the effect of the closing of the London branch and the South African branch is shown. The decision to close these two railway offices was taken after very careful consideration as it was felt that under the present circumstances no useful object could be achieved by keeping open these two railway offices. In London a nucleus staff will be maintained by various Governments and any railway inquiries can be handled by that staff. In Johannesburg it is proposed to close the office altogether.

May we turn now to the table shown on page 80 which shows "Abstract 'L' Estimate of Expenditure on Works in Progress and Proposed." That table, as hon. members will see, is divided into three main parts. The first section gives the total estimated costs of works already sanctioned but not completed and proposed new works. The second section shows the estimated amount required during 1940 in respect of works already sanctioned—that figure is rather high owing to the fact that some of our rolling stock is still outstanding owing to the late deliveries at home. The third section covers the estimated expenditure on new works during 1940. It will be seen that the total in that section is just over £200,000. We have endeavoured to keep down our programme to a minimum, bearing in mind the need for efficiency, economy and our statutory obligations as regards housing. I may inform Council again that this is a programme only and each work, before being sanctioned, goes before the Railway Advisory Council for their approval before the work is started.

In connexion with this table I would like to say that owing to the absence of loan funds we have had to allocate

[Sir Godfrey Rhodes]

temporarily to the Betterment Head certain works of a capital nature which would otherwise be charged to a loan head. We hope to get a loan schedule approved in due course and then we will be able to re-allocate some of these works.

The next table shows "Abstract 'M'—Estimate of Expenditure on Works in Progress and Proposed Harbours." I do not think that that table calls for any special comment.

Now we come to Appendix I, on the following page, page 82, which is a statement showing the approximate position of Renewals and Betterment Funds and Capital and Reserve Accounts. Again the figures shown in this table will be subject to amendment if any re-allocation can be made during the year.

I have in past years explained this table very fully, and as there are no new items except one that require further mention there is no need for me to say very much about it. There is, however, the new item "Supplementary Sinking Fund 1921 Loan." As hon. members will remember when the Secretary of State agreed to withdraw his claim for repayment of the £51 million grant, he made a condition that the sum of £500,000 be taken from the general reserve and put to a supplementary sinking fund. That has been done. The extra amount above the £500,000 is the interest earned on that money. But for that one point I do not think this table differs in any way from that of past years and I think I need say no more about it.

That covers very briefly indeed the figures included in the annual estimates as printed.

There are, however, one or two other matters which I would like to pay some attention to. The first point deals with the question of war policy. At a time like this, of course, the question we are asking ourselves is how can we help in the present emergency, and I think that on that point I can say that the Railways and Harbour Administration has never been in a better position to meet the calls made upon it than at the present time. Hon. members will recollect that during

the year we received six new Garrett locomotives and 35 new third-class coaches. The acquisition of that rolling stock has helped us very much indeed in carrying out the various troop movements—we have had to deal with since the war started. In addition to troop movements we have had to carry a great deal of extra military traffic, and in connexion with that point I would like to say that, with the advice of the Railway Advisory Council and the High Commissioner, it has been agreed that the charges for military traffic during 1940 will be calculated at a rate only sufficient to cover costs. In other words, we do not expect to make any additional revenue out of that traffic.

In addition to the ordinary movements of troops and stores, both the engineering departments, the Chief Engineer's and the Mechanical Engineer's, have been called upon to carry out a good deal of work for the military forces, and I understand that the General Officer Commanding is extremely satisfied with what we have been able to do for him in this way.

Turning now to civil requirements again, I would like to say that we shall be able to meet all calls that will be made upon us during the coming year. For the coming year we have allowed for some £4,000 only in rates reductions. In past years we have been able to do very much better than that, but unfortunately the position we see in front of us does not make it possible for us to give any large rate reductions. In fact, I think rather that our whole effort will have to be directed to avoid surcharges or anything of that nature during the coming year. I hope sincerely that we shall be able to get through the year without having to suggest any tax of that kind. It will depend a great deal upon the control of working costs and everything possible will be done in that direction. Hon. members will see, therefore, that in such circumstances it is not possible to offer large rebates to industries, and I am hoping that those whom we have helped in the past will now find it unnecessary to come back to us for further assistance.

I have, in the past year or two, informed hon. members that we have been endeavouring to introduce a super-annuation fund for our staff. After three

[Sir Godfrey Rhodes]

or four years working in close collaboration with the Colonial Office and the Government actuaries at home it has now been possible to get approval for a scheme and it was introduced with effect from the 1st October.

During the past year we have been able to help the cattle industry considerably and have been able to offer very low rates, special rates, to Liebig's factory at Athi River in an attempt to try to keep that factory going, and also, at the request of the hon. Director of Veterinary Services, we have been able to quote very low rates for the removal of cattle from stricken areas, and for the transport of fodder and forage to the stricken areas. I think the hon. members will agree that we have done all that we can to help him in the present circumstances in that way.

There is one other small final point I wish to mention. Hon. members will have seen from the communique printed in the press that special reduced rates have now been approved with the object of assisting closer settlement. Two-third fares have been reduced to one-quarter ordinary second class fares, and this facility has also been extended to what we term residential settlers as distinct from farmers. Furniture and other household effects are also being brought up at very much reduced rates, namely 3 cents per ton mile, which barely covers the cost of coal and oil. I think we are doing everything we can do in that direction to help fill up the vacant spaces of East Africa.

That covers all the points I propose to touch on in my address now, but I hope hon. members will ask for further information if there is anything else I can tell them with regard to the estimates.

MR. DENNISON seconded.

MR. GHERSIE: Your Excellency, I do not propose to criticize the estimates, as I consider that futile. The estimates disclosed, are in my opinion, the essence of efficiency as regards organization and management, but it must not be forgotten that the Railway is in an exceptionally privileged and protected position. We have high freights and, due to Government's management or non-management of our road system, all com-

petition is completely eliminated. I think, however, there is many a board of directors who would congratulate themselves if they could be in a position to submit at an annual general meeting a similar position regarding their accounts as have been submitted to us this morning. But I think some shareholders might consider that an unduly large sum has been allocated to reserve and might clamour for a dividend.

All sections of the community are being called on to make a contribution to the successful conduct of the war, and I should like to hear from the hon. General Manager what form the contribution from the Kenya and Uganda Railways and Harbours will be.

Income tax appears to be a very popular method of taxation at the moment, and I am sure the hon. General Manager would have no objection to legislation being introduced whereby the Railway could be taxed through that channel. If this were agreed to, I submit that Government could not possibly accept the accounts as set out in these estimates, and in that connexion I am making no reflection on the Government auditors who, I am certain, exercise their duties very ably in regard to checking allocations regarding expenditure and revenue.

But I submit that they have little or no control over the policy of the hon. general manager or the Railway Council in regard to these large reserves set aside and, in particular, that contentious item Betterment Funds. I suggest that if there was any question of taxation, it would require independent investigation as far as the accounts were concerned.

Due to the enterprise of the hon. General Manager there has been imported into the Colony in the last twelve months new and modern rolling stock. That rolling stock comprises coal burning engines. Now we are at war, and I think it only reasonable to suppose that coal may become scarce. We have already been informed that the price of coal has risen, and I suggest it may increase even further. I should like the hon. General Manager, in his reply, to state the cost per ton mile of these coal burning engines in relation to wood fuel burning engines. I hope that these wood burning

[Mr. Ghersie] engines have not been condemned to the scrap heap, because there are enormous plantations in this Colony which have timber suitable for those engines. Furthermore, the consumption of wood-ty in this Colony means an extremely large internal spending power.

I wonder if I shall ever be able to convince the hon. General Manager that a certain period of the year the rolling stock proceeds to the Plateau, Trans Nzoia and Uganda empty? It proceeds there for the purpose of carrying maize and cotton down to the coast. If it carried fertilizers and cattle feed free upcountry it would not only be a boon to the people in those particular districts but would eventually repay the Railway, because increased use of fertilizers means increased crops, and therefore the Railway must benefit by the increased traffic.

In his reply, I hope the hon. General Manager will be in a position to assure this Council that the reserves created for the depreciation of investments is adequate.

I also trust that the hon. member may find it possible to arrange that troops, when proceeding on leave in this Colony, should travel free.

MR. PANDYA: Your Excellency, I should like to compliment the hon. General Manager on the very satisfactory position of the Railway under his charge. I think the management on the whole is very efficient, and although everything in such a huge machine cannot be considered to be satisfactory I think the hon. member himself has contributed a great deal to the efficient and smooth running of the machine under his charge. We have seen, for instance, during the past year an improvement in the third class coaches, which has materially contributed to the comfort of the people travelling by that class.

The hon. General Manager in his speech mentioned that it was not possible for him to offer us any reductions in rates during the coming year. This was done, no doubt, to avoid increasing charges, which would mean increased taxation. I for one would not take any exception to that principle in view of the fact that if a

reduction is offered now, in later years you may have to pay more.

There is one point the hon. member made concerning reduced rates of transport for encouraging settlement in this country. I think it was mostly intended for new settlers who come to this country, but I should like to have a little further explanation as to what actually is intended in that particular item, or if it is possible for the hon. member to give the total amount this is likely to cost the country in order to encourage settlement. I should also like to know whether that principle applies to Indian settlement, either at the coast or at Kibos.

There was one point made by the hon. Member for Usain Gishu when he said there was a very large sum, in his opinion, allocated to reserve. I think that generally the satisfactory financial position of the Railway is entirely due to the reserves which the hon. General Manager was able to accumulate during the last few years, and I always like to see reserves accumulate to a reasonable amount to make it impossible for the Railway to increase rates at short notice.

Another point he made is that perhaps it would be possible for the country to charge the Railway with income tax. I for one see no definite benefit in regard to that particular issue, because if the Railway, which is supported by the taxpayers of the country, were to pay income tax, it would only be taking money from one pocket to another and would not benefit the Government or anybody else.

With regard to the general running of the Railway, while as I said the whole thing is satisfactory, there are certain aspects of the employment of Asians on this Railway that I should like to criticize.

In this Council we have brought these grievances of the Asian employees to the notice of the hon. General Manager and the Railway Council more than once. This is the only one occasion in the year that we get to bring them forward so that they may receive the sympathetic consideration of the management of the Railway. Unfortunately, we have not got that influence with the hon. General Manager that others may have, because

[Mr. Pandya] no Indian member has been appointed on the Railway Council. We have sought for it, but so far unsuccessfully, and we have not the first-hand information we otherwise would have if we had a member on that Council, when we could criticize these estimates more intelligently and perhaps with more detail. I will therefore confine my remarks to the employment of Asians by the Railway.

There are one or two points that I should like to make in this connexion. There is one that is always made by the hon. member, that the Railway is a business undertaking and therefore the terms of the people employed should not be criticized on the comparison of the terms of those who are employed by Government. I do not agree with the hon. member in this view, because I think that in this country the railway is a state-owned undertaking and it is of general benefit to the taxpayers, and there are not, I consider, good grounds for differentiation between the terms of service of the Railway and of Government.

The Asian staff of the Railway has to-day only a local leave of 14 days against 18 for those in Government service. I understand that in certain parts of Uganda, beyond Namasgali, the staff enjoy 18 days leave. I would ask the hon. member to consider next year if it is not possible for him to increase the period for the whole of the staff to 18 days, particularly for those engaged in Uganda, where the climate is not very suitable, and, if it is not possible for them to have an annual holiday at the coast in 14 days, I suggest that privilege leave be increased from 25 to 32 days as enjoyed by certain of the railway staff in Uganda. After four years, if an employee goes to India on the basis of 25 days, he only gets three months, which is hardly enough to acclimatize in India after a long stay in this country. I hope the hon. member will consider that point and increase the period.

There is one point I have always made, and which I should like to make again, and that is in regard to the grading of the Asian staff, particularly the fifth and fourth grades. We can see from the estimates that a large number of people such as station masters, goods clerks, and

so on, are on the top of their grades. Referring to page 34, items 29 and 30, we find that grades 4 and 5 are bracketed together, and I should like to know from the hon. General Manager whether this shows or is intended to show that promotion is continuous from fifth to fourth grade. Yet on pages 17 and 18 those grades are not bracketed together. I do not know whether it is a printing error or a change of policy regarding those two items.

I understand that in 1932, when the Railway was quite prosperous, they had intended to provide 21 posts for promotion for which we have been asking for so many years, but subsequently the depression came and those posts were not created. I should like to ask the hon. member whether he is now able to provide some more posts for these people who are complaining of long delays in promotion. It is only fair that if a man has been at the top of the fifth grade for at least five years there should be automatic promotion for him in the service.

I should like to make another plea for consideration by the hon. General Manager of those railway artisans employed on the daily wage system. I understand this system has been introduced since 1913 and was originally copied from India. It was a measure introduced for economy in 1932, but in subsequent years the Railway has done very well indeed, and it is time for reconsideration of this particular issue. When we see that this is copied from India, I should like to say that the circumstances in the two countries are so different that it is not fair to copy that particular system in this country. In India we have got more than one railway system, owned by more than one company, therefore if men do not get fair treatment on one they can go to another. In this country there is only one system, owned by the State, and the employees have not that facility. In view of this, the hon. member should reconsider the matter more sympathetically.

With regard to privileges enjoyed by these artisans, I understand that the hon. member has accepted some of the things we have been suggesting in this Council. Among them, he has agreed to give them seven days local leave, and 15 days

[Mr. Pandya] gratuity pay when the man has completed 15 years service. We are thankful for the small acceptance of the principal we have been advocating in this Council, but the point we wish to make is that a man, after working continuously for the railway for 15 years is still considered on a temporary basis. We ask whether that is fair. In my opinion, there is a good case for people after 15 years service being recognized as permanently employed and entitled to all the privileges of permanent employment. There is a very strong case for this, and I hope the hon. General Manager will sympathetically consider it.

There is one point in regard to Railway rates that I should like to make. I have here a copy of a resolution sent to the hon. member by the Dhow Owners' Association, in which it says that the dhow owners of Lake Victoria have voluntarily agreed not to transport import goods paying high rates and to confine their activities to the transport of low-rated produce. The only transport of goods which they undertake at the present moment is at such low rates that the Railway does not bother about it, but I understand that the complaint of the dhow owners is that the Railway rates for local produce on Lake Victoria have been reduced and has entirely put out of action the dhow business in that area. The Railway first complained, and we had some interesting debates in this Council, against the motor traffic, that it was doing them down by picking up the best traffic and transporting it by road. Here we have an instance in which low-rated produce is being taken by the Railway on account of its huge economic strength as a state-owned railway.

I do not think it fair for the Railway to have it both ways. When somebody competes against them in the motor traffic, State-aid is sought to kill that traffic and give them a monopoly. On the other hand, where local produce traffic at low rates is taken by dhows, it is killed by the Railway by competition because of its huge economic strength. I do not think that that position can be considered fair, and particularly when the monopoly enjoyed by a railway state-aided in both measures should be used

against people who have been serving the country by cheap transport for so many years.

I hope the hon. General Manager when he replies will throw light on this question and try to redress the grievances of the dhow owners.

MR. NICOL: Your Excellency, I have really no criticism to make on the detailed estimates which we are now considering. Once again one is impressed with the efficiency of the Railway, and I am sure I can say without fear of contradiction that we are very fortunate in having Sir Godfrey Rhodes as our General Manager. I should, however, like to ask one or two questions.

My first question is, what is the position with regard to the suggested realignment of the railway from Uplands to Gilgil? My second question is, what has been the effect to date and what is the anticipated effect on the Railway revenue due to restrictions on the use of petrol? My third point is with regard to the port area. I should like to suggest to the hon. General Manager that a port of the size of Mombasa should have an ambulance in the port area.

In a recent case of a company in which I am interested, one of their employees, a coolie, was injured in the hold of a steamer. The accident took place at five minutes past ten in the morning, and between that time and 10.15 attempts were made to get through to the telephone exchange in order to call an ambulance. Some considerable time elapsed, and as the ambulance did not turn up at 10.45 a box body car was borrowed and the injured native was taken to the hospital. I may say that the ambulance eventually arrived at 11.10.

This matter was referred to the port manager and to the police and to the medical officer in charge at Mombasa. The port manager was away sick, and the acting port manager in his reply deplored the delay in obtaining the town ambulance, but said he did not feel the expenditure would be justified by the Administration in providing an ambulance of their own. I do not agree with him on this point, and hope in my following remarks to justify that disagreement.

[Mr. Nicol]

I think it would perhaps help the Council if I indicated the procedure in Mombasa to secure the use of an ambulance. First of all, the ambulance is not the property of the police, nor are they responsible for the attendance and presence of a driver. The police receive calls for the services of the ambulance and transmit them to the driver if he happens to be about. The attitude of the senior medical officer at the coast is that in this particular case the ambulance happened to be on another job, but went to Kilindini as soon as it returned, and in a letter dated the 10th November of this year to my company the senior medical officer writes:—

"I would like to emphasize that the ambulance is a Medical Department vehicle, used by the department for general purposes. Other departments and the general public are permitted to use the ambulance when available. The Medical Department do not, however, hold the ambulance always standing by to be available for an emergency. It therefore happens that at times the ambulance is out on other work and delay occurs."

He finishes by saying that the provision of an ambulance should be a municipal service, and also he is doubtful whether the number of accidents at the port would justify an ambulance there. I have figures of these which I will give later. He is probably quite right in what he says in regard to a municipal service, but you have got to consider that the port area is one wherein a large number of natives are at work and engaged on work which is subject to certain risks. In the interests of those natives and others, I contend that it is only reasonable that the Administration should have an ambulance of its own and not rely on any other ambulance in town which may or may not be available.

There is one point in the extract of the letter which I have just read which, I think, shows a wrong conception of the case. Although the ambulance is allocated to the Medical Department, to contend that it is only available through the Medical Department seems entirely wrong. The public contribute by way of

taxes to the upkeep and staffing of the Medical Department, and I submit that the general public have a right to the use of the ambulance. After all, each time it is used by them a fee of Sh. 10 is charged.

In regard to accidents which have occurred in the port area, I have for an illustration taken out figures in respect of six months ended the 1st October this year, insofar as accidents to labour of the Kenya Landing and Shipping Co. are concerned, not figures in regard to stevedoring companies operating at the port, as I did not think it necessary but insofar as this one company is concerned. There were 124 accidents in the six months. This figure is made up thus: 22 were sent to the native civil hospital by ambulance, 10 by car or taxi, 43 by the bus (mainly minor injuries), and 49 whose actual transport was not known. I think these figures will show that there is a larger number of accidents than people are inclined to think.

There was one really bad case the other day. An able-seaman on the S.S. *Craenir*, which was discharging coal at Mbaraki, fell from the ship's side to a pontoon and fractured his thigh. An endeavour was made by the wharf Foreman to obtain the ambulance by telephone, but were told by the police and hospital that it was out. After 25 minutes with a fractured thigh the man had to be taken to hospital in a private motor car.

I do not suggest that an ambulance as elaborate as those used by the L.C.C. is necessary. A box-body car which would take two stretchers would be ample. But the point I am making is that a large amount of labour is working in the port, and there should be an ambulance provided to take them to hospital when necessary. To say there are not enough accidents to justify that seems wrong. You might also argue that because we do not have fires in the port area it is not necessary to have a fire engine. I hope the hon. General Manager will give this his consideration.

MR. COOKE: Your Excellency, I do not propose to criticize the estimates, because I agree with my hon. friend, the Member for Uasin Gishu, that it would be quite futile, because we are faced

[Mr. Cooke]

with a despotism in comparison with which those of Hitler and Stalin are hardly visible! But I should like to congratulate the hon. General Manager for saving us from those jerks which we experienced last year on the Railway! When I raised this matter last year he very nobly took the part of his subordinates, and said the jerks were due to causes over which they had no control. However, these minor earthquakes have now disappeared, and we travel much more comfortably.

There is just one point which concerns the travelling public, and that is the price charged for mattresses on the Railway. It is only a small point, but it is really a sort of legalized blackmail, because the hon. General Manager says: "Unless you pay your Sh. 2 you will probably have no sleep that night," so that most of us pay up. When I raised the question last year the hon. member promised to do what he could in the matter, and I hope something can be done.

There is one point I have been asked by the hotel keepers on the coast to raise, and that is the question of concessions on the Railway throughout the year. At the present moment, the only concessions we receive are seasonal, and there is a great difference of opinion in Mombasa and on the coast as to what are our best seasons. Some think January and February are the best for people who come from the highlands, but there are no concessions during those months. On the Rhodesian railways there is a system by which people going on holidays appear before a resident magistrate and make a declaration that they are going on a bona fide holiday and receive return fares at single rates.

Personally, I do a good deal of travelling on the Railway and very often find empty compartments on the train. Surely the giving of these concessions throughout the year, especially now there is a war on, and many people find it difficult to get home, would encourage travelling.

Council adjourned for the usual interval.

On resuming:

EARL OF ERROLL: Your Excellency, I do not intend going into detail on this budget, but I would like to say that I was a little depressed to hear the hon. member say that the rebates on the coffee and sisal were to be taken off as from the 1st June. We all know that at the present stage the coffee industry is going through a very difficult time indeed and need all the help they can get to survive. I do hope the hon. General Manager will give this matter further consideration if the industries are able to put up a case for the continuance of these rebates in June or whenever it is that it comes up for renewal.

I heard him say also that he was also carrying military traffic without making any profit. If he can do that I hope also that he will help in any way he can the agriculturists of this country who also have a great deal to do with war efforts. He indicated that he himself and his administration wanted to help as much as they could as far as the war effort was concerned, and I suggest in view of this fact that this year's contribution to the betterment fund, now amounting to £563,000, may be used for the reduction of freights and not be put to the fund as usual.

The hon. General Manager rather airily slurred over the fact that another £100,000 had gone to this betterment fund. I suggest that it would be better appreciated if this money was spent on the reduction of freights on agricultural products this year.

MR. KASIM (Indian Western): Your Excellency, there are several points I would like to bring forward for the consideration of the Railway authorities.

On page 6 the Railway is budgeting about £10,000 more earnings from the passenger services. If this is to be materialized and if the level of earning is to be maintained at a higher level, the Administration should give some convenient service to the users. In this connexion I beg to draw the attention of the authorities to the timings of the passenger train service between Nairobi and Kisumu which is not suitable to the residents at Kisumu. Especially do they resent the fourteen

[Mr. Kasim]

hours' stay at Nakuru. It may be noted that the journey to Mombasa from Kampala, a distance of 879 miles, takes 48 hours; while the journey from Mombasa to Kisumu, a distance of 580 miles only, takes the same time, entailing greater hardship to travellers.

Surely the users of the Railway are entitled to a more convenient service, and this, I must say, is lacking on the Kisumu-Nakuru-Nairobi section. It is argued that if the Railway Administration runs through trains it will have to employ extra staff. This argument does not convince me because, there are already two or three trains being run at nights between Kisumu and Nakuru, and if one more is added to these it should not entail the necessity of extra staff. From what I have gathered, I believe that if the Railway authorities give a trial for six months and run a through train between Kisumu and Nairobi they will find a satisfactory traffic and the demand will be quite justified. I hope the Railway will give serious attention to this question.

I would like to mention the great difference in the fares between third class and second class, which is four times as great, and I would like to suggest that either there should be a reduction in the second-class fare or an intermediate class should be introduced on the Railway. This adjustment, coupled with a better service with regard to timings, will encourage people to use the Railway more frequently.

On page 32, Abstract D, in the Transportation Department, there is a large number of Asian staff which is kept on the same salary without periodic promotions. When they apply for promotion they are told to pass certain examinations and even after passing such examinations and after having served the Railway efficiently for ten to fifteen years they still are not given promotion. This is unfair.

Owing to the present abnormal times, the cost of living has risen and is still rising further, and the Railway Administration should therefore consider increasing the salaries, or giving a special allowance to the staff, Africans, Asians and Europeans all alike.

The staff stationed at small stations have a peculiar difficulty, that of educating their children, as no schools exist at these small centres. The Railway should, I think, consider giving some sort of facility or, in lieu of it, an educational grant, to those who are stationed on roadside stations and whose salary is under £15.

Another hardship is that some years ago Indian workmen were removed from the ordinary system of monthly wages and put on the daily wages system, denying all such facilities as living quarters, medical aid, and so on. May I ask the hon. General Manager if this system is applicable to Indians and Africans or to Europeans also, and if it is applicable to Europeans, how many Europeans are on the daily wages system?

The Railway recently advertised for apprentices of European-born parentage. In connexion with this system I should like to know if there are any Indian boys being apprenticed and if not, does the Railway Administration propose taking them on, on similar terms.

I have now to mention a question, the handling of which has so far reflected on the honesty of purpose of those responsible for it. It is in connexion with the dhow traffic on Lake Victoria. The Railway Administration wants to crush the dhow industry, and it wants to do it by foul means. It is a recognized fact that the dhows were on the lake before the Railway or its steamers reached the lake area, and these dhows have rendered most useful service in the development of the trade of the country in general and of the lake area in particular. Dhow owners have at present invested in the industry over half a million shillings and in order to spirit this capital away the Railway Administration has introduced an absurd and arbitrary policy.

I will quote one example. If sugar manufactured in Jinja is railed from Kisumu to down-line stations, freight payable on it is not from Kisumu station to its destination, but from Jinja, 165 miles extra. I wonder if such an arbitrary rule exists anywhere else in the world. This is only one instance where the Railway Administration has thrown honesty to the winds in dealing with the dhow

[Mr. Kasim] industry on the lake. There are other methods also, namely the reduction of rates from port to port to an uneconomical level, unduly high wharfage and jetty fees, which are the Railway's monopoly, and such other burdens which have depreciated the value of the dhows by 50 per cent. I might quote an example here of how the rate reductions to uneconomic levels work out: the usual rate on a bag of posho was Sh. 1/94 per bag which is now reduced to 46 cents a bag. A bag of rice of 220 lb. from Mwanza to Kisumu used to be Sh. 3/56 a bag, which is now reduced to Sh. 1 per bag. The Railway, in my view, is losing thousands of pounds annually by this rate-cutting policy between the lake ports.

On the other hand it would be observed how the Kenya and Uganda Railways have adopted a policy of crushing the whole dhow industry, which has helped so much in developing the Colony's trade in general. I do not wish to bring racial matters into the question here, but I must say that had there been European capital or labour at stake in the dhow industry, the authorities concerned would not have dared to follow such a mean policy. As it is, most of the dhows are owned by Indians and therefore the authorities believe that any policy is a good policy so long as it would crush that industry.

I submit that the Government should consider these economic questions impartially and reciprocate the goodwill shown by the Dhow Owners Association.

COL. KIRKWOOD: Your Excellency, I should like to ask the hon. General Manager for some information as regards the new alignment of the Escarpment. I am well aware that an inquiry has been held and that evidence has been taken as regards the users in the Elmenteta area, but it is not yet clear to me whether that part of the line is going to be taken up and compensation is going to be paid, or whether that part of the line is going to be left to avoid compensation. I think the fullest information about this new alignment should be given.

I should also like to know whether the work now in progress is being done departmentally or whether by contract, and

if so, by whom and whether the contract was advertised?

I think it would be valuable to be given information as to what is to happen to the present permanent way when the new alignment up the Escarpment is complete. Is it going to be handed over to the Public Works Department of the Colony and used as a road, or are the trestles, etc., going to be demolished and sold as scrap? I think that information would be valuable, for it is a well-known fact that the Rift Valley road is the most unsatisfactory road in the whole Colony and is certainly no credit to the Public Works Department. If the old track is going to be used over the new approach over the Escarpment it would be information to them and to the hon. members on this side of Council to know what the expense would be. It would not need very much to be spent on its upkeep.

I would also like to ask the hon. General Manager if he is considering giving return fares at single rates both for up-country people going to Mombasa and vice versa, and also to the civil servants of the Colony—who, I understand, are prevented from taking their overseas leave, to enable them to go to some home from home within the Colony for their holidays? I think it would be a great asset to the Colony if this circulation of traffic could be increased by the Railway on the lines I have indicated.

In conclusion, I would like to ask the hon. General Manager to give an assurance that the rebate on sisal and coffee will not be arbitrarily closed to these industries without giving them the opportunity of putting their case. It must be quite obvious that the cost of living puts up the cost of production and the cost of everything that both these agriculturists are requiring now. Everything they are using has increased enormously, and the increase in the price of sisal is not so brilliant as it seems on the face of it, as one reads on paper. Labour, for instance, has gone up, and so on. I think the hon. General Manager, before he cancels these rebates, should give them the opportunity of putting up their case. I think it is only what they are entitled to.

MR. ISHER DASS: Your Excellency, the hon. General Manager, in moving the

[Mr. Isher Dass] adoption of the Railways and Harbours Estimates of Revenue and Expenditure for 1940 indicated his opinion on page 1, that it is very difficult to foresee the circumstances or what the effect of the war will be during 1940, and therefore it had been decided not to revise them at this stage, and he also said that the estimates as printed would serve adequately to control expenditure!

In this connexion I wish to say that so far as the revenue and expenditure of the Railway is concerned no amount of criticism we may make against the hon. General Manager would make him change his policy. What he feels he would like to do he does, and when he does not feel he wants to do it he does not do it. As far as the revenue is concerned, all fair or unfair means have been adopted to raise revenue, and therefore no amount of opposition or criticism by the hon. Indian members on this side of Council would serve any useful purpose. And as to the controlling of expenditure, whether it is for 1939 or 1940, I do not think much of it, and no amount of criticism from this side of Council would serve any useful purpose so far as the hon. General Manager is concerned. For instance, I would like to point out that some of the European drivers on the Railway get more money than admirals of the fleet in the Japanese and French navies. If the hon. General Manager had ever thought of controlling the expenditure then I think definitely that he could have reduced that money to such a level that would seem reasonable to an outsider, because such a comparison seems to me to be absurd! that an engine driver on the Kenya Railway should get much more than those admirals in the French and Japanese navies.

On page 3 he produces, under item 6, Harbour Services, the sum of £71,990 as against £77,916 for 1940. I am not concerned with the difference in the figures as to whether it is an increase or a decrease, but what I am concerned about is how it is that the hon. General Manager has not seen fit to run this work departmentally instead of giving the work out on contract to the Kenya Wharfage and Landing Company? Cannot he take

over this work and run it more cheaply? I think two years ago he suggested that the time had come when he should take over that business. But instead of that he still lets it out on contract!

There is also the point raised by the hon. Member for Mombasa about there not being an ambulance to meet an emergency. I entirely associate myself with the hon. member's remarks, and there are one or two questions I should like to ask the hon. General Manager and also, if the hon. member had been here at this moment, I would have liked to ask him. The Kenya Landing and Shipping Company is partly a private company and it employs labour and therefore it should come under the rules and regulations governing the employment of labour as do other departments and individual companies. So much has been said about the provision of an ambulance; I am merely going to ask who is to provide the ambulance, the Railway or the Kenya Landing and Shipping Company? The company should provide facilities for their employees, and if it is making a profit as a result of the contract, as a business concern then it is their duty. I do not see why the Railway should be called upon to provide an ambulance.

No labour officer stationed at Mombasa up to this time has thought of remedying the position—he was responsible for the welfare of the labour—and I am sorry that some legal action has not been taken on this matter. It is a matter that has been wanting some action for years and years, and now the matter has been brought up here I hope something will be done. We have here the Chief Native Commissioner under whom the labour officer works, and who is not only responsible for the health of the working classes but also for their safety and good housing. He should be called to go into the welfare of the labouring classes of the Kenya Landing and Shipping Company. I am sorry that no action has taken place so far, and hope a remedy will be found now.

There is also one more point which is in the minds of every man in the country, whether they are Europeans or Indians, and that is the future of the youth. What is going to happen to them? That is a

(Mr. Ither Dass)

problem which no man has come forward to solve; whether they are Europeans or Indians, whether they are to be absorbed in Government or in some other industry! That is a big problem. Recently we have had a discussion and the hon. the Director of Education was also present, and he was anxious to consider the whole question sympathetically. I would like to point out to the hon. General Manager and ask him whether it would be possible for him to accept or adopt some scheme by which certain youths, whether Indian or European, could be employed in the engineering department and in the workshops to be trained as first-class mechanical engineers, electrical engineers or constructional engineers, and so on.

Also there are certain other lines in which he could, in consultation with the hon. the Director of Education, provide some means of training the youth in the railways under his control. So far as the staffs are concerned, I beg entirely to associate myself with the remarks made by the hon. Mr. Pandya that it is high time that the hon. General Manager should consider this question favourably. There are people who have been in employment for years and years, as much as eight or ten years, without being given promotion or even at least an ordinary increment. When they are on their top grade they have to remain in the same stage. It is a position which requires regulating. It is not wise to let these people go on like this because it causes discontentment and discontentment affects the efficiency of employees.

The last point I wish to speak on is this. I regret that Government has not up to this time thought fit to introduce in this Council a Workmen's Compensation Act. I think the Railway as a commercial concern should introduce it because I know from experience and from information of certain cases of accidents, and these unfortunate people have received not only very little compensation but they have not been fairly dealt with when not only their present existence but their future was in danger also.

I must also, in criticizing the hon. General Manager, congratulate him in a certain direction, and that is in the housing accommodation as far as the staff are

concerned and lighting arrangements. He has done everything possible to satisfy all those parties concerned, but there are still a lot of things which can be done to improve the conditions of the employees of the Railway.

MAJOR GROGAN: Your Excellency, it is apparently becoming customary to treat this annual occasion as a sort of Hawaiian hula-hula dance, when the hon. member is decorated with flowers, usually of narcotic properties. I feel it incumbent upon me to add a little sprig of Mexican marigold, and to compliment him on one thing—the businesslike way and promptness with which the Railway invariably attends to any complaints or suggestions that may be brought to them by individual members of the public.

But anyone listening to this recitative of figures might imagine that it was a shareholders' meeting of a foreign railway, wherein the shareholders (who, incidentally, are entitled to dividends from shares to which they have contributed) were listening to the year's working by the director of the company. They would certainly then be entitled to feel rather gay about their profits, and to adjourn to the nearest Riiz prepared to crack a bottle in satisfaction. But, in effect, the proposition is a very different one.

This is not a form of investment owned by ourselves as individual shareholders entitled to dividends. It is an examination of what is in effect an integral part of our own anatomy, a part that amounts to an arterial and intestinal organ of the body politic. It is the machinery that connects the cerebral and productive centres of the country with that other portion of the State anatomy so ably represented by my hon. friend the member for the port. That part of the social organism is doubtless entitled to an equitable share in the pabulum of the country.

I, unfortunately, despite these perpetual invitations in the opposite direction, am too old to change. I remain a realist. I find it quite impossible to live like Alice in Wonderland, which we are supposed to do, and take these matters rather seriously; and, viewed from the angle of a realist, this financial exposition on the part of the Railway can only

(Major Grogan)

appear to be, as in fact it is, a pathological condition of the body politic. I still can see, as I do to-day, and have on several other occasions, the almost incredible antithesis of our being called on to observe the annual beakfast of what to all intents and purposes amounts to our national tapeworm (laughter), whereas to-morrow we shall be invited to attend the funeral obsequies of the host, and anybody who regards the contrast between the two sets of figures must realize that this is a Gilbertian extravaganza characteristic of this country. It is only long use that enables us to maintain it seriously.

If all our capital margins are to be absorbed by this insatiable monster, it is not unreasonable to suggest that a certain proportion of these capital amounts should be used by the Railway for some purpose really contributory to the benefit of the country. I suggest that it is the duty of the Railway to introduce a research department entrusted with the task of careful investigation of all local materials and the uses to which they could be put. I was amazed the other day to read in the paper—I was not amazed, because it is quite the usual procedure—but startled to read that when every inducement is being offered to utilize local materials to the limit and avoid, as far as we can, the unnecessary use of shipping and financial resources, an advertisement by the Railway asking for tenders for, I think the figure was, 400,000 Mangalore tiles. I am a bit of a potter myself; I have lived in the Potteries, and was privileged to initiate the pottery industry in this country, and I can assure my hon. and gallant friend the General Manager that it is possible to make in this country, and they have been made, tiles that are immeasurably superior to the Mangalore tiles that are imported. The necessary facilities for making them to-day are here and, in fact, I am told by the proprietor of the biggest brickworks in the country that he proposes to close down the works, break them up, and sell the kilns for what they will fetch.

I have referred again and again and again to the incredible position of the one country in Africa that has inexhaustible and unlimited amounts of timber of

every conceivable sort, kind and description going out of its way to lay steel tracks, whereas in the Sudan, with no timber at all, like all good railways they have a wooden track. I do not want to labour that further because I have referred to it on previous occasions without result, but I do suggest that these redundant money supplies of the Railway could be usefully applied to the establishment of a research department to investigate the proper uses of the timber of the country, the limes, phosphates, available in the country, and so on.

Beyond that it is not worth while to pursue any other of these matters, because it does not make any difference.

LORD FRANCIS SCOTT: Sir, as a member of the Railway Council I, on these occasions, like to listen with interest to hear any point that may arise, in case I can contribute anything towards the debate. My hon. friend who has just sat down described this as being like a shareholders' meeting. In fact, that is what it is. We are the representatives of the shareholders who can say anything about the accounts. (MAJOR GROGAN: You haven't got the script!)

There are three points to which I wish to refer in the Estimates themselves. The first one is on page 1, paragraph 3:—

"The estimate of railway revenue of £1,357,500, after allowing for certain rebates and minor rates reductions; represents an increase of £125,800, compared with the 1939 estimate after making similar allowances, the increase being mainly in respect of anticipated passenger and goods earnings."

That is quite a correct statement, but we have got to remember that the 1939 estimate was framed on a conservative basis, as explained by the hon. General Manager, and the figure one really wants is how it compares with the revised estimates which are likely to occur this year, to give one a truer picture. Estimates are estimates, and not actuals.

The next point I should like to take up is on page 82, the Betterment Fund. We are shown in Abstract K a contribution to the Betterment Fund of £100,000, and that £100,000 is in accordance with the recommendation of the Railway Council

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that that should be the maximum contributed in one year to this fund. But I note that on page 82 it is not £100,000 but £102,000, and I do not know where that extra £2,000 comes from.

The third point is that on page 81, dealing with the harbours, the estimated expenditure on new works during 1940 comes to the very big total of £185,000. I do not think the hon. General Manager gave an explanation of that in his opening speech, and hon. members would like to know a little more of the details of what that will be spent on. I should particularly like to know. I know it was originally intended to buy a new tug, and recently the people at the port recommended that such a tug should not be purchased.

To come to some of the points which have been raised. First of all, this question of rebates on coffee and sisal. The position is that there are definite rates fixed as the normal rates for export on those two commodities, and when those industries require assistance it has been the custom to give additional rebates. It was for this purpose that the rates stabilization fund was instituted, and at the present moment there is in that fund still £192,000 which is available to be used if it is considered advisable to give further rebates. What was decided at the Railway Council was that these rebates, which have been existing for some little time, should be continued until next June, and that they should then cease. This does not mean that there is no chance of their being continued. What it really means is that the industries concerned have got to put up their case before the Railway Council, which meets probably some time in May, to justify any further rebates, but it does not mean definitely that they cannot get any further rebates, because that was not the intention of the Railway Council.

Personally, I feel that even if prices are better, at a time like this, if the Railway can afford to give further help to the export industries of the Colony, it is a very justifiable way of using the money in that reserve. I hope both industries will put up their case clearly and fully in ample time for the Railway Council to

consider them in April or May. With regard to the date being June, that was pointed out by the coffee industry as being a more convenient date from their point of view than the end of the year.

Another point raised by two hon. members was with regard to the alteration of the line between Uplands and Gilgil, and the possibility of it being further altered between Gilgil and Nakuru. The position is that the part between Uplands and Gilgil has been decided on and approved by this Council, and work is in progress. We were told at the time that it would take about three years to complete.

It was also asked by one hon. member what would happen to the old track, and the intention, although I do not know that a definite decision has been taken on it, was that that track should be available to be made into a trunk road from Nairobi to Nakuru.

With regard to the part between Gilgil and Nakuru, there has been a great deal of investigation into it, and reports, including one by a committee over which Your Excellency presided. The position, as far as I know it, is that there were various propositions put up. One was to scrap the existing line between Gilgil and Nakuru and build a completely new line, which would shorten the railway by ten or eleven miles. Another was to build that new line I have just mentioned and keep the existing line as a branch line. A third proposition, which was supported by all the Kenya representatives on the Railway Council and also by the late Governor of this Colony, was that we should not spend the extra money required to complete that short cut, about £120,000, but re-grade the existing line at a cost of about £18,000, so that it could take the heavy traffic which is so desirable.

I do trust that that advice will be followed. We do at this time want to conserve our resources as much as possible regarding loan funds. If an altogether new line is built, it does mean borrowing under loan something between £100,000 and £120,000, possibly more, whereas if we only re-grade it the £18,000 can be found out of the funds we have. I further do maintain this is a Kenya

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matter which affects Kenya and farmers in Kenya, and it does not affect any of the farmers in Uganda. For that reason I think it entirely wrong that the views of the Uganda people should be preferred to those of the Kenya representatives. I know that if a similar case arose in Uganda, I should be chary of going against the advice tendered by representatives of Uganda.

My hon. friend the Member for Uasin Gishu said he trusted that when empty trains were going up-country they might be utilized for carrying fertilizers. I personally support any such proposal, because by getting fertilizers cheap you are increasing the fertility of the soil of the country, which, after all, is the wealth of the country, and by doing so you are obviously going to increase production, and so the Railway gets back benefits far more than the amount of money which it might sacrifice by carrying fertilizers free of cost.

I do not think it is any good my dealing with some of the questions raised by hon. Indian members regarding terms of service. I have no doubt that the hon. General Manager will answer them quite fully. I should only like to say this, that on the Railway Council we spend a good deal of our time considering the Indian terms of service, and we always look on them from the point of view of giving them a fair deal and, I maintain, a generous deal.

Finally, I should like to support the appeal made by the hon. Member for Ukamba that the Railway should investigate every way possible to further the use of local products in preference to importations.

With these few remarks, I support the motion.

MR. SHAMSUD-DEEN: Your Excellency, the vacant seats on the unofficial side of this Council show the amount of interest taken in this Railway budget by the unofficial members. I have always described it as merely a Railway bulletin that comes out year after year.

LORD FRANCIS SCOTT: On a point of order, Sir, while other members

were speaking the hon. member was not in Council, but the other hon. members behind him were.

MR. SHAMSUD-DEEN: That is no reason why more interest should not have been evinced by members in this budget.

The fact remains that year after year these estimates come before us, and in practice we find that not a single shilling is added to or subtracted from this railway budget. It has been said over and over again that the Railway is a commercial concern, and that members of the Railway Advisory Council act in the capacity of directors of the company. They do nothing of the sort. It is not a commercial concern at all, and members of the Railway Council are merely in a capacity to advise. The despotic powers given the General Manager are such that he can simply brush aside all recommendations of the Council and say he will not carry them out.

I submit the time has now come when a strong committee should be appointed to reconsider the whole question, us to whether it is not a mistake to divorce the Railway from the general administration. I cannot think of any commercial concern which enjoys the privileges that this Railway does: it pays no customs duties or licences, and yet it has the protection of Government to fleece the general public by imposing all sorts of duties and leaving members of the Railway Council in ignorance of what is being done.

Have you, Sir, ever heard of a director of a company ask his general manager for information such as the noble lord, the hon. Member for Rift Valley, asked for this morning? In banks and other companies, matters are referred to the directors, and when a balance sheet is struck it is published in the Press merely for the public information. If the same thing was adopted with this Railway it would save the time of hon. members and our time too in discussing these Estimates.

Again, I feel it is not fair to the Estimates of the Administration. Where the Estimates of the Colony range in the vicinity of just over two and a half millions, the Railway Estimates are

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probably about £200,000 more. Yet what do we do? We go thoroughly into the Administration Estimates. They first go to Executive Council, and then come to this Council where we grind away and discuss almost every item. Then they go to the Standing Finance Committee and are thoroughly discussed there, and then come to this Council again. Yet with the Railway Estimates, all that is done is that a day is set aside for members to make as much noise as they like without the slightest effect! If no drastic change can be made, at least there should be some sort of Standing Finance Committee to which they could be referred, even our Standing Finance Committee, where they could be discussed in detail.

As I have said before it is hopeless to discuss these Estimates in detail because they give you no information at all. I would ask hon. members to turn to page 14 and find there one or two items. There is a one line vote affecting motor trolley drivers, trollymen and chainmen, £788, but it does not give you the slightest idea of how many men are employed; as no figures are given at all. Again, on page 16, there is an example of the disparity of wages paid by the Railway to their staff and those paid by the Administration. The sum of £530 is paid to a landie overseer and another £330 paid to an assistant landie overseer. You compare these sums with the wages given the A.D.C. to the Governor and the private secretary, probably men with university educations and much responsibility, while the ordinary landie overseer is probably a Dutchman.

I think the time has really come to overhaul the machinery of the Railway and go into this question of removing the disparity between the two concerns. I submit that the Railway Council govern the Railway and is part and parcel of the administration of the country.

Most of the points have been referred to by hon. members who have spoken, but there is one I should like to refer to.

A very wicked policy is being followed by the Railway in depriving their British Indian staff from reaching any positions

of substance. There are members who have worked for the Railway for 35 years in responsible positions such as station masters, etc., but once a labourer always a labourer. They have no chance of rising to superior subordinate positions, and it makes me sick to see in these Estimates a European sub-permanent way inspector getting double that paid to an Asian.

I suggest the time has come when we should eliminate these obnoxious expressions, European and Asian, and that it is about time to refer to them as British and British Indians, so that we should at least know that as far as the Europeans were concerned they were British and that the Railway was giving their British subjects more opportunity or preference over those who have no responsibilities whatever to the British Empire and enjoyed all sorts of privileges of a British subject.

It is very galling indeed to realize the heartless manner in which the Railway treats their Indian artisan class. Most unfortunately, I think, there is no one here who really knows the whole history of the construction of the Uganda Railway. I am not going to relate the whole history, but I do say that in the circumstances in which the Railway was built it is only fair that the Indian labourer should always have had some special consideration as regards terms of service. But what has happened? This artisan class of people, who were brought from India on agreements which, while not liberal, were reasonable, and which were in force up to 1930, have been taken off the agreement system and placed on the daily pay system. As such, they are treated in a manner that no human person would treat an ox or an ass, for at the end of any day a man may be told that he can get out, together with his wife and children, from his Railway quarters.

I have made very extensive and persistent representations to the hon. General Manager, and I suggested to him that although these people were on the daily system there was nothing to prevent the Railway from giving them reasonable warning to leave. In fact, the

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natives of this country are in a much happier position. If you dismiss a house boy or a garden boy he will go to the District Commissioner straight away, and you are made to pay him his month's wages. But the poor Indian artisan, with his wife and children, does not get treated like that.

Again and again I am told that the terms of service are the same as in India and England. But in England, a worker has more places to go to, but in a country like this, where they have been converted from agreement people into daily paid people, and as the former they were entitled to very good treatment and the existing holidays, they are simply taken on and put off.

Coming to the question of employees being liberally treated, as the hon. Member for Rift Valley said, I will give you a few examples of how they are.

These people have got no trade union. As a matter of fact, there is a trade union in the Colony, but these people are frightened to be members in the light of the past experience of those who made representations to the General Manager or workshops manager and got kicked out—as a matter of fact very few can express themselves in the English or any other language. But if one happens to speak English and goes to the authorities, that particular person—I am saying this in the light of the experience I have gained during the three strikes in this country since 1901—is marked and sooner or later is dismissed. Therefore, they come to the elected members, because they think that as they have given them their votes they will put it up and show Your Excellency how the General Manager behaves towards the elected members.

I have made these representations, and I got a letter from the hon. General Manager dated the 16th September in which he says:

"I have to advise you that revised conditions of service have been agreed to."

I should like to know who agreed to them, the directors of the company sitting here? The proper parties were the

men themselves. But nothing has been done, and the most generous privileges or concessions made to them are roughly these: 7 days' leave is granted to these people after a full year's service, no existing holidays, no religious holidays, no Saturdays, no Sundays. Then they are given another illusory privilege of a gratuity after 15 years.

The presumption is that the Railway expects these people to continually work for 15 years and only get 7 days' leave a year and then, if they do not die, a gratuity. I should like to know if the majority can work under these circumstances. Even machinery working continuously for 15 years cannot last, and I submit it is a very poor concession which the Railway have given to these people. What is happening in England? If these most abominable terms were offered to work people there, they would through their unions probably, go out on strike.

A circular containing these concessions goes on to say that a man can accumulate his gratuity up to 25 years. We have been discussing the terms of the Local Civil Service here, and in most cases we have said that four years is too long a period for anybody to be in this country without overseas leave. But these men get none at all, only seven days a year, and it is a sort of joke because they are allowed a free pass over the Railway twice a year for themselves and family. Was it expected that they would split their holiday in half by going to Nakuru, three days, and back again?

This is one of the evils of a Railway with nobody to control or check them. I am quite certain that if this was presented to Government these men would have far better consideration. It is true that anybody has the right of appeal to the High Commissioner for Transport. My experience goes to show that the High Commissioner seldom looks at these recommendations, that some junior goes through them, and in 99 cases out of 100 they come back in the same form. It is a farcical affair. The hon. General Manager, after a good deal of pestering by me, was kind enough to tell me sketchy details which I find are not in their entirety at all, but I managed to

[Mr. Shamsud-Deen] get hold of one of his weekly circulars marked "Private and Confidential"—for what reason I cannot understand. The matters contained therein generally refer to the public and to the staff. He seemed most annoyed, because in a letter to me he wrote:

"As, apparently, you have had access to one of the weekly notices issued from this Administration, you will also no doubt have noted that it is clearly marked 'For information and guidance of railway servants only.'"

It is not only information for Railway servants but matters of vital importance contained in these weekly notes and of great interest to the public. The General Manager also wrote:

"In disclosing information contained in such a circular the railway servant responsible was, therefore, guilty of a breach of the regulations of the Administration and you are condoning his offence by making use of the information."

I submit it is hardly fair. It is time these circulars were made public property, at any rate to members of the Legislative Council. If it is marked private and confidential I must not make the contents known to members or at a meeting. The hon. member can rest assured that I will not tell him the name of the person who supplied this copy. He concludes:

"While there is nothing of a secret nature in the particular subject in question, you will, I think, agree that disobedience to the regulations must be regarded as a serious offence by the Administration."

That sounds more like Hitlerism.

I submit that what has been suggested by my colleagues is worthy of serious attention. I also brought a case to the notice of the Railway of an Indian who had passed his A.M.I.C.E. examinations in England, a degree that few junior British officials possess, but simply because he is an Indian he is still in the subordinate class because he had the misfortune to be born in a country called India and

the colour of his skin is dark. I submit it is about time that we revised the whole thing.

There are many other things of which I could talk, but it is no use, only a waste of time. All this Council is really a loud-speaker. You can talk away as much as you like and nothing will happen.

SIR GODFREY RHODES: Your Excellency, I would like to deal with the various points that have been raised as fully as possible because, as hon. members have pointed out, this is the only time that they have a chance of raising them, and so I am afraid that I will not be able to finish before the usual time for adjournment.

I will first of all deal with the remarks made by the hon. Member for Uasin Gishu. He makes general statements and does not support them with any argument so that I am unable to follow how he has arrived at his conclusions. For example, he says that the freight rates are high as compared with those of other railways. I do not know how he has come to that conclusion. I do not think I have told him anywhere that they are high and I think, compared with other freights, he will find that they compare very favourably with those of other railways of this kind.

Then he mentioned that we had unduly large reserves. I am quite sure I never told him that and I do not quite know where he got that idea from, because, compared with other railways our reserves are not high at all. They are extremely low. Our only real reserve is just over £100,000, the Secretary of State having transferred £500,000 to the supplementary sinking fund. He is possibly thinking of what we call our renewal fund. Well, our renewal fund, as I have explained before—I am not going to repeat all the details *in extenso* now, but briefly our renewal fund is a fund contributed only in order to average out our annual expenditure on renewals. We could adopt a different policy of charging up the actual cost each year, but that would cause fluctuating amounts each year to be debited to the annual working account and would

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upset our accounts very seriously. So, we have this system, and as a result of this system we have a large sum of money in that fund earmarked for future renewals. And I suggest that it is a very sound principle and also one that is adopted by most up-to-date railways that are financially sound. It is quite incorrect to call that a reserve and because we have that renewal fund therefore to say that we have unduly large reserves.

The hon. member asked also in what way can the Railway contribute towards the cost of the war and he mentioned income tax as a possible way of doing it. Well, I have no objection. He is the one who will have to pay it because it will have to come out of the pockets of those who use the Railway. If we pay an income tax surcharge on the revenue of the Railway it means that the traveller has to put his hand into his pocket because it will put the Railway fares up a little more in order that the tax earned may go into the Government coffers. I do not know that the individual will be better off that way. I suggest that it is quite wrong to tax transport unduly and for that reason it has been the agreed policy that the Railway should not even pay customs duty. If it has to pay duty the cost of transport will go up and that, I suggest, would not be in the interests of the community as a whole.

The hon. member also mentioned the Betterment Fund and suggested that we were making a mistake in extracting from revenue a certain sum of money each year in order to deal with the betterment requirements of the Railway. That again is a policy that has been discussed frequently in this Council and outside and you find it necessary in your own budget, the Colony's budget, to have items such as that which are the same only called by a different name, and it has been found sound to reinvest in this concern, the Railway, at least an average of £100,000 a year. If you did not adopt that system for providing for assets when required you would have to adopt another system: you would have to borrow every penny that you invest

in this way, and I suggest that that would be a much more expensive way than the one we have adopted here. I may say that if we have a bad year and the revenues do not come up to expectation we shall have no hesitation in cutting down the Betterment contribution, but if we have a good year, and the traffic is better and the money is available then it is put into the Betterment Fund.

The hon. member raised the very important and proper question with regard to the use of wood for fuel as against coal. And he has suggested that our modern locomotives recently imported are burning coal and must burn coal because they cannot keep steam up on locomotives of that size on wood, and therefore perhaps it was not altogether a wise policy. Well, there is a great deal to be said for that, but on the other hand we have now had a great deal of experience on this Railway with regard to the respective merits of burning wood as against coal. Originally we burnt wood almost entirely, in fact we were able to do that because we used very small locomotives and ran a great number of trains. But the time came in about 1925 or 1926 when we had so many little trains running about burning wood and getting wood to be burnt that we found that we could hardly move the traffic of the country and we had to adopt an entirely different system to deal with the position. We had to get bigger engines and run bigger trains, and, therefore, fewer trains. I can assure the hon. member that as a result of that it has led to a great deal of economy from the operating point of view and operating costs now per ton mile or per train mile, or any other unit he may wish to choose, is lower now than it has ever been before, and one of the reasons is that we are able to get modern and large locomotives to concentrate our loads into big trains.

MR. GHERSIE: Your Excellency, on a point of explanation, I asked for the cost per ton mile of these coal-burning engines compared with wood-burning engines.

SIR GODFREY RHODES: I am afraid I cannot give the hon. member these figures to-day but I can give him

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a good deal of information if he were to come to my office. I have not got those figures in that particular form available at the present moment. I can only make a general statement that our unit costs have decreased enormously since this policy has been adopted. I was going to say in spite of this policy of using large engines we still operate a large number of small engines and most of these still burn wood fuel, and that policy will continue so long as wood fuel is available at a reasonable cost. I may say that the cost of wood fuel is increasing and we have also got much further to go for it and we have to put in longer sidings and so on. We are continually in touch with the hon. Conservator of Forests on this matter and I think he will agree with me that we do what we can whenever we possibly can.

The hon. member also raised one other point which has come up before this Council and that is, why not utilize the engines and trucks going up-country to carry fertilizer free. We almost carry fertilizer free to-day, at 1 cent per ton mile. Already we are meeting the agricultural industry in regard to that matter. We are trying to use empty vehicles for special purposes such as this, but it is extremely difficult for the vehicles are only empty when the export traffic is at its maximum and we are hard put to it to get the trucks back in time for loading cotton and cotton seed and other export commodities and if we waste time in re-loading the trucks with fertilizer and sending them up to the stations where they are required and unloading them there we would not have the trucks required during the peak season. It is only during the peak season that these vehicles are running empty.

The hon. member also asked the question whether our reserves are adequate to meet depreciation of investments. This seems to me a curious question to raise after his general statement that our reserves are unduly large. At the same time I would like to answer that point because it is a very important one and one that we have been dealing with in Railway Council

quite recently. Why should we have a reserve for the depreciation of investments at all. I cannot see any real reason for it. Our investments are not intended to be bought and sold from day to day or month to month as the market fluctuates.

MR. GHERSIE: It is a sound business policy . . .

SIR GODFREY RHODES: I do not understand even yet the need for a reserve. What we do with our surplus money is that we instruct the Crown Agents to invest it in as suitable investments as they can find, and they have been doing it quite satisfactorily recently and most of our investments are earning interest at from 3 to 3½ per cent. The point is, these investments show a certain value in our accounts and if you choose any particular date in the year these investments may be larger or smaller, but as we do not expect to have to sell at an unfavourable time there appears no need for a reserve to cover depreciation. It has, however, been ruled by the Secretary of State that we must find out what is the value of the investments on 31st December and adjust our accounts and show depreciation or appreciation accordingly. We have recently asked to be relieved of this necessity.

The hon. member asked a question whether the troops who were now stationed at Kampala might be brought down to Nairobi free of cost. As a Railway Administration we are not in a position to quote any services free of cost, but there is nothing to prevent this Government signing warrants to entitle them to travel free of cost, and I hope that if that matter comes up the Government will give it their very sympathetic consideration indeed. I understand that it is the general practice at home to give the troops free concessions on the railways at least once a year; if they have to pay the fare they are entitled to a very reasonable concession to cover that journey.

One question was raised by the hon. Mr. Pandya. It is to the effect that there are to be no rate reductions this coming year. That is not quite correct because

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in my opening address I did say that we were giving rate reductions to the value of some £4,000. We have not been able to keep up the previous standard of an average of £200,000, but we, of course, never expected to be able to do that every year.

He asked a question about the continuance of the settlers concessions and what amounts were involved and whether they applied to Indians. There is no racial differentiation whatever. The conditions have recently been revised but they are too long for me to read in this Council; they have been published and the hon. member can get the details from my office if he applies for them. I am not able to say what amount is involved as I do not know to what extent the concessions may be availed of.

I may say that I was glad that the hon. member did draw attention to the fact that the very satisfactory position of the Railway now and that during past years we have been able to assist various industries is entirely due to the fact that our reserve position is sound and that in consequence it was possible for us to devote money to help distressed industries when required. And he also pointed out that an income tax must be paid by the people.

The hon. member also drew attention to the question of the employment of Asians. That matter has been referred to by several other hon. Indian members and I would like, therefore, to deal with it fairly fully now so as not to deal with it again when answering further questions.

Most of the complaints revolve round the question of the employment of daily paid artisans. I have explained here frequently that our policy in that respect is to pay such labour daily because our work fluctuates from week to week, month to month and day to day. The Chief Engineer who employs most of these people states that he cannot employ these people economically on a monthly wage, the reason being that when a work ceases he has to put off his

labour. That is the common practice in most parts of the world for that type of employment and I suggest that every contractor in this country does the same thing. When we carry work out on contract the employees that are on that contract are dealt with in exactly the same way and the rates and scale of pay offered to them take that fact into consideration. They would get quite a different scale of pay if they were on a monthly wage or on a six-monthly rate.

We do, however, recognize the position that some of these daily paid artisans are often employed by the Administration not necessarily continuously but for quite long periods and we have, after very careful consideration in Railway Council, agreed to give them certain concessions which have already been commented upon by the hon. Shamsud-Deen. Bearing in mind the concessions given to similar employees of other employers they are considered reasonably generous and I have no reason to think that they are not fair or not equitable. From what we heard to-day from certain hon. members of this Council one would think the Railway service suffers from general unattractiveness and that we would have great difficulty in getting any one to work for us. But, in fact, as hon. members know, the position is just the reverse, we are inundated with requests from all sorts of people who want to come into our service.

I would like to read one or two extracts from some of our junior applicants; some of the youths who are applying to us to be taken on and who were put through an examination and were asked to write an essay. The subject of one essay we asked them to write was "Why do you want to join the Railway Administration?" One says "There are better prospects in the Railway than in any other Department; The salary scales of the Department are more than in any other Department; in comparison with other Departments it gives more facilities to employees; It is only in the Railway Service in which you are looked after and helped; The Railway Administration provides good housing; There is the

[Sir Godfrey Rhodes] Railway Institute, where you can enjoy your leisure hours. You can enjoy every kind of game and they have got good books in the library, and there are so many other privileges in the Railway Administration."

MR. SHAMSUD-DEEN: May I ask if that young gentleman got in the service?

SIR GODFREY RHODES: That I am not able to tell you. But the absence of grammar leads me to think that he was not quite long enough under my hon. friend the Director of Education. (Laughter.)

That is the position. In fact we are getting all the applicants that we require for all our work and most of our staff are highly satisfied with the treatment that they get.

Reference has been made to the lower grade posts. The position has much improved in the past year but I am afraid there will always be some block in promotion; we cannot provide enough posts in the higher grades to meet the wishes of all those in the lower grades. Unless it is decided to operate the Railways as a philanthropical institution I do not see how we can alter that position. The position is not unduly bad now and it has been improved in recent years.

The hon. member also raised the question of the dhows and one or two other hon. members have also spoken on the same point. What has been the position as regards dhows? In early years there were very few dhows. Indeed the records as late as 1926 and 1927 show that 12, 14 or perhaps 15 dhows have been registered at the main centre in Mwanza. The fact is that the dhow industry has grown up with the railway industry and with the development of the country. The hon. member, I think, did me an injustice when he said that I had always done my best to put difficulties in the way of the dhows.

During discussions on registration and so forth I recollect that I said on one occasion that we welcome the dhows in

their proper sphere as a feeder to the main transport system. The trouble is that the dhows have taken upon themselves to carry what might be called main line traffic from the ports provided by the Railway and have interfered very seriously with the business of the Railway which has invested as hon. members know many thousands of pounds of public money in arranging the transport of goods belonging to the public of these territories. We had, therefore, to deal with the situation, and I can perhaps best explain the position by reference to the sugar industry. The Railway, as a matter of fact, has enabled the sugar industry to develop its export trade. Without our special cheap rates the sugar industry would not have been able to do this. They recognize this themselves and say frankly that if they could ensure that all sugar travelled by rail they would do so, but when sugar was bought by the customer it passed out of their control and it would then travel by any form of transport the purchaser wished. What we have done with regard to sugar is to give through rates from Kenya and Uganda Ports to Tanganyika destinations and that, I am afraid, has hit the dhow industry.

In addition to dealing with sugar in that way we have also quoted point to point rates for certain commodities between certain important points—and that, I suggest is the proper function of the Railway. The dhows' function is to deal with the small ports and act as feeders to the main system and I think there is a great future for the dhow industry in that direction if they only concentrated on that part of their work. Incidentally the rates we have quoted between the main ports are not below the rates formerly quoted by the dhow industry themselves.

The hon. Member for Mombasa raised certain questions. With regard to the position in connexion with the realignment at Gilgil, my hon. friend the Member for Rift Valley has answered that point fairly fully. The work has already been put in hand between Uplands and Gilgil, but that section between Gilgil and

[Sir Godfrey Rhodes] Nakuru is still under consideration and no decision has yet been come to. I am afraid I cannot give the hon. member any idea as to what loss of revenue there will be from petrol restrictions, but undoubtedly they will affect us considerably.

With regard to the question of an ambulance at the port, so far as I am aware this is the first case brought up on this point, and I can only assure the hon. member that I will go into the matter carefully and see whether anything can be done. I may say that the port does pay—and heavily—contributions to the Mombasa Municipality in one way or another, and that under the circumstances we should get an ambulance service which I think should quite properly be a municipal service. On the other hand, no doubt the type of work at the port does lend itself to the possibility of accidents, and I am quite prepared to see whether we cannot co-operate with the other departments concerned to see if something can be done.

The hon. Member for the Coast congratulated us because from his experience the jerks have now quite disappeared. But my hon. friend on my right says they are just as bad as ever! It is very difficult to prevent them altogether. There are two main causes for this trouble. One is bad driving, which we have tried to deal with, and the other is the working of the brake gears. When a train is composed entirely of passenger stock with proper brake gears it is more uniform, but in most trains we have to attach goods vehicles also, and in such a case their brake gear does not work quite in the same manner as on passenger coaches.

The other point raised by the hon. member had regard to mattresses. Well, perhaps the position could be improved, but as I explained last year we cannot carry sufficient mattresses on the trains because of the space required in which to store them. I did explain last year that we hoped to do away with the special mattresses and use "Dunlopilo" cushions. One coach has been running on trial with them and others are being fitted, and I believe that this is the solution to this particular problem.

The hon. member also raised the question of concessions at different times, in and out of season. Well, our tariff book is so full now of concessions that we cannot fit in any more. We try to fit in with every requirement, but the concessions that are granted do not necessarily bring about increased traffic as a result. Concessions are granted by railways in other countries to increase the traffic, but it has very little effect here. Our concessions nearly always mean loss of revenue.

The hon. Member for Kiambu went into the question of the rebate on coffee, and stated that the coffee industry should be given some consideration when the time came. Both the sisal industry and the coffee industry have been advised of the policy approved and have been told also that if they have any further representations to make then they will be given full and due consideration. I only hope that these industries will not find it necessary to come back to the Railway for assistance, because as I have suggested already I think we shall require all the money we can get to maintain our general tariff structure, and we do not want to see that structure deteriorate in any way if we possibly can avoid it.

The hon. member also pointed out that the agricultural industry requires help. I think that agriculture is now getting more help in this country than in any other part of the world—

LORD FRANCIS SCOTT: Question!

SIR GODFREY RHODES: —as far as the railway is concerned. The hon. member seemed to connect up the Betterment Fund with freight rates. There is no real connexion between the two. We do not increase freight rates in order to keep up the Betterment Fund. But what we are able to do is to give to the Betterment Fund its full contribution in good years when the traffic is greater than expected. Betterment money is not therefore available for reductions in rates, because the latter are designed to be as permanent as possible.

The hon. Mr. Kasim referred to the train service at Kisumu. I think we have done our best to try to explain to him why it is not economical to give a better

[Sir Godfrey Rhodes] service there. I believe he went to see the Superintendent of the Line, who explained the position to him. We have every sympathy with him, and when the time comes we shall undoubtedly improve that service if we can. The question of the reduction of the second-class fares to bring them more into line with the third-class fares—that is a question of rate reduction, and that cannot be contemplated during the coming year. We have already made reductions during the past few years and the position now is not too unsatisfactory.

The hon. member also referred to the Asian artisan question, which I have already spoken about, and also to the dhow.

The hon. and gallant Member for Trans Nzoia asked again about the realignment at Nakuru, and that was very largely answered by the noble lord the hon. Member for Rift Valley. The work is carried out partly by the department, but largely by contract. There are a number of contractors working there. After the tenders had been called for, some of the work did not lend itself to contract, but where possible contractors have been obtained. I may say that one of the most interesting contracts there is the contract given to the construction company who are using very heavy American mechanical graders and pushers for doing some really heavy work of a very interesting nature. If any hon. member is interested in it he should pay a visit to that work, and I am sure he will find it of great interest.

The question of the realignment has been answered. The hon. the Director of Public Works tells me that the old alignment question was mentioned in this Council last year, and a sub-committee of the Central Roads and Traffic Board has recommended that the old line should be taken over and converted into the main trunk road. I imagine that needs very careful consideration before a final decision can be taken, but I hope that something of that nature will eventuate. Of course the grade is a wonderful one for a road.

So far as the rebates on coffee and sisal are concerned I have dealt with that.

The hon. Mr. Isher Dass refers to the question of the wages of drivers, and considers that it is a high wage. I think they earn their money. They take tremendous risks as they can be run in for manslaughter or murder if they make a mistake or pass a signal at danger; they have to run the risk of losing their own lives and also they may kill the passengers and so on. I think they earn every penny they get. A driver's wage is divided into two parts; one is his substantive wage which is not high, and the other is what is called his mileage rate, and if he does the work he gets a good salary.

He also asked the question why the Railway did not do the work at the port departmentally instead of employing the Kenya Landing and Shipping Company. That question was gone into very carefully two years ago, and it was only after very careful consideration of the tender offered to us that it was decided to let a contract for another ten years. I can assure the hon. member that the decision was taken after a very full consideration of the pros and cons of the case.

The hon. member also talked of the employment of youths in this country, and on this subject I have the greatest sympathy with him. I think the Railway Administration can claim to be doing a great deal in helping in the employment of the youth of this country. He asked whether we could train engineers, civil and mechanical, and so on. I think that is beyond our capacity. To begin with, students who wish to become fully qualified engineers must have a proper university training and get the proper degrees, and after they have got their degrees they have to come back and get practical qualifications. I am afraid we cannot take them from the early stages if they wish to be engineers fully qualified.

The hon. member also mentioned the question of workmen's compensation. That is a question under consideration by Government, and we are only waiting to hear the result of that consideration before going into the matter. I may say that from a preliminary examination of the model act I think the compensation we already grant under our regulations

[Sir Godfrey Rhodes] very nearly complies with what is laid down in that act.

The hon. and gallant Member for Ukamba asked a question as to whether we could not help in the request for research, and I think one other member mentioned that point too. I am in complete sympathy with that. If we can get co-operation we shall be very glad indeed to help in any way possible. I am not in favour of doing the whole work ourselves because I do not think it is really a fair charge on the Railway alone. But if we can get the people interested together with the departments concerned in Government I think something could be worked out on these lines. We have one particular case now in front of us, and that is the testing of timber for sleepers. As the hon. member knows, the history of sleepers in this country has not been too satisfactory. It is suggested that further experiments would show a way in which timber can be used more afterwards. Well, we shall be very glad indeed to work with the other departments in connexion with this.

With regard to the question of Mangalore tiles, we have tried to use local tiles. Sometimes we get them and sometimes we cannot, and sometimes they are good and sometimes they are bad. In most cases they have failed to come up to our requirements, which at times are fairly large, and the hon. the Director of Public Works tells me that his experience has been the same as mine. He has endeavoured to get them locally but could not get his requirements filled. Incidentally, this affects the dhow industry on the coast, as Mangalore tiles come from India by dhow.

The noble lord the hon. Member for Rift Valley dealt at some length on the respective merits of the three alternatives for dealing with the problem of the proposed Gilgil-Nakuru diversion, and if I had more time I would like to go into that in more detail, but I think possibly I may get another chance to do so when the question comes up before this Council for final decision. I cannot agree altogether with the argument of the noble lord, because I think he has left out one side of the picture altogether in his ex-

planation. However, it would take too long to go into now. He did ask where the other £2,000 came from in the Betterment Fund. That I almost forgot myself, but it is the contribution that the Government of Kenya makes to us as their share of the cost of the City Square in the neighbourhood of the Law Courts, which, as you know, we are under contract to vacate.

LORD FRANCIS SCOTT: As a matter of explanation, could the hon. General Manager say why it is put into the Betterment Fund?

SIR GODFREY RHODES: The cost of clearing away the buildings and erecting and replacing the ones that have been taken from here is a charge partly against Betterment and partly against Renewals. The money for that object has to come out of the two funds.

The heavy expenditure on harbours is due to the proposal to have a new quay situated where the present Magadi jetty is. There was also a suggestion of buying a tug, but I am hoping we can postpone that for some time if we can get back the *Nguvu*, which was requisitioned by the naval authorities. Without the *Nguvu* we have only one tug, and I am afraid that we shall be in some difficulty if any accident happened to it.

The question of rebates has been dealt with and fertilizers I have also dealt with—we are already carrying fertilizers practically free.

The hon. Mr. Shamsud-Deen gave us a very long address. I listened carefully to most of it, and to the question we hear year after year of a request for more control over the Railway Administration. My only reply to that is that the present system works. It is admitted on all sides that we are getting results, not only here but also in Uganda, and we please both parties, which is some achievement whereas the old method did not prove to be workable. I suggest that the hon. member needs only to read the history of railways under Government control to see that no railway can be managed efficiently as part of the government machine. Example after example occurs all over the world, and it does not need me to elaborate that point. The Railway

(Sir Godfrey Rhodes) Council does in fact act as a Standing Finance Committee not only to this Council but also to the Council in Uganda, and I suggest that the present system works in a very satisfactory and practical way and that results are being obtained.

I cannot say any more about the question of daily paid artisans, except that I was able to arrange that when an artisan was to be paid off he would be given as long notice as possible so that he can make other arrangements. I do not think that employees get that same consideration from contractors and other employers in the country.

I think I have gone through all the points requiring an answer, and that have been mentioned. The hon. Mr. Shamsud-Deen gave us a very full extract from private and confidential papers of the Railway Administration. Well, I cannot agree with him that these papers are open for use by everybody, but at the same time, of course, I cannot devise machinery to prevent such papers being so used, if the staff allow them to be in other people's possession.

I think that is all I have to say.

The motion was put and carried.

ADJOURNMENT

Council adjourned until 10 a.m. on Tuesday, the 12th December, 1939.

Tuesday, 12th December, 1939
Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, 12th December, 1939, His Excellency the Acting Governor (W. Harragin, Esq., K.C.), presiding.
His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of the 11th December, 1939, were confirmed.

ORAL ANSWERS TO QUESTIONS

No. 65—TELEPHONE EXCHANGE, MOMBASA

MR. PATEL asked:—

1. Has the attention of the hon. Postmaster General been drawn to the unsatisfactory telephone service and unreasonable delay in getting numbers in Mombasa?

2. Is this due to mechanical or to personal inefficiency?

3. Will the hon. Postmaster General state when the new Mombasa automatic telephone exchange will come into operation?

MR. HEBDEN:

1. The answer is in the affirmative.

2. The present unsatisfactory service referred to is primarily due to the poor general condition and age of the existing manual exchange apparatus.

3. It is hoped that the Mombasa Automatic Exchange will come into operation about the middle of 1940. This, however, is dependent on the date of delivery in the Colony of the balance of the necessary material. Owing to war conditions this date is uncertain.

PROVISIONAL DRAFT ESTIMATES, 1940

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

"That the Provisional Draft Estimates of Revenue and Expenditure for 1940 be referred to the Standing Finance Committee."

Objection has been raised in previous debates on the budget to the habit of Government speakers of applying to the

[Mr. Lockhart] budget of the year some descriptive adjective, but in describing this one as provisional I have the authority of the Estimates themselves, where it is so described, and the reason will be obvious to all hon. members. We cannot tell what fortune has in store for us in 1940, nor can we form any clear or certain view as to what our economic and financial situation will be throughout that year. Moreover, as I will later explain, certain of our financial obligations have not yet been fixed.

Hon. members will also observe that no revised estimate of the results of 1939 is embodied in the Estimates for 1940. The latest accounting figures available are those for July, where the surplus on the 1st January, 1939, of £400,000 had increased to £528,000 by the 31st July. At that date we had every reason to expect a successful year so far as Government finances were concerned, with a comfortable surplus at the end of it. Since then, war conditions have intervened, and the effect of war expenditure on Kenya finances in 1939 cannot yet be stated. The negotiations in regard to the incidence of war expenditure are nearing a conclusion, and it is proposed to make a public pronouncement on this question before the end of the year.

Hon. members will appreciate that the issues involved are complicated and that a number of authorities have to be consulted. While a satisfactory provisional arrangement is in sight, it is probable that the final incidence of war expenditure so far as Kenya is concerned will not be settled until the war is over, and it will be reviewed in the light of our economic and financial circumstances at that time. In the meantime, for 1940 we have tentatively included provision at 25 per cent over the 1939 figure of military expenditure.

Turning to the Estimates for 1940, it will be seen that the Revenue total is £2,599,172 as contrasted with a figure of £2,635,735 in the Estimates for 1939, which is a decrease of £36,563. That decrease can be almost entirely accounted for by the elimination from the 1939 figure of a sum of £30,000 which was included to represent partial reimbursement of expenditure incurred in the

maintenance of the Abyssinian refugees. Figures on that account in 1940 have been eliminated from both sides of the Estimates, and the provision necessary will be provided from time to time during the year by means of special warrants.

Even so, and despite the inclusion in the Revenue Estimates of the proceeds estimated from additional taxation amounting to £165,000, no increase is shown in the total. This arises very largely, almost entirely, from the Customs position, in which the estimated total under Customs and Excise is £790,000 as compared with an estimate of £830,000 in 1939. The reasons for that are these. Kenya is primarily an agricultural country, and we must face the fact that climatic conditions to-day are as bad as they could well be and, in consequence, the spending capacity of important sections of consumers in the Colony must be seriously affected.

The second point is the increase in the costs of imported goods on which duties are collected. The prices are quite beyond our control and they must reduce consumption, unless there is some increase in prosperity which, taking the country as a whole, there is no explicit reason to count upon at the present time.

The third and perhaps most important fact is that we shall open the year with an unusually large stock of duty paid goods. It is to be expected, owing in part to what is natural in any circumstances and in part to the possible difficulties of replacement, that we shall close the year with a lower stock of duty paid goods, which means that goods which enter into consumption in the country will not be wholly replaced and will exceed the duty clearances. There have also been heavy clearances from bond during the last few months, and a substantial sum of revenue which could properly be attributed to the year 1940 has been collected in 1939.

I should like, however, in view of rumours that have been current in regard to clearances in anticipation of our recent increases of duty to give the Council a few figures.

Taking the items on which the duty was increased, and contrasting the figures of deliveries from bond of direct importations during the period 1st October

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to 13th November, and comparing the year 1938 with the year 1939, we get these figures: cigarettes, in 1938 £11,485, in 1939 £8,352; tobacco, in 1938 £2,302, in 1939 £2,111; whisky, in 1938 £14,089, in 1939 £10,440; brandy, in 1938 £2,175, in 1939 £2,231; gin, in 1938 £3,531, in 1939 £3,336.

While it is possible that heavy clearances were made in anticipation of the increased duties, I can only say that those responsible for them formed a very poor judgment of the items likely to be increased or received extremely misleading information.

It may be said that the revenue in 1940 will benefit from the increased value of imported goods at c.i.f. prices, but the position is that in what are the more profitable items of revenue, more profitable to the revenue, the duty collections are specific and not *ad valorem*, and the benefit from the increased c.i.f. prices will apply to a relatively small range of total importations.

The other Revenue items of the Budget are, for the most part, normal, and in accordance with the experience of previous years. There are only two that I will comment upon.

One is income tax, which hon. members will see in the Estimates is increased by £20,000, although the increased rates of income tax proposed would account in a full year for £53,000. The reason for that is that the higher rates will apply only to one instalment of the tax in 1940, and also to the fact that our assessments on income tax remain seriously in arrears. The second is the mining royalty, and hon. members know that it has been agreed that the present proposal should be discussed with the industry, and a meeting to do so will take place tomorrow afternoon.

Turning to the Expenditure side, the principle, so far as our normal estimates are concerned, which has been adopted is set out in the first paragraph of the Memorandum, which reads:—

"The provisional Draft Estimates for 1940 have been framed on the principle that, as far as possible, no new services should be provided other than

those necessitated by the war, and that existing services should be maintained at the lowest possible cost."

Dealing with the figures on broad lines, the social services—Education and Health—are estimated at £450,000 in 1940 as against £440,000 in 1939. Economic services, including Agricultural, Veterinary, Forestry, Mining, Roads, and so forth, are put at £353,000, within a few pounds of the 1939 figures. The cost of Administration proper, including Police and Judicial services, and so on, is £823,000, which shows a reduction of £12,000. Non-effective services such as Public Debt and Pensions at £514,000 are up by £10,000. The revenue-collecting departments at £53,000 are identical with 1939, and self-balancing departments such as the Posts and Telegraphs and Printing at £189,000 show an increase of £9,000 which is covered by additional revenue. Defence expenditure, which totals £141,000, I have already dealt with.

As the ordinary current expenditure of the Colony is practically devoid of any new projects, I propose to dispense with explanations in matters of detail, but would just say that almost the only department for which any increase in staff is proposed other than by the incorporation in the 1940 Estimates of posts already approved, is the Education Department, under which provision is made for an additional assistant master at the Prince of Wales School, a new teacher for the European Primary School, Nairobi, an additional matron at Eldoret, and seven new Indian teachers for various schools in the Colony. Even so, the increased staff provided is barely adequate to keep pace with the growth of the school population. Some additional expenditure will be necessary in the grants for African education, and also for African staff and other expenditure on native hospitals.

In regard to this section of the Estimates, it is easy to talk economy but, as many hon. members know from prolonged and bitter experience, it is a very different matter when we get down to the task of carrying out economies in detail. Large sections of expenditure are outside our control. The largest spending departments carry out services which no section

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of opinion, as far as I know, suggests are excessive in relation to public requirements. On the contrary, there is a steady public pressure for expansion rather than reduction. We cannot contemplate expansion in these times, but it is the policy of Government to ensure that no ground gained in the past is lost as the result of the war.

There will be no quarrel with this policy from any part of the Council and there are, as it seems to me, few controversial matters in this section of the Estimates. But this is not to say that no savings are possible and cannot be made in Standing Finance Committee. It was not possible this year to pass the Estimates through the departmental committee which has come to be known as the Blue Pencil Committee, but I think my colleagues on this side will agree with me that it does not mean that no blue pencil was used. There are a few minor items of departmental expenditure which will require careful scrutiny and very full justification in Standing Finance Committee if they are to survive.

I turn now to another section of the Expenditure Estimates, that is "War Expenditure—Civil", which amounts to the somewhat formidable total of £59,050. Some of the items under this head will, I imagine, prove to be controversial. Owing to the temporary character of this head and to the uncertainty of the exact provision required by some of the items, only one-line votes have been inserted in the Estimates, but fuller details are provided on page 13 of the Memorandum, to which I propose now to refer.

The first item is "Internment of enemy aliens, £3,200". This expenditure includes provision for the purchase of rations and other expenses of the interment camp itself and not for the guard. The question of repatriating certain categories of interned aliens and also German women and children in the Colony is at present under action, and some steps in this direction have already been taken.

The next item is "Maintenance of German women and children, £3,750". It was decided by Government at the outbreak of war that it was necessary for the safety of the German women and

children in the Colony that many of them should be concentrated in one centre, and the obligation of maintaining them necessarily fell on Government. Arrangements were made for their accommodation in a hotel in Nairobi. In addition, certain enemy alien women were interned in a camp at Mau Summit in charge of officers and members of the Women's Transport Service. In 1940 this arrangement is being revised, and those internees not evacuated to Germany will be housed with the remainder whom it is necessary to maintain.

The next item is "Supplementary police provision, £28,500". In accordance with the arrangements which were made prior to the war as part of the defence scheme, a supplementary police force is undergoing special training in a camp at Maseno, and 170, I understand, have been trained. The establishment originally approved and provided for in this estimate was 20 European police officers and 850 African police. I believe the number of natives actually recruited is 716, but it is not proposed at present to continue with recruitment, so that if it is decided in Standing Finance Committee that the completion of the establishment is not now necessary some saving will be possible on this item.

The next is "Criminal Investigation Department, Intelligence Branch, £2,300". Hon. members will appreciate, for reasons which I need not go into more closely, that the need for civil intelligence work is greatly accentuated under present conditions, and it was found necessary to create a special branch of the Criminal Investigation Department to deal with it.

The next item is "Air Raid Precautions, £600". At the time the item was put in the Estimates, Government had certain obligations in regard to air raid precautions, but I am hopeful that it will be found in Standing Finance Committee possible to eliminate this item altogether.

The next item is "Custodian of enemy property, £1,800". The Registrar General was appointed as Custodian to deal with the affairs of interned enemy aliens, and the expenditure on this is more than covered by the fees which he charges for his services.

[Mr. Lockhart]

The next item is "Import control, £760", which may, I think, in Standing Finance Committee require to be increased. It has been necessary under the import control regulations to set up a special branch of the Customs Department in Mombasa for the issue of import permits and maintenance of the necessary records and statistics. If the machinery is to function with the minimum of inconvenience to those engaged in the import trade, and I need hardly say it is Government's object it should do so, some additional staff and expenditure will, I am afraid, be involved.

It is natural that traders should wish to keep as close a touch as possible with the officers administering this scheme, and the Supply Board now has under consideration the possibility of creating a branch office in Nairobi.

Our object in the administration of these regulations will be to minimize inconvenience and hardship to the greatest possible extent, but I must make it clear that we cannot eliminate either. If no import licences are to be refused or reduced, there is no object in having an import licensing system at all. The object of import control is, of course, to conserve the resources of the Colony by eliminating imports which can fairly be regarded as unnecessary, and economize shipping space by doing so. All hon. members, I am sure, recognize and accept the necessity for the action which is being taken in East Africa as in the United Kingdom and elsewhere.

The next item is "Man Power Committee, £840". I think the title is a misnomer, as I believe there is no committee as such, but the man power organization which performs and continues to perform such vital work for the Colony must, all will agree, be maintained in being during 1940.

The next item is the Supply Board, of which the cost is estimated to be about £1,700. I should like to take this opportunity of explaining very fully the duties which the Supply Board is now performing and the objects which are now in view. These duties fall under four heads: export control, price control, currency control and commodity control. I will deal with them in that order.

The object of the export licensing system is two-fold. First to ensure that essential raw materials do not reach the enemy through neutral countries and secondly to ensure that exports to foreign countries are paid for in the currency of the country concerned and that that currency is surrendered through the authorized channels and is sold to the Bank of England in London. When it can be shown to the satisfaction of the Board that insistence on this condition will lead to a loss of export trade, alternative arrangements are made after discussion with the exporter—and such arrangements have been made in very many cases both as regards individual exports, and individual transactions, and also as a standing arrangement which applies to particular exporters.

Dealing with price control, the objection of this control, which I may say has been introduced in one form or another in practically every Empire country, is to ensure that no advantage is taken at the expense of the community from the circumstances which arise from the war to extract an unreasonable margin of profit from the sale or distribution within the Colony of articles which are regarded as essential to the life of the community. While this admirable object can be quite simply stated and while my hon. and learned friend on my left would have no difficulty in producing regulations under which this result could apparently be obtained, the fact is that the application of this scheme does present grave difficulties in any country, and particularly so in a country which has trade conditions such as those of Kenya. In the case of locally produced foodstuffs basic prices are fixed at joint meetings of a sub-committee of the Kenya and Uganda Supply Boards and acting on those prices—the local prices of these and certain other scheduled and essential commodities—the prices at which they can be sold are fixed by the local District Commissioners with the advice of the locally appointed Price Inspectors or, in some cases, committees. So far as this section is concerned, the system in force can be said to be working reasonably well. But there are defects, notably in Nairobi, which, however, the Board hopes to deal with. The question of imported goods

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with landed prices beyond our control presents another and much more difficult problem. It is manifestly impossible to fix definite prices for all imported articles which can fairly be described as essential and although the alternative of prescribed margins of profit may seem attractive at first sight, the supervision which would be necessary to ensure that the regulations are obeyed, and the work involved in conducting prosecutions (to say nothing of the difficulty of securing convictions) when there was reason to suppose that they were not being obeyed, decided the supply board not to adopt this system. The investigation of specific complaints has been carried out on a considerable scale and it is fair to say that in the overwhelming majority of cases the results of the investigation have shown that the complaints were unfounded.

There is, however, some sign that a different spirit has come to prevail in certain quarters of the trading community to-day and the gradual realization that overseas prices are rising and may continue to rise for some time to come (although this is not necessarily certain) has led to goods being withheld from the market and to the speculative hoarding of goods to be held for higher price levels. The Board is fully alive to the dangers of this situation and has in hand steps which are designed to deal with it. I do not suggest that these steps will provide a complete solution, but they will, I hope, ensure that some of the speculations which I have referred to will turn out less profitable than those who indulged in them intended.

As a preliminary step returns have been called for in to-day's Gazette from holders of stocks regarding which there is evidence that hoarding has taken place. It would be unfortunate if the action of a limited section of the trading community were to compel the Government to take drastic steps which would cause great inconvenience to traders as a whole and which would deprive a section of them of perfectly reasonable and proper profits.

Complaints—and I think very natural complaints—have been received from

primary producers in the Colony that whereas their products are subject to organized marketing and control, the commodities which are essential to such production are subject to no control. It is necessary to recognize with regard to imported goods that there is a very limited scope of local action, and it does not necessarily follow that the price increases that have been made are extortionate or avoidable. We have evidence in many cases that they are neither, but arrangements are in hand to carry out inquiries in regard to certain imported articles concerned and a beginning will be made in the near future in regard to agricultural implements and machinery. It is known that large orders for imported goods have been placed and it is to be hoped that replacement stocks will come forward sufficiently freely to allow normal commercial competition to play its part in ensuring reasonable prices. But the necessity of supervision and control which has proved to be necessary elsewhere is equally required in Kenya and I can assure hon. members that every effort will be made to make that control as effective as possible and to remedy defects as they present themselves.

In regard to currency control the position is that foreign exchange can be obtained through the banks of East Africa to meet any genuine trade requirement and to meet reasonable personal and travelling expenses. By reasonable trade requirements is meant the importation of trade goods for which an import permit is held. The general position in regard to currency was explained very fully in an answer in this Council not many days ago and I do not propose to refer to it further except in the case of surrendering currency. Any individual possessing foreign currency by way of dividends or from imports or in any other manner must make it available to the Government through their bankers.

These currency regulations are operated by the commercial banks and I should like to take this opportunity of endorsing Your Excellency's tribute to the public spirited and efficient way in which the banks have carried out, without remuneration, the onerous duties which have fallen to them.

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With regard to commodity control, the Supply Board endeavours to keep in touch with the general position with regard to stocks of essential articles in this country and to ration requirements when shortages are anticipated. The list of such articles has been steadily reduced and the only ones for which a sale permit is required are corrugated iron and spares for petrol-driven lorries. Sale permits are also required for wireless transmitting sets, but that is for another purpose.

The next item—"Petrol Rationing Expenses, £600"—certain expenditure has been necessary in regard to petrol rationing, the operation of which I think hon. members will agree was introduced, having regard to all the circumstances, with relatively little inconvenience to the public and is now working smoothly. Some doubt has been expressed as to whether petrol rationing was necessary at all. The position is that we have been invited by the Imperial Government to economise in the use of oil products in order that the maximum quantities of petrol and other oils, and what is equally important—tanker tonnage, may be made available for the prosecution of the war. I am sure that no hon. member would suggest that we should not co-operate in this effort which we can do with relatively little inconvenience to ourselves.

With regard to the next item—"Information Committee, £3,700"—hon. members will all realize the importance of full and accurate information designed to spread knowledge of what is being done not only in this country but in the Empire and by our ally in the prosecution of the war and the consequences arising from it. A special department has been set up in England with which our committee is in touch. I think I am correct in saying that the greater part of the work of the committee deals with local information and concerns itself with local interests. The chairman of this committee is a member of this Council and will be in a position, at a later stage in the debate, to answer any specific points which hon. members wish to raise.

The next item—"Censorship, £1,300"—here again, the Chief Censor is a member of Council and will be able to explain

more fully than I can do the different work and responsibilities involved. I will only say that censorship in Kenya is only a part of an Empire-wide scheme and the staff necessary to carry it out, if we are to fulfil the obligations we have assumed, has been subjected to a very close examination, and I cannot see that it is capable of reduction as matters stand. That brings me to the end of Civil Expenditure.

The total expenditure for all purposes provided for by these provisional estimates stands at £2,652,576, of which £2,523,439 is recurrent, and that leaves an estimated deficit of £53,400, which is just about the total of our civil war expenditure.

The deficit has been reduced to that figure only by making drastic reductions in the provision for capital expenditure. Under Public Works only £500 is provided for the replacement of mechanical plant and £4,000 for minor works. The Posts and Telegraphs Department which has been regrettably short of development funds in recent years is necessarily, so far as revenue-funds are concerned, still more severely rationed this year and receives only £5,000 for extensions and improvements. So whatever may or may not be possible in other sections of the estimates there is no hope of making any reduction so far as extraordinary expenditure for capital items is concerned.

It will be the concern of the Standing Finance Committee to devise means of bridging the present gap between revenue and expenditure as shown in these provisional Estimates or to confess that the task is beyond them and to justify the result which, if the out-turn of the year should coincide with the provision in these Estimates, will mean an inroad into our small surplus balance. If this can be avoided it should be avoided. But a surplus is accumulated for the purpose of dealing with emergencies and it is with an emergency which we are now faced.

MR. RENNIE seconded.

LORD FRANCIS SCOTT: Sir, in speaking to the Estimates this year it has been pointed out by my hon. friend the mover that one is dealing with Estimates which are definitely called "provisional" and which we really cannot foretell, on

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the revenue side, what is likely to happen during the coming year. The deficit of £50,000 may be a correct estimate, or the deficit may be very much greater. On the other hand it may not prove to be anything like as large as it states. We cannot possibly say. The main feature of this budget is that it is a wartime budget. The chief points in that wartime budget are, first of all, increased taxation which we are told is estimated to bring in £165,000; military expenditure which at present is estimated at 25 per cent above the 1939 Estimates; and Civil expenditure of £59,000 with which the hon. mover has dealt with so fully.

Now, Sir, taking first of all the increased taxation, I think I can truthfully say that the people of this country are only too ready to contribute, whether in money or other ways, whatever they can to the common cause of prosecuting this war to a successful conclusion. But if you go to the actual incidence of these taxes, one first of all takes the increase in Customs duties, I shall be very much surprised if the estimated amount is realized. The reason I say this is that some of the things on which increased import duties have been placed, such as cigars and wines, are almost impossible for importers to get into the country at the present time. Whether that position will be remedied later on or not, I cannot say, but I think it is inevitable that with the upset of war conditions, the Customs revenue must be very much down on what it has been this year, and I do think that the hon. mover is wise in having allowed for that large drop.

Amongst the civil war expenditure reference was made to the Import Control section. I quite agree with the hon. mover that the amount of money put in—£760—is unlikely to be sufficient to deal with this very important work. It is bound to be very difficult work to deal with; it is bound to be a work which will cause a great deal of irritation and difficulties to the commercial firms who wish to import goods and I do trust that steps will be taken as far as possible to make it work in a practical way. It is very easy to say that we must change over and import everything from Great Britain or sterling countries but when it comes to

putting it into practice it is not easy to put it into effect. For instance, one of the countries affected by this Customs question is Canada, a part of our own British Empire, and I think it should be pointed out to the authorities at home that whilst they argue that we are such a small country with a small production that it does not matter very much whether they get any of it or not—and then the same arguments must apply to imports which must be small in proportion—and cannot affect the main issue to any great extent.

Now, we come to the direct taxes and the large increase in income tax. People who are making profits are only too ready to contribute their bit to the common weal, especially when one realizes the tremendous burden which is being borne by the people in Great Britain. Only this last week I heard from home of a large land owner whom I know well, who, after he has paid all his taxes, rates and other charges, gets less than Sh. 2 in the pound to spend. That is going to have a very ill effect of course on employment and the upkeep of estates in Great Britain. Fortunately we have not got to that pitch in this country but it does make one realize that we must be prepared to take our share of the burden. But if we are really going to do any good to help in this way it is essential that every effort shall be taken to increase the basic wealth of this country so that there shall be something from which we can contribute. I am not referring to the royalty on mining because, as already stated, that is *sub judice*, and there is going to be a meeting to-morrow to deal with it.

Now we come to our contribution on the Military side. I think the present Estimates in this budget are an increase of 25 per cent over the 1939. It seems to me to be a very reasonable provision and when it comes to contributing in man-power I do feel that we have gone as far as we safely can if we are to maintain the productive capacity of the country.

My hon. friend the noble earl the Member for Kiambu can give you better figures than I could, but I think I am correct in saying that over 2,000 of our people have joined the military forces in

[Lord Francis Scott] some way or another, which is a very large proportion of the European community, about 10 per cent of the European population and about a third of the able-bodied men available. I think it would be dangerous if a very much larger number went; it would be very much to the detriment of the business of the country.

We had hoped that we were going to be able to contribute to the common good far more in the way of producing the necessary foodstuffs and raw materials from the soil. We thought that probably that was going to be our chief method of helping. But unfortunately it does not seem from what has happened up to date as if the home authorities want our products, because if they did presumably they would be prepared to pay for them. As far as one can make out the policy in Great Britain is to buy in the cheapest market irrespective of anything else and I understand from people at home that there is great dissatisfaction amongst the farming community there who say that they are being strangled by a network of bureaucracy which has grown up in numbers and strength to such an extent as has never been known before in Great Britain.

That same bureaucracy seems to have little sympathy for the producer in other parts of the British Empire. We understand that they are short of butter in Great Britain, and short of bacon; presumably they are short or else they would not be rationing them. Well, we can produce butter here and increase our production of butter. We could increase our production of bacon very largely and very quickly but to do so the farmer must be given a reasonable price. We do not ask for any fantastic prices. If we got Sh. 1 a pound for butterfat and 6d. a pound for our bacon we would be well content.

But what has actually happened is that so far as bacon is concerned, I do not think we have had any offers at all. So far as butter is concerned whilst the control price, the wholesale price, in England is Sh. 148 per cwt. we were offered Sh. 129 and were told that if we did not accept that they would be prepared to

requisition all our spare butter and pay us whatever they liked. Already two consignments of butter have been requisitioned and Sh. 100 has been paid in advance, but I do not think the balance has been paid.

Now, Sir, if they were prepared to give us a price equivalent say to Sh. 140, which is considerably under the wholesale price in England, the dairy farmers would be able to raise money to buy more heifers and cows from the ranching farmers and so increase their output of milk which in turn could be turned into butter and that butter would be sent to help the shortage in Great Britain. But if one only gets a price which barely covers the cost of production it is only natural that the banks and such other people who lend money are not likely to lend money unless they can see that some reasonable return is going to come for that money.

Now, again, there is tea: I understand that large consignments of tea have been requisitioned and no payments have been made at all so far. Then again, we come to maize. We are told that they want all our surplus maize, but the price which would come to the farmer is Sh. 6/40 a bag. Now that Sh. 6/40 in normal years would pay for the cost of production without leaving any profit to speak of. But in the present time, with locusts all over the country and when one knows that one is lucky if one only loses a third of a crop and unlucky if he loses more than half it does alter the price at which one can take the risk of planting maize.

Personally, I have been growing maize for twenty years, and I certainly am not going to increase my production this year unless a much more reasonable price is likely to be offered, because one simply cannot afford to take the risk. It may be said that this is very unpatriotic of farmers, that they ought to be prepared to grow what they can and sell even at a loss. If we were all very rich people farming for a hobby and could afford those losses, we would willingly do so but, in fact, that is not so. The people of the country are not rich people. Farmers in particular have had a desperate time trying to make both ends meet over a period of years, and they simply cannot

[Lord Francis Scott] afford to go in for production which is likely to show a loss; nor can they get the banks to enable them to do so. There is no question of being unwilling or unpatriotic, but the plain fact that it is not possible.

While a farmer is expected to get even less than he was expecting before the war, everything which goes towards his costs are allowed to go up. They have to go up under the circumstances. Shipping has gone up by 33½ per cent, oil is up, all the manufactured articles one has to use have gone up. Then we are told there is that which we hear so much about now, replacement costs, which covers a multitude of sins, but the farmer has to pay for it. Yet he is expected to go on producing at the same sort of price or even lower than he was doing before the war. Only a few days ago, that new body known as the Settlement and Production Board, issued a long document in which they showed very clearly what the prices of commodities were and what the return to the farmer was likely to be. That is very illustrative of the position.

Unless something can be done to remedy that position, I feel very nervous about it in this Colony. First of all, we will not be able to help our friends overseas at home with our products, nor will we be able to produce money in this country to help to carry the burden of the country itself. It cannot help the home people to see the Colonies going broke. It is going to be a burden on them in the future, and it does seem tragic that at a time like this when so little would help to make the position so much better nothing seems to be done about it. I do urge your Government, Sir, to take this matter up very strongly and persistently. We all know what the Colonial Office attitude is: nothing short of a bomb will ever disturb them from their complacency. Unless they can act on our behalf in London, there is nobody else who can do so. So I suggest that we have to go on and bombard them with tiresome points, which may be tiresome to them but which are essential from the point of view of this country. We have to go on and on until we disturb them and make them take some action on our behalf.

Another point in connexion with this question of getting markets for our produce is the question of shipping rates as between this country and places like Port Said. I cannot understand, nor can I see any justification, why shipping companies give much better terms from Bombay to Port Said than from Mombasa to Port Said. I hope that the hon. Member for Mombasa, who is interested in some of these shipping companies, may be able to do something to help in that respect. The trouble, of course, with us is that this is a very small country and therefore a very weak country. We cannot pull the strings at home to make our influence felt in the same way as the larger countries, the Dominions or India and so on, can. The result is that the Treasury and other people who control these matters in London do not really care very much what happens to us. It is only by persistently pestering them that we can hope to get any amelioration of the position.

May I hold out a word of warning to my hon. friends on the other side of Council? It has been stated that it is the Imperial Government's policy that social services be maintained. It is an old saying, and I am sorry to repeat it, but it is a truism, that the sole wealth of this country comes from the soil, and if the wealth from the soil is not maintained there will be no money to keep those services going, and the inevitable result will be a cut in salaries. So I ask hon. members opposite to bear that in mind and be warned in time.

I will now touch on a few points in the actual Estimates.

First of all, I had better get it off my chest perhaps, why I consider that certain essential capital expenditure has got to be undertaken in this country, and which is not provided for. The first thing I wish to speak about, and which is really urgent, is the question of increasing the accommodation in the native hospital at Nakuru. This was agreed to during this year, and was top of the list of those things we required. Since then it has been cut out under the economy needs, but the position is getting worse. It is a little anomalous. We are going on with expenditure running into hundreds of thousands of pounds for building a magnificent native hospital in Nairobi to

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accommodate 300 natives in the first instance, while at Nakuru to-day there are over 200 natives in that hospital. I had the figure from the doctor in charge only a few days ago. All that is asked for is £3,000. If there is nowhere else it can come from, take it away from the Nairobi hospital for which hundreds of thousands of pounds have been voted and give it to Nakuru, because it is the most urgent need of all native hospitals in the country to-day.

The next point is the question of school buildings. The hon. Financial Secretary pointed out that there had to be an increase in the recurrent expenditure of the Education Department with the increase in the school population, but it is no good having masters unless there are buildings in which they can operate. This matter should be dealt with.

The third thing is an increase in telephones all over the country, and I particularly wish to put in a plea for rural telephones.

All these things are capital expenditure, which should rightly come out of loan expenditure, if there is any loan money with which to deal with them, but I do urge that they are matters of real urgency which should not be allowed to go into abeyance because they are closely associated with the proper development of the country.

Dealing with the Education Estimates, I was rather surprised to see that there is a large vote put in for bursaries at Makerere College. I understood that when we were practically forced to contribute £50,000 to the endowment fund, the interest on that £50,000 was going to provide for the cost of our sending pupils to the college. But here is an extra vote of nearly £2,000, and before I give my vote in favour of it I shall have to have some strong arguments put forward.

I notice under the head of Judicial Department that it says:—

"The establishment of puisne judges has been increased by one in order to cope with the increase of judicial work and to provide for reliefs for leave movements".

May I ask how that fits in with what we were told in this Council a day or two ago, that this additional judge would deal with all those cases all over the country taken out of the jurisdiction of administrative officers?

Under the Veterinary vote, I am glad to see there is a vote for dealing with beef measles, and I do trust that this menace to the cattle industry will be taken as seriously as possible, and every step possible taken to deal with it.

Under another vote, I have been asked by my constituents in the Naivasha area to raise the question of the experimental station at Naivasha, if it is doing any good work or whether it would not be economical to close it down.

I also, like the hon. mover, would like to refer to this civil wartime expenditure.

The first question I should like to ask is with regard to the maintenance of the German women and children. They are being maintained by Government for their own benefit, they are not interned as dangerous enemies or anything of the sort, and I cannot conceive why they should not pay for their own rations. They must have money just like other people. It may not be a large amount, but I cannot see why Government should support a lot of German women at Government's expense when they could produce money themselves. I believe the Custodian of Enemy Property could probably find the money with which to pay for it if the ladies themselves do not produce it.

Of all that civil expenditure, the part which I think may be of real benefit to the country is the "Supplementary Police Provision, £28,500". We have been very short of police for some time, and I trust that the training of this extra force may be able to help a good deal in that respect.

With regard to the Information Committee, I see there is a European staff of nine, which I should have thought was excessive, and I cannot help feeling that that vote should be cut down. I hope the native paper *Baraza* will be kept going, and I think the Afrikaans broadsheet is also of value, but I am very doubtful whether all the other expenditure out of that vote is really necessary.

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With regard to Censorship, I see there is a European staff of twenty-two, at an average of nearly £400 apiece. I wonder whether that is really necessary? Of course, it is a matter of policy as to how much censorship is considered necessary. During the early stages of the war one heard all sorts of cases and of some unnecessary and foolish types of censoring. That has been modified now, and I am sure the hon. member in charge of the department would welcome any diminution of the work. It does also seem that £400 per person for censorship is rather high, especially when one hears of a good many gentlemen in the country willing to give their services voluntarily without pay to help in various war work. I should have thought that some could have been employed on this work and so save money.

However, I do not think I shall bother the Council any longer, but I do once more want to reiterate that the really important point which has got to be considered by Government to-day is this question of helping the producer to get reasonable prices for his products, so that he can assist the people at home and can also assist to keep the income of this Colony going, and thus afford to pay for these many and expensive services which we have built up during recent years.

Council adjourned for the usual interval.

On resuming:

MR. PANDYA: Your Excellency, we have to-day before us a somewhat unusual budget with a deficit of over £50,000, in spite of extra taxes that it is proposed are to be imposed to the extent of £165,000. I understood from the speech delivered by Your Excellency when the session was inaugurated that this extra taxation was going to bring in about £200,000 and I would like to have some explanation from the hon. Financial Secretary when he replies to this debate, as to the reason for this reduction in these Estimates to the extent of £35,000.

I realize that we are in the middle of a grim struggle and that we cannot escape the sacrifices which are necessary

to win this war. Although, so far, we have been saved from actual warfare conditions in this country, thanks to British diplomacy, it is however, very necessary that in times like this that one has got to keep prepared and that this preparedness, as it is called, always costs money. So I do not think that we can fairly complain about the services and the particular items of expenditure necessary for the war.

It is our duty to contribute to the best of our ability to the war effort and I do not think anyone here or in the country would take any exception to that principle. I think we can say safely that in this country we are contributing economically, financially and by man-power. Economically we are increasing agricultural production and, in spite of the difficulties which the noble lord the Member for Rift Valley has mentioned just now, I think we can say that there are possibilities of a great increase in our agricultural production. There is no doubt that the prices in spite of control are likely to and must rise as a result of war conditions.

We are, on the other hand, trying to reduce our imports and trying to confine them, as far as possible, to Empire countries so as to save a certain amount of foreign exchange.

Financially we have shouldered, or propose to shoulder next year the burden of extra taxation that is to be imposed upon us and £165,000 to pay into the general taxes is not a small amount, particularly when the country is already overtaxed having regard to its stage of development in comparison with other countries, and the contribution that we are making next year to my mind is not an insignificant one.

As far as man-power is concerned we have already heard that 2,000 Europeans have already joined the services in one way or another and as far as the Indians are concerned we have to-day in the military certain persons employed and we have now a compulsory register of Indian man-power in the country which I am glad to say totals approximately now 14,000 from the ages of eighteen to forty-five. Now, all these 14,000 Indians could be effectively used in the service

[Mr. Pandya] in which they could be most useful. I would not say that the whole lot or a large majority could be in fact used for military services, but in these days of warfare there are all sorts of auxiliary and other non-combatant services in which the Indian man-power would be most effective and useful. We have also in this country an Indian Mountain Battery and no doubt in cases of emergency we can count on India for a certain amount of military help.

As far as the African community is concerned, I think I can say very frankly that in the equipment of the whole man-power of the country they have contributed very materially to the military man-power and also to the labour and other services.

On the whole, therefore, we can say very safely that we have done our duty and have contributed to the war effort to the best of our ability.

Now, coming to the question of the taxation which it is proposed to be imposed in 1940, the taxation is mostly confined to the non-native communities, and at this stage I do not take any exception to it. But I simply wish to point out that the direct taxes and the duties on luxuries are more or less all contributed, and will be, by the non-native communities.

As far as the poll tax is concerned the Indian community cannot reasonably take any exception to this imposition today. In ordinary circumstances I should be very strongly opposed to such an increase in taxation, but in view of the fact that all communities are supposed to contribute to the war effort, rich and poor alike, I think it is reasonable to say that we should shoulder this extra imposition during wartime. But, in regard to the poll tax particularly, I think it is necessary for the Inland Revenue Department to exercise more liberally their power of exemption to the people who are of the wage-earning classes and to the poorer sections of the Indian community, and I think it would be necessary to evolve some sort of machinery so that exemption could be more readily given in cases where it is proved that it would be a great hardship.

Coming to the question of the Revenue Estimates, the hon. mover gave certain details in regard to Customs. The Customs revenue to be obtained for the next year is £790,000, whereas in 1938 the actual revenue accrued was £878,000. In 1939, we have not got the figure here, but I think it is in the neighbourhood of about a million pounds. I quite agree that in 1940 in estimating this revenue we have got to take into consideration the heavy withdrawals that the hon. mover has referred to and, in my opinion, over £50,000 has already been taken in Customs duty which would have accrued in 1940. In view of this I do not think we can say that this budget before us is necessarily a deficit budget, but, according to Government accountancy one has got to put that as a deficit.

In spite of all that, I personally feel that there are chances of not only increasing this revenue but perhaps reaching the figure we have already secured in 1939. The hon. mover made a point that large stocks had been withdrawn already this year and perhaps next year duty-paid goods would be lower. The thing necessary to do in this case is to start a rumour of increase in duty at the beginning of December, and if someone starts large withdrawals from bond we shall have a repetition of what we had this year!

I do not think there will be any material difference in the revenue which the Customs Department will secure in 1940. But in spite of this I think it is always best to budget on the safe side and the revenue here from the Customs Department is, in my opinion, on the conservative side.

In regard to income tax, I am not quite in agreement with the viewpoint or the arguments which were advanced by the hon. mover in regard to the proposed increase of only £20,000. In 1938 the actual amount secured was £104,473 and in 1939, I have not the figure of the amount secured, but the figure estimated is £134,500. Now, leaving alone the 1939 Estimates, and taking the 1938 Estimates, if we take them into consideration and the 40 per cent which is the additional tax which it is proposed to levy, the figure which I get would be about

[Mr. Pandya] £148,000 to £150,000. And I think the question of non-payment or the lagging behind is also applicable to 1939 as in 1938, so I do not see any sufficiently strong reason why the estimate is so low in these Estimates.

Coming to the expenditure side of the question I entirely agree with the principle which is enunciated here in the memorandum before us, but I do not find that such economy has been properly followed in certain items of these Estimates. In spite of the increased figures for education and other services the expenditure has been kept just the same as last year. This is mostly, I suppose, due to certain people having been transferred to the military and I do not think that if these people's salaries had to be paid by the Government we should have been in a position to show the expenditure reduced to the figure here.

I do not blame the Government at the present moment because, as the hon. mover explained, Government had not sufficient time to look very carefully into this expenditure and I suppose that at the Standing Finance Committee stage we shall be able to do something. But I hope that next year this question of expenditure will be very carefully considered.

The hon. mover explained at some length the question of the price control, its necessity and the work done by the Supply Board. In my opinion it is necessary to remove a certain misunderstanding which exists in the minds of people on this question. It is said that we find a large number of people who are profiteering or taking advantage of war conditions and increased prices. I think the question is to some extent a parallel to what the noble Lord the Member for Rift Valley mentioned in his speech this morning. He outlined a scheme whereby the farming community should receive increased prices in order to recuperate them for their losses and that this is the time for making profits in order to keep reserves for future needs. Why shouldn't we extend that principle to the trading communities generally? The word "profiteering" is a somewhat emotional word which arouses the emotions of the people but, in relation to the facts the use

of the word is hardly justified. There are certain words which immediately come to people's minds. If you analyse these things I do not think there is any justification for this implication, and if the trading community has not during the past few years, in competing among themselves in relation to each other's trade, not made any profits, then at this stage perhaps when there are possibilities of getting reasonable profits I think it is perfectly fair to do so.

There is one thing in this connexion which has been overlooked by the people in charge of price control, and that is this principle of replacement costs for the articles which are sold. I do not wish to develop this argument at very great length, but I do wish to make this point in order that the people might understand the principles which are at the back of these increases. It is claimed that if a man has got a certain article in his shop to-day there is no reason why he should charge an increased price for that particular article. I myself in the beginning was of the same opinion and I also thought in the same manner, but after hearing the arguments of people concerned and of the principles under which trading is everywhere conducted I altered my opinion. Even in peace time, if the price of a given article goes down at home or in Japan or in other countries, it can be proved by facts that the price immediately goes down in this country. As an instance, if we hear a rumour that as the production of maize is going to be increased this year and next year and that the price would go down, immediately the prices ruling to-day go down automatically. That being so people, when they find that the article which they are selling would be replaced at a very materially higher price, it is only natural that they should increase their present prices in order to reach that price and thus distribute slowly the difference between the present and future price of the same article. This, when properly explained, would no doubt remove some mistake about so-called profiteering.

It is contended that traders should continue to sell their present stocks at pre-war prices. But what happens when he continues to replace his stocks at continued high prices and at the end of the

[Mr. Pandya] ... war, when prices come down, how is the consumer going to be forced to pay that high price? How is a trader going to recuperate and how is he going to pay his losses which he is going to be faced with at the end of the war? So, to a certain extent, taking these two things into consideration I think it is only fair to allow these people to have a certain reasonable margin of profit in order to recuperate themselves to-day and accumulate a reserve against their losses in the future.

There is one item to which I would like to refer and that is Item 17 on page 7—"Lands and Settlement". It is proposed under this that the post of sub-draughtsman, Asian, is to be abolished and the reasons given for that are:—

"The creation of a new post of senior sub-draughtsman was approved in the 1939 Estimates. For various reasons, no appointment has been made, and it is now proposed to abolish this post on the ground of economy".

Now, as usually happens, the hon. member in charge of the department no doubt had great difficulty and had made out a very strong case in order to justify this appointment in 1939 and now, before the appointment has been made it is proposed to abolish it on the ground of economy. If this principle of economy was followed throughout the Estimates I would not take any reasonable objection to this particular measure of economy, but I think that when we analyse this matter further we find that this principle is not applied to other things. We have in the same department's Estimates Item 49—"Clerks, European, £416". And the explanation is:—

"A special increment has been approved for one clerk on the advice of the Lands and Settlement Board".

So here we find that the principle has not been observed throughout these Estimates. Here is an instance of an increase of £91 in the salary of one clerk, whereas a post giving an increase of £12 in regard to an Asian it is proposed to abolish. I have brought this example out in order to show the differentiation which exists between the Asian

branch and the European branch of the Civil Service. It shows the mentality at the back of things in regard to these matters.

We now proceed further in order to see whether the same principle of economy has been observed in the other departments and on page 8, under the Medical Department, Items 79 and 80, we find this:—

"A regrading is proposed here in order that there may be opportunities for promotion for the inspectorate staff. This regrading is also reflected in Items 33 and 34 and involves the creation of four senior posts. There will remain nine junior posts".

Here is an instance that the Government accepts the principle of providing four senior posts to nine junior posts. The senior posts carry a salary of from £500 to £600 and the junior posts from £372 to £500. Whereas we find in the item which I quoted in the Lands and Settlement Department, a sub-draughtsman, there is one senior post for the nine sub-draughtsmen which it is proposed to abolish. And Government accepts the principle in the Medical Department of a ratio of four to nine.

There are many other instances of this nature but I will only quote one further instance. On page 10, Police, Item 6, you will find here "Assistant Accountant and Storekeeper". And the explanation is:—

"The work in the stores and accounts branch has been increasing for a number of years, and it is considered that a post of Assistant Accountant and Storekeeper on an appropriate scale of salary is justified. The creation of this post enables one European clerical post to be abolished".

But what do we find here? We find that in order to provide an opportunity of promotion to a clerk that a special post has been created at a salary of £500. And the savings shown on page 70 of the Estimates, under Item 34, is £393, so that either the same man or another man from that particular head is transferred for this promotion which costs £107. Whereas in the same Department, as far as Sub-Inspectors, Asians, are concerned they have not got a sufficient number of posts and they are kept at the top of their grade for a considerable period!

[Mr. Pandya]

These details show the differentiation which I have just mentioned between the two branches of the Service and I personally do not see any reason why, in view of what I have shown, this particular post should be abolished.

I entirely acknowledge that to a certain extent the feelings of those in charge should be more in sympathy with the people of their own race, but in this it seems a sense of proportion is necessary, and I think that if you can call this an instance of economy then I should say that the word "economy" could not have been more abused than it is in this particular instance.

I should like to raise another question in regard to the wheat pool agency. I have here a circular letter, dated the 21st September, from the Kenya Farmers' Association to the millers, issued under Government Notice No. 717. It says:—

"The maximum and minimum quantities of wheat with respect to varieties and classes which shall be supplied to millers will be in the following percentage to the total wheat taken by the mills:—

White wheat, maximum 24 per cent.

Red wheat, maximum 56 per cent.

Sabanero, maximum 20 per cent"

and then, it goes on to certain other details which are not necessary for the discussion which I am raising this morning.

Well, in regard to the administration of the wheat pool agency we have a genuine grievance. We have raised this question here many times, and we have brought it to the notice of Government very often. I am not going to raise it again except on principle and I am going to confine my remarks to the issues involved in the circular which I have just quoted. The Indians are the largest consumers of wheat in this country, and atta is the particular type of flour which is used by the Indian community entirely, and in order to grind this atta they have to grind it rough so that the flour can be used for baking *chapatti*, the Indian bread. In order to manufacture this atta I am informed by the millers themselves that it is necessary for them to have a good variety of wheat, other-

wise it is entirely unsuitable for the manufacture of it, and they particularly object to *sabanero*.

They complain that the agents hitherto forced on them this type of wheat to a certain extent, but it is now made compulsory by Government to the extent of 20 per cent and therefore they have no way out of it. The Indian millers were complaining to the agents that it was quite impossible for them to use this particular wheat for the mixing of *atta* but now the millers cannot object as it is approved by Government. It is not only this but in the circular I have mentioned the grade of wheat that may be issued to the millers might be from the first to the tenth grade with an average of third grade, and it is contended that in this way the opportunity is given to the agent to supply a lower grade.

With regard to the superfine flour which is mostly consumed by the European community, they do not mind if the wheat is poor; I understand they can make it strong and improve it by mixing chemicals. But as far as *atta* is concerned this mixture is impossible and therefore this particular average of qualities which is mentioned in the circular could not produce proper *atta* which in this country is made entirely for the Indians, and the Indians are forced to accept this inferior quality *atta*.

I should like to draw the attention of the hon. Acting Director of Agriculture that in these kinds of thing there is always a limit to suffering and patience. Before that limit is reached I hope the hon. the Acting Director of Agriculture will look into this matter and give the millers an opportunity of representing their case.

They also say that in 1930, when this wheat pool was introduced, they were consulted by the agents or Agricultural Department as regards the grades and percentage of varieties, but in making this alteration the millers were not consulted. Another point that the millers are very serious about is that they have always complained and without success as regards the principle of the agency, that the agency should not be given to people interested in the industry. They have not

[Mr. Pandya] yet successfully brought home to Government the difficulties of the matter, but it is very natural to assume that if people interested in the industry are handling the agency and the sales also, all the business of the petty millers will be known to the agents and, to that extent, trade secrets could not be kept.

What is happening just now on account of this policy of Government entrusting the agency to interested parties is that other mills are going out of business, and if this is kept up it will practically transfer the monopoly of wheat milling to the wheat agency. I do not think the country can view that with equanimity, particularly the Indians, when their food supply is at stake.

I do not wish to enlarge or speak on any of the expenditure votes, because the other hon. Indian members will deal with certain issues which have been raised. But I would say a few words in regard to Coast matters, the constituency I represent.

We have at the Coast roads in a particularly bad condition; we can say that, with few exceptions, roads do not exist, and those few exceptions are only tracks which are closed for periods of time in the rainy season. I must admit that the hon. Director of Public Works has tried his utmost to do what he can with the limited resources at his disposal to improve matters. Whenever I have gone to him with complaints, he has always heard them with great sympathy and has done what he could to improve matters. But the limit of his sympathy is finance. He could only say he sympathized. I agree that times are bad to-day and it is difficult to provide funds for many things, but there are certain roads at the Coast on which expenditure could be justified even on military grounds. And I am quite sure that when one mentions the word "military" all objections to the question of voting funds disappear! I think in this particular instance I should like to take advantage of these conditions as far as the Coast roads are concerned and make a plea for the road between Lamu and Mombasa, a very necessary one indeed. To-day Lamu is cut off in certain seasons, and one can only go once a month when

my hon. friend the Member for Mombasa can provide a steamer, which he sometimes does, and sometimes does not! Therefore we must have some sort of road in order that people can travel and keep in touch with that part of the country which to-day is impossible. It may be done in the dry season, but not at other times.

There is an inter-territorial road, from Mombasa to Tanga, which has been improved somewhat recently. I admit that the hon. member has done what he can, but it does not go a long way, and even on military grounds expenditure on this road is equally justified.

There is one point, in regard to Indian settlement, which I should like to make. We have in this country an increasing Indian population, and trade and industry cannot absorb the surplus. The only way in which the surplus population which we shall have in a short time in this country can be absorbed is by settlement on land on the Coast or in some other areas suitable to Indian settlement. It may be said that the Indians are permitted to settle on the Coast or any other place except the Highlands, which are reserved for Europeans—and it is very humiliating that Germans, with whom we are at war, could settle in the Highlands, but Indians cannot. However, I think that is a phase we can successfully fight after the war; this is not the time, but it is the sort of thing which my hon. friends sitting here should consider. If they were in my place they would feel much the same, and would have done more than we have done to obtain a reversal of this policy.

Apart from that, in areas where Indian settlement could be undertaken, there are certain instances in which Government could afford to do their part. One might ask, what has the Indian community themselves done, are there any people in this country who wish to settle on the land? Well, we have an Indian population at Kibos, who have been successfully settled on the land, and I am quite sure good use could be made of suitable land in other areas. But the point I wish to raise is that in spite of all the facilities Europeans have in the Highlands in the way of climate, large acreages, and all sorts of Government help, it is necessary

[Mr. Pandya] for them to insist on having a Settlement Board, which is supported by Government, to increase European settlement and so on in the Highlands. If this is necessary where conditions of settlement are ideal, and people would jump at the opportunity of settlement, it must be somewhat more necessary in regard to Indian settlement where conditions are not the same.

The land on the Coast is very good, as my hon. friend the Member for Ukamba would say because he happens to have experience of land in that area and at Taveta, but on the Coast generally there is sandy soil, and the facilities which are available up-country do not exist. I suggest to Government that when we think of increasing production it is necessary for every community in this country to participate in that effort. Here is a case where, if Indian settlement is encouraged, something could be done in that direction, and the question of increased Indian settlement, not necessarily at the Coast but in other areas which are suitable, should be seriously considered by Government.

I hope that when this question is considered by the Standing Finance Committee, some provision will be made to make a start with that particular scheme.

There is one point I should like to make before I conclude, and that is the same point which, perhaps in a general way, was made by the noble lord the hon. Member for Rift Valley, when he complained that people had not been paid for motor vehicles taken some time ago. I have had complaints from Mombasa, and also from Nairobi, that motor lorries which were requisitioned at the beginning of the war were not yet paid for. I will not say all of them, but a certain number of owners are still unpaid. In addition, although these lorries were required by Government for military purposes, some were returned to the owners without any compensation. In the case of lorries driven by drivers only partly trained, their fate is imaginable, and for Government to say no compensation will be paid is rather unfair. They do agree to make certain repairs, but that does not satisfy an owner, because there

is always a difference of opinion as to what repairs are justified and what are not.

I am quite prepared to admit there was cause for delay in the beginning of the war, that you cannot have a big machine working at top speed and with great efficiency in a few moments. We all realize that and are prepared to make allowances. But I do not think there is any case for unreasonable delay now, and I should like to appeal to the hon. Financial Secretary that he should make an effort, and convey the disappointment or resentment of the public to the department concerned, so that in future these matters are dealt with with more efficiency and promptness and without unreasonable delay.

LADY SIDNEY FARRAR: Your Excellency, I would like to say, in referring to the budget before us, that I think that a tribute should be paid to the honesty of the hon. mover in agreeing that the budget, just as the Railway budget yesterday was, is wholly based on guess work. I think, on the other hand, that this guess work was based on one point of view only, and I should like to endorse the remarks of the hon. Member for Ukamba the other day in which he stressed the need to bring Government back at times to a sense of reality.

I should like to submit that both the raising of taxation and the budget before us are framed in a spirit bordering, shall we say, on cynicism; also on a certain lack of knowledge of conditions in this country and its capacity to pay, the psychology of the peoples making up the population of the country, and the problems they are facing, and to a certain lack of perspective which may, of course, be based on instructions received from the Colonial Office. That is generally the answer to such criticisms.

I would suggest that a budget of this type is purely negative from end to end, probably carrying out a policy of negation which the producer can hardly be expected to endorse.

I am not going to go through the budget page by page, as already a certain number of points have been covered by my colleagues, and doubtless a majority

[Lady Sidney Farrar]

of further points in which I am interested will also be covered. I will only raise one or two outstanding points.

Repeating the remarks of the noble lord the hon. Member for Rift Valley, I should like to emphasize that the financial stability of this country is based on the primary producer, irrespective of race, and his successful continuation by increase of production. Dealing with the new taxation which has been brought in to meet a possible deficit in the budget, I feel that this also is very definitely framed in a spirit of guess work, and I am not satisfied that the guessing was altogether as it should be. You have the taxation on cigarettes which has been so heavy that, to my knowledge, the majority of native consumers in my own area have ceased to buy cigarettes altogether. I contend that had that taxation been brought in in a more reasonable manner, shall we say 5 or 10 per cent increase only, this drop in consumption would not have been nearly so observable. You also have a second important form of additional taxation, the taxation on liquor. Whatever may be the case in town, the fact remains that in the up-country districts such as the one I have the honour to represent, the consumption of liquor is already looked upon as a luxury and not in any way as a daily necessity. (Hon. Chief Secretary: Hear, hear!) I think this luxury, from what I can hear and have seen, is one of the first to be completely cut out. In a secondary manner the breweries have benefited, but with that exception I see no benefit in the very heavy taxation that was imposed on the consumption of liquor. To say that purely and simply, and from a somewhat cynical point of view, it is a luxury, and we therefore cannot grumble because it is a war measure, is a false premise.

Turning to a point which I have very much at heart, and which we have heard to-day is *sub judice*—but I believe I am entitled to refer to it—the arbitrary suggestion of the reimposition of the gold royalty, I feel again that this was a shot in the dark and not one on which there had been sufficient consideration. I greatly appreciate the attitude of Government in allowing reconsideration of this

subject, and I know I am speaking for the mining community in thanking Government for accepting the motion to which I refer. But I still feel that, again, it is an example of very hasty and ill advised decision which was taken without sufficient reference and sufficient consideration for the opinions of members closely concerned. What we have was a suggestion to allow 5 per cent being imposed on an industry now paying income tax and company tax and, on certain necessities such as freight, 80 to 100 per cent increase in charges, that on top of that Government was going to impose a super tax on primary industry supposed to be of value to the Empire as a whole. The result, of course, showed at once, in the sense of insecurity aroused in the gold fields in that production was slowed down. If the 5 per cent royalty had been put in force as was feared, I think production would in some cases have ceased, and the clutch of golden eggs would have been stolen instead of being given the opportunity to hatch out.

Regarding another primary industry, agriculture, I ventured to submit that here again in this budget there is an extraordinary lack of courage in planning the position as regards the agricultural industry. All we have got is a new slogan: "Increased extraordinary expenditure must not be incurred". Again, may I say it, surely this is not the usual custom of financial experts to suggest that a country or person or community should revert to the old fashioned attitude of keeping all the savings they might be fortunate enough to have in a stocking? That is the position at the present time, capable of maintaining a very doubtful *status quo*.

I can find nowhere any signs or any reference to the provision of increased funds for the support of increased production as regards agriculture in this Colony, and I venture to suggest, that unless such steps are taken these savings in the old woman's stocking will be finished very shortly in buying her bread and butter, and nothing more will fit it in its place.

We have heard to-day from the noble lord that our expectations as regards the possibility of betterment of the agricultural community by increased production

[Lady Sidney Farrar]

and better prices is not immediately available. I would suggest that Government should not take the pessimistic view immediately but have faith in the community. I absolutely believe that within a very few months' time that every additional increased production we can show will readily be absorbed by the British Government, and if they find it impossible to get these commodities by any other means than by offering more reasonable prices than are ruling at the present moment they will offer those reasonable prices, and I believe that as we are guessing—in other words, gambling—at the present time we should gamble on this point. But Government should put its faith in the possibilities of increased production and back it for all they are worth, possibly for all they are not worth.

I am putting this forward as a very tentative suggestion, because the frequent criticism levelled is that it is very easy to generalize but not easy to put things into operation. I do not suggest that my suggestion can be put into operation easily. We have taken without a whimper from anybody that it is necessary to allow a 25 per cent increase in the military vote, so that presumably money is available somewhere for that. I suggest that Government should accept the principle of encouraging and endeavouring to arouse support for a 25 per cent increase in agricultural production in this country among all communities, 25 per cent increase in the land under production or increase in suitable cattle on land that is not fully developed, and in areas where that development has already reached its peak a 25 per cent increase in the amount of production.

I suggest that we have now—I am speaking of European settled areas only, because I feel sure the hon. Member Representing Native Interests is already prepared to speak largely on native interests—I suggest that in European settled areas you have already certain bodies such as district associations, man-power committees, and representatives of the soundest elements in the individual district, who could be approached and asked to put up concrete suggestions for carrying out that 25 per cent increased pro-

duction. This, of course, applies to the Settlement and Production Board. Further than that, I would suggest Government assist them, and that whether it is a question of short term loans to individuals in those districts or some form of communal attempt to increase production—which I believe is also possible at the present time, as we have found the group manager system possible—Government should provide the necessary funds for carrying out these programmes.

It is a gamble, you say, but I believe it is a legitimate gamble, and I believe the result of it will be the necessary increase in revenue to the coffers of the hon. Financial Secretary, possibly not this next year, but within the next two or three years. It will probably be that the years of war will also possibly help to balance our budget. To my mind, a loan or loan funds which may be available in the Colony, is legitimate, and the soundest investment Government can possibly look to.

I should like to bring out one very small point in this respect, and that is, that I regret to see a project which I hoped was coming to fruition, namely, an experimental farm in Songhor, which was also going to be a distributing centre for improved seeds, and I hoped improved cattle for that area, has had no funds made available for the starting of this very satisfactory and helpful scheme. I hope the Standing Finance Committee may consider introducing into the amended budget funds to make possible the starting of this farm, which is not going to be a heavy recurrent expenditure on Government.

There is one important point I should also like to raise, an individual point. I should like to refer to the noble lord's remarks regarding the increase in the Judicial establishment of one puisne judge. I reiterate once again my belief that, both for the efficient administration of the country and as a measure of economy at the present time, instead of introducing expensive judicial judges we should revert more to the English system, which was a success in Great Britain, of allowing men of high character in each district who at the present time are

(Lady Sidney Farrar)

justices of the peace to have more administrative powers, and also in the native reserves, instead of narrowing the powers of native chiefs, they should be permitted to use more administrative and judicial powers.

At the present time there is one point which I have very much at heart. We are supposed to be still encouraging the permanent settlement in this Colony of a white population, and to make sure of this we must have a sense of security throughout the white race in this Colony. And I think this sense of security is not all that it might be at the present time. I would suggest two points, although I am sure that there are many more on this subject which could be made. One is that we are not making sufficient use of the knowledge of the leading commercial houses and their representatives at present in Kenya. I would like to know too to what extent those representatives or the representatives amongst that community, are consulted or have been consulted in framing this budget or in framing the measures of taxation recently introduced. In Great Britain now, the Government has given the lead in co-opting all the available advice that can be given by leading men of the commercial community. I think it is doubtful whether we are following that lead sufficiently and whether it would not be of very real benefit to the country to make more use of their knowledge and advice.

The other point is the question of European education. I was very glad indeed to see that there was provision for additional educational facilities, but I would wish to point out to the hon. Council that at the present time we are faced with a definite deficiency of accommodation for children attending the European schools, a deficiency which cannot be made good by day schools as following the principle of the centralization of European education they only serve a very small area. I would urge Government to consider seriously and sympathetically the need for additional accommodation for white children at the schools in this Colony. To my own knowledge in Nairobi schools although no child is to be refused primary education

there is a waiting list of over thirty at the present moment. In Nakuru, although at the moment actually there is not a waiting list, there is a waiting list from other areas and we have every reason to be sure that there is going to be a waiting list within the next twelve months. The position has been improved in the Prince of Wales School during the last twelve months and I trust that it will be found possible to do something as regards primary education. I would suggest a solution, a straightforward solution, namely that funds should be made available for the building of a Girls' Secondary School, which has been planned for a number of years and which would release the present building occupied by the girls of the secondary school for primary children and for probably the next few years at least would make it possible to accommodate the additional inflow of children.

At the same time I would like to urge Government not to lose sight of a scheme which I understand has its very sympathetic consideration, namely the introduction of a farming school for which a very generous gift of land was allocated. Although at the present time the majority of the young men of seventeen, eighteen and nineteen are heading towards the military forces I believe absolutely that we should endeavour to train the younger boys coming on to a love of the land and a knowledge of farming which is going to be the principal career. And I sincerely hope that Government will see its way to include funds for the starting of that farming school in this year's Estimates.

In conclusion I would like to say that, summarizing the points that stand out most in my mind in the present budget, I think there is a real urgency for loan funds to be made available for increased agricultural production in respect of the set-back the industry is suffering from at the present time and also that funds will be made available for the improvement of accommodation for primary children in the primary schools in this Colony.

ADJOURNMENT

Council adjourned until 10 a.m. on Wednesday, 13th December, 1939.

Wednesday, 13th December, 1939

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, 13th December, 1939. His Excellency the Acting Governor (W. Harragin, Esq., K.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of 12th December, 1939, were confirmed.

BILLS

FIRST READINGS

On motion of Mr. Willan, the following Bills were read a first time:—

- The Trade Unions (Amendment) Bill,
- The War Taxation Bill,
- The Kenya Naval Volunteer Bill,
- The Sisal Industry (Amendment) Bill.

MR. WILLAN gave notice that the subsequent stages of the Bills would be proceeded with later in the session.

DRAFT ESTIMATES, 1940

The debate was resumed.

MR. NICOL: Your Excellency, first of all I should like to congratulate the hon. member on his very complete and lucid speech. The noble lord the hon. Member for Rift Valley has covered the ground of general policy, and I should like to associate myself with his remarks. I would further emphasize the necessity for a drive for increased production on the part of all sections of the community. I also contend that now is the time to bring about the union of the East African territories, and I would point out that we of commerce have been advocating this step for many years. Surely Tanganyika will never now go back to Germany?

I understood from the remarks of the noble lord in regard to the difference in freights as between Mombasa and Port Said and Bombay and Port Said that he referred to the rates as they were pre-war. He did not, however, state any specific commodities. I should say that this is due to the fact that when you take into consideration the earning capacity of a round voyage you will find that the outward voyages to India show better earn-

ings than the voyages to East Africa. But I will, if the noble lord or the chairman of the Settlement and Production Board give me specific instances, make representations in the proper quarters and go into the matter.

In a conversation which I had yesterday with my hon. friend the Director of Veterinary Services he expressed the view that there was anxiety in some quarters as to whether the regular shipping services are going to be maintained. Well, I can safely say that it is the intention of the British lines to do their utmost to keep the berth covered and as far as possible they are endeavouring to maintain regular services. Hon. members will appreciate, however, that owing to the uncertainty of how long a ship is going to take to get on the berth or how long the voyage from London to East Africa is going to take, it is quite impossible to say any length of time ahead when a ship will be ready to sail. As you know, ships are conveyed from England a good part of the way and delays must occur in making up a convoy and the speed is limited to that of the slowest ship in the convoy. Voyages normally taking 28 to 30 days are now taking from 40 to 50 and sometimes 60 days. And here, Sir, I would like to pay a sincere tribute to the Royal Navy, who have so perfected the convoy system and, generally speaking, are keeping the seas free from menace.

Turning to the question of trade, we here must do all we can to maintain our trade, as only by the maintenance of such can we pay our share of the war. Trading will undoubtedly be curtailed, and generally an even flow of commerce cannot be expected under the existing difficult conditions. Irritation is felt in some quarters at the various restrictions that have been imposed. I would, however, ask traders to be patient as the difficulties they are faced with to-day are in the nature of the teething troubles of the authorities in that they themselves are not quite sure as to the best method of application of the many instructions which they are receiving from the Colonial Office. I have every confidence in them and that soon the desired smoothness will be achieved. After all, the war has only been on a very short time.

[Mr. Nicol]

The hon. Mr. Pandya yesterday made reference to the coast road. Well, I was going to take this opportunity of expressing gratification on the fact that we have got a magnificent road now from Mombasa to Malindi. It is not exactly a speed track; but you can make very good time along it. It is an ill-wind that blows nobody any good. We have had to wait for a war to give us this road; I sincerely hope we will not have to wait for peace for the improvement of the other main roads in the Colony.

I am not going to deal with the figures of the budget, as they must be, as the hon. Financial Secretary has said, provisional. However, my own bet is that if the year ends with the deficit estimated, and only the deficit estimated, we shall be very lucky. However, I have got one or two general remarks which affect various departments.

My first one is with regard to the Customs Commission of Inquiry into the irregularities brought to light some months ago. Your Excellency, in your recent address, said that you hoped they would start their labours shortly, but so far nothing has happened. Why? The irregularities which were brought to light in the courts show a very sorry state of affairs.

Now, in regard to income tax, I should like to ask if the salaries of the fighting forces are liable to income tax. For I think I am correct in saying that in England during the last war income tax was not paid by the fighting forces.

My next comment is in regard to the Education Department. On the 13th of December of last year, when the Standing Finance Committee Report was being considered, I raised the question of the enactment of legislation so that Government could get greater control over the establishment of schools of all races, and as far as I know nothing further has happened, and in fact the position is to-day as it was then. Even I could open a school, and I am sure that that would not be in the best interests of anybody. (MR. WRIGHT: Hear, hear!) Perhaps the hon. member may be my first pupil! Anyway, in order to get something done, I am seriously considering opening one! (To Mr. Wright: Will you come along?)

I do hope Government will get on with that very necessary legislation.

My next point is in regard to the Registrar General's Department. On the 21st of April this year I asked a series of questions in regard to the position of outstanding bankruptcies. The reply given by the hon. the Acting Attorney General discloses a state of affairs far from satisfactory, but after further investigation the position is worse than the figures given to me disclose. It is quite obvious that over a number of years traders have sought bankruptcy as a means of escaping their just obligations. And this has been made very obvious since the outbreak of war. Bankruptcy as it was administered produced the inevitable repercussions in that creditors have invariably accepted bad and unreliable compositions rather than rely on the bankruptcy proceedings, which either produced nothing at all or, at the most, a very meagre sum after a considerable number of years. My remarks are not intended as a reflection on the hardworking and most efficient chief administrator of bankruptcy. I am fully satisfied that, with the means at his disposal, which are very limited, he is doing his best. The Associated Chambers of Commerce have quite often drawn the attention of Government to the defects in the bankruptcy administration, and on the 22nd of August the following resolution was passed:—

"That this Association again calls the urgent attention of Government to the most unsatisfactory state of the bankruptcy administration in Kenya and Tanganyika, and urges that a considerable increase in staff be secured for the Department responsible for the administration and investigation of bankruptcies to ensure that the treatment of the many outstanding cases and current cases be expedited."

Well, just after the war started, the executive met and decided that that resolution was one of several others which should not be unduly pressed in wartime, but since the executive came to that decision unfortunately the chief administrator of bankruptcy has had an added burden thrown on to him, namely Custodian of Enemy Property. Admittedly there is a one-line vote for this Department in the Estimates, but that will cover

[Mr. Nicol]

additional staff and a lot of his time must be taken up in a supervisory capacity. I do hope that something will be done to bring about some benefit in this very unsatisfactory case.

Turning to page 96, "War Expenditure, Internment of Enemy Aliens." I do hope that Government are not going to release or relax their vigilance on the internment of enemy aliens with a view to saving a few hundred pounds. After all, we are at war with Germany and as such we are at war with the German people—I do not mean those nationals who, by reason of their birth, had to become refugees—but whether the German is Nazi or non-Nazi he is still a German, and we are at war with them despite what other people do tell us to the contrary.

Lord Milne in the House of Lords recently made a striking speech in this regard. No matter whether a German be a non-Nazi or not, he or she must, in my view, be treated with the greatest suspicion. Some have been released already and some of these are not of the refugee class, and some of those who have been released have been known to have strong Nazi leanings. I certainly view the Nazi-leaning people with more suspicion than the non-Nazis, but nevertheless I think it is most dangerous that they are allowed, be they male or female, to be at large in the big centres such as Nairobi or, for that matter, and particularly, at Mombasa, which is the port town of Kenya and Uganda. One can be very sure that the British subjects interned in Germany would receive very little consideration for their feelings or their health, and while I do not advocate the ruthless treatment which that inferior interior decorator of Berchtesgaden and his lying gang of cut-throats seem to advocate, yet I do feel that our internees here are treated with too much consideration, which they neither expect nor do they really appreciate.

Now that we are at war, our aim should be for economies. One of the first economies which comes to one's mind is that, with the inception of the Budget Session, it is entirely necessary for all the hon. gentlemen opposite to come here

just to say "Aye" or "No" at the bidding of Your Excellency? I suggest that as a wartime measure the voting might be vested in the four principal members of Government opposite and so enable the other very hardworking gentlemen to get on with their jobs and probably save a lot of money. I am sure though that we shall miss their cheery countenances during the delightful few minutes which we get each morning when taking a little refreshment.

The next point I want to commend to Government is the consideration of a scheme of industrial salvage. With your permission, Sir, I will read from the *Manchester Guardian Weekly* of Friday, 17th November, 1939. It reads:—

"The Ministry of Supply has set up a salvage department which is to organize the recovery of used raw materials and to find alternatives, for scarce materials. It would be difficult to exaggerate the importance of this new enterprise at a time when ships and dollars must be used sparingly. Except for petrol, all industrial raw materials have more than one life. Even in peace-time old precious metals, iron and steel, and some base metals are regularly collected as scrap and used again. In gold and silver, steel, copper and lead, scrap usually forms a large proportion of the material from which new products are manufactured. Tin and spelter, being used mainly in the form of thin plating, do not often repay reclamation in peace-time. The use of old textiles and waste paper is equally difficult as a commercial proposition. But in wartime the saving of labour, transport and foreign exchange is more essential than considerations of profit. If it does not pay private firms to adapt factories to the work of reclamation the Government will step in."

I feel sure there is ample scope for investigation of industrial salvage in this country and the other East African territories.

I have got two specific points the answers to which I should like to hear from the lips of the hon. Acting Provincial Commissioner of the Coast. I particularly want to hear from him because.

[Mr. Nicol]

after all, he is the man on the spot. Will the hon. member please tell Council how the native settlement schemes at the coast are progressing; and I should like to hear too what stage they have got to, and what his plans are for the future?

My second request is that I should like to know to what extent the development of the vegetable industry in the Teita Hills has progressed, and if he thinks that that could be extended. I am quite sure the hon. member will be only too glad to make his maiden speech in this Council, despite the fact that when I spoke to him a little time ago on the subject of such a desire he replied in the celebrated phrase of Bernard Shaw's, placed in the mouth of Miss Doolittle in the delightful play *Pygmalion*: "Not bloody likely!"

DR. WILSON: Your Excellency, in view of the fact that as a member of the Standing Finance Committee it will shortly be my duty to help to consider these estimates in detail, I do not think I am justified in taking up the time of this Council by criticizing them to any considerable extent now. On the other hand, if I take no part at all in this debate, possibly some of my hon. friends might suggest that native interests were being neglected.

Looking at this budget from the point of view of its general principles, it is what one might call a "standstill" budget and I cannot see that any other budget is really advisable in these critical times.

I am afraid I cannot agree with the hon. Member for Nyanza in the contention that this is the right moment for a large increase in expenditure in the hope of a large increase in production. If I understood the hon. member correctly, the proposal was to increase our expenditure on the assistance of European agriculture to such an extent as would be calculated to result in a twenty-five per cent increase in production. And the hon. member suggested that I would be forthcoming with a similar proposal with regard to native production. Well, of course, I should be delighted to propose a large increase in native services, with the hope of an increase in native production, if I could suggest any source from

which the money could come from except from our reserves. I cannot see that this is the right time for us to make any serious inroad into our reserves.

Frankly, I am very doubtful about the likelihood of an increased production, whether there is extra financial assistance or not, in view of the diversion of manpower, both white and black, from productive to military purposes. As we know, that diversion has taken place on a large scale and this, to some extent, does appear in these Estimates.

On page 7 of the Memorandum, Item 13, "Staff Surveyors," it says:—

"Four officers are at present serving in a military survey unit."

If I may refer to the Report of the Standing Finance Committee on last year's Estimates, on the same item, "Staff Surveyors," the note was made:—

"The Committee were informed by the Director of Surveys that survey work generally and that of the Computing Office particularly had fallen seriously into arrears, and that the one additional post of Staff Surveyor appearing in the Draft Estimates was quite inadequate to meet demands."

and later on, in the next paragraph, it says that four members—

"asked that their view should be recorded that, on the grounds that more speedy surveys were desirable in the interests of settlement and development, the request of the Director of Surveys should be fully met."

But this year, four of the existing surveyors have been taken off for military duties; and we have been told that the bringing into force of the Resident Labourers Ordinance must be indefinitely postponed because these surveyors are unable to carry on their proper work. It may be said that this question of surveyors is not directly concerned with the increase of production, but it is indirectly connected with it.

In one other place this diversion to military service is "reflected"—to use a pet Secretariat phrase—in Head 4, Item 83, page 39 of the Estimates, Agricultural Department; Native Services; Agricultural Officers, and the footnote says:

[Dr. Wilson]

"One post in abeyance, holder on military service." That is a post directly concerned with production.

As I have the Memorandum open at page 7, I should like to call attention to the last word on that page. When I read of Public Health Services in Naivasha, I got quite a thrill. I never contemplated the possibility of such a thing! But when I turned to the Estimates I found that it should read "Mombasa" and not "Naivasha".

There are one or two general questions to which I want to refer.

One is the correlation between the Colony's budget and the revenue and expenditure of local native councils. I believe a report was made on this subject, and I believe a committee sat on that report. I do not know whether anything was hatched out as a result of that sitting or whether the egg was added, or whether the unfortunate fledgling was burnt in the Secretariat fire! But one would like to hear something about this question of great importance, which is becoming increasingly important every year it is put off.

On another general question, roads, I think it is quite impossible to expect to arouse any real interest in this subject, because everybody must be completely hopeless of ever seeing a road policy carried into effect in Kenya, and we shall carry on in Kenya with the astounding anomaly of a most efficient railway with unlimited funds for maintenance, improvement, and general glorification, and a hopelessly inefficient road system—if it can be called a system at all—with practically no funds for maintenance.

If I might mention one small example of entire lack of co-ordination. Some time ago there was a proposal to connect the Thika road system with the Naivasha road system by about 15 miles of road through the forest. Those 15 miles were constructed with free native labour under the orders of Government, because the road was in the interests of the natives of the district. The 15 miles brought the road to the boundary of the Naivasha District Council area, and then the question of two miles of road to connect the end with the Naivasha road system. After

the usual wearying delay of months and months, recently a decision has been recorded that these two miles shall not be constructed. And so this promising scheme, which was to be in the interests of the natives and was carried out as far as it has gone by free native labour, completely collapses.

I should like to ask one question: Does the Central Roads and Traffic Board perform any function whatever? (A MEMBER: Yes.) Or are the roads left, if I might borrow the hon. Acting Attorney General's phrase, to the tender mercies of the hon. Director of Public Works, his assistants and advisers?

We heard mention quite recently of that incredibly foolish—and it is only respect for you, Sir, and this Council that prevents me using the appropriate expression—that mad proposal to take over the existing railway line from Uplands to Longonot and turn it into a main road. I should just like to know whether that proposal has been submitted to the Central Roads and Traffic Board with full information of all its implications, and whether the members of the Board have had the opportunity of getting first-hand acquaintance with those conditions, and if it has not been submitted why has it not been submitted?

In connexion with the roads, I happened to see in to-day's paper that one of the "live wires" of our roads services has been mentioned as being taken for military service. I do suggest that if there is one time when a proper road system is necessary, it is when there is a threat of the possibility of military operations.

To take one or two single items in this budget. Head 15, items 2 and 3 in the Memorandum refer to the judges. The noble lord the hon. Member for Rift Valley pointed out that there is no indication here of that extra provision which will be needed as a result of the amendment of the Criminal Procedure Code. As a matter of fact, it is obvious that there is no provision whatever for these extra judicial services, and I should like to know how our 34 million natives are going to get justice, whether it is blind, colour blind or any other kind, without an increase in the judicial vote, and I shall be very pleased to hear from the

[Dr. Wilson]

hon. Attorney General what he thinks of that.

There is one item in Head 17, item 56, page 57 of the Estimates: Expenses of Settlement and Production Board—a new item of £18,000 without any details at all. One sees a little "m" in the margin and hopefully turns to the Memorandum, which, as far as I can see, gives precisely no information at all, because this item is not even mentioned.

In conclusion, I must refer to my hardy annual, pensions and gratuities for the African Government servants, and I shall be glad to know whether we are going to hear anything in the new year about the committee which was appointed to advise on this question. It is long overdue for settlement.

MR. MONTGOMERY: Your Excellency, there are just a few minutes before you may decide to adjourn, and I should like to refer to one or two points of general interest.

The first is a question of revenue from native taxation, native hut and poll tax. I should like to know it possible why the revenue from this source seems to be steadily declining year after year, especially in the Nyanza Province. It seems extraordinary to me because of the great increase in the money spent on such services as agriculture and medical, which ought really to increase the wealth of the people. I see that for 1940 the figure for Nyanza is estimated at £204,203, whereas £207,000 was the estimate in 1939 but only £201,958 was collected in 1938. Reference to a report issued in 1936, of which I was a joint signatory, shows that in 1933 the total figure was £557,000, in 1930 it was £591,000, and it steadily declined to £502,000 in 1935. There must be some explanation, and I should rather like to hear what it is. People are not decreasing in numbers, their wealth is exactly the same as it was, plenty of labour is available, and money, and yet the revenue goes steadily down.

The noble lord the hon. Member for Rift Valley referred to the great shortage of accommodation in the native hospitals, and regretted that so much money was being spent on a palace in Nairobi,

whereas accommodation could have been provided in the district hospitals. I entirely agree with him, but where I do not is in his statement that the worst hospital is at Nakuru. Going around the country as I do, I find that every single native hospital is overcrowded and short of accommodation.

Under the head of Colonial Development Fund there is an item of £11,000 for water boring in native reserves. I should very much like to hear from the hon. Director of Public Works if he will be able to carry out that work during the year, or is he short of machinery or labour or whatever is necessary? I refer to this because I have copies of a memorandum, which I believe has been sent to the Chief Secretary, from a company dealing in water boring, suggesting they might be employed on this work. I will say at once that I have no financial interests in this company or any other company that goes in for water boring. The memorandum starts off by quoting a short extract from Lord Hailey's book, *An African Survey*:—

"It is, at all events, clear that the extension of drinking water supplies in semi-arid tracts has claims on the available resources of the African territories which are certainly not less than those of medicine or education as a measure conducing to the promotion of native welfare."

If money is available, as apparently it is, from the Colonial Development Fund and if, as I understand, the Public Works Department is short of trained boring experts, and if this company is operating in this country—and I believe they have done a lot of work in Uganda—if they could be employed I would ask the hon. Director of Public Works to employ them.

Under the Administration vote, I see that a post of temporary labour officer has been included. I should rather like to know what that means. Why temporary? Because in a report on juvenile labour a strong recommendation was made that two extra labour officers should be employed. One was made available in 1939, and I am rather sorry if the one for 1940 is a purely temporary post.

[Mr. Montgomery]

I want to suggest one economy for the consideration of the Standing Finance Committee, and it deals with the sittings of this Council.

It seems to me a lot of money could be saved if we sat in the afternoons, and thus get through the work in half the time. Another point is that I think there is a waste of money on what I call formal meetings for laying papers. I believe there was one the other day—I was not here—for ten minutes. That means a tremendous expense. I do not know if it is possible either to circulate the papers or, if it is necessary to have a meeting of Council, whether a bare quorum, say of officials, would not be possible, which would thereby lead to some saving of money.

Those are the only points I wish to make. I think the budget will be more interesting when it emerges from the Standing Finance Committee, as possibly there will be suitable alterations.

MR. KASIM: Your Excellency, on page 64 of the Estimates, item 92, under the Medical vote, is a sum of £392 allocated for four Asian nursing sisters. I hope that the hon. Director of Medical Services will be able to post one of these nurses to Kisumu.

With regard to hospital facilities for African and Indian patients at Nakuru; I associate myself with what the noble lord the hon. Member for Rift Valley said yesterday. The Indian community is clamouring for an Indian ward at the Nakuru hospital, and the hon. Director of Medical Services, in his letter to me, No. 40/631/106 dated the 17th January, 1939, assured me that provision would be made in the Estimates for 1940. I would like to read this letter which I have received from the Indian Association at Nakuru:—

"Honorary Secretary's Office, Nakuru,
24th Nov., 1939.

The Hon. Rahemtala Kasim,
P.O. Box No. 23, Kisumu.

Dear Mr. Rahemtala,

Re Hospital accommodation for Indians at Nakuru. The Director of Medical Service letter No. 40/631/106 dated 17th Jan., '39 addressed to you.

With reference to the first para. of the above letter, I hope it is just the right time to press the matter before the 1940 budget is introduced in the Legco.

I do not agree with the second para. of the above letter. Hospital accommodation for Indian patients has not been given in the Local N.C. Hospital as and when required. On the other hand it is understood that admission is strictly discouraged as the Hospital is almost always overcrowded with African patients. Further, example has occurred when an Indian patient was placed in the Common African room soon after an abdominal operation, screened only by cloth screens, to which the patient's relatives took the strongest exceptions.

Yours truly,

Hon. Secretary,

Indian Association, Nakuru."

From this it will be seen that the Indian community is experiencing great hardship in the absence of such a ward, and I hope Government will sympathetically consider the question of providing one.

Regarding roads, the only Indian settlement is at Kibos, where Government allotted farms to Indians in 1904. Thirty-five years have passed, and still no roads have been provided. The request for the provision of roads is only £1,000. Our former Governor, Sir Robert Brooke-Popham, visited the Indian settlement a few months ago, and he greatly sympathized with the Indian farmers' difficulties in connexion with the roads.

Now with regard to the school building at Kisumu, I must remind Government that their assurance since 1927 that a Government school will be built there has not been fulfilled. But I would like to express my gratitude to the hon. Director of Education for including in the Estimates the taking over of the Kitale Indian school.

On page 39 of the Estimates, there seems to be no provision made for more agricultural officers for service in the native reserves. Government is planning to encourage the growing on a large scale of food and other economic crops in the settled areas, and is arranging to provide financial help to European settlers. It

(Mr. Kasim) should be Government's policy to equally encourage the Africans in the reserves to grow both food as well as crops. This can only be done if an adequate number of agricultural officers are posted in the reserves and encouragement given to the Africans in that direction. There are only four agricultural and assistant agricultural officers in the whole of the Nyanza Province to look after over half a million African agriculturists scattered over a hundred miles. I understand that some of the agricultural officers have been sent on active service, and if this is true it is very much to be regretted. Government should consider replacing them in the interests of the natives.

Now I come to the police force. It is gratifying to note that Government is budgeting for an increase in the Police vote. In recent years, natives have played havoc in breaking into Indian shops in the native reserves, where they have adopted a new method of cutting the corrugated iron sheets with a big tin cutter. There are instances where, during one night, two to three shops were entered in this way and goods and cash taken away, and this has caused consternation among the Indian traders. In my view, the possession of these tin cutters should be made illegal in native reserves. I hope Government will consider this seriously, together with the posting of askaris at trading centres in the reserves.

Coming to the wheat pool, I associate myself with the hon. member Mr. Pandya's remarks in regard to the wheat pool agency. In my constituency the Indian millers have complained against the mixture and the inferior quality of atta, and I should like to urge Government to redress the grievance.

In this connexion, there is one point I should like to emphasize. Wheat and flour have enjoyed protection for a long time, and under this protection local consumers have so far been exploited and made to pay very high prices, while Australia and Canada, wheat-producing countries which employ white labour, have been able to sell at competitive world market prices. There must be something wrong with the industry which has not been able in so many years to prosper

in spite of high protective duties and consequently high local prices. Wheat so far has not been exported from Kenya in any quantity. Therefore the whole burden of high prices has fallen on the local consumers, and it would be correct to say that the industry exists at the expense of those local consumers. This should have improved the position. Instead, we find that the industry insists on supplying lower quality wheat Sabanero and inferior quality flour for Indian consumers, who cannot use such flour. This is done under Government orders, and creates a position which requires consideration by the wheat industry as well as by Government.

Coming to the policy of Government bringing uneconomic pressure to bear on Indian traders in native reserves, they have been trading there for the last forty years at the risk of their lives, since the time when the Colony was in a primitive state. Under the Marketing Ordinance and by means of resolutions passed in local native councils on matters of economic interest, African traders are encouraged to build huts and trade within a few hundred yards of the existing trading centres where Indians have invested large sums on buildings and on which they pay heavy taxes. Government has established trading centres for Africans only, where substantial shops have been erected and rented to African traders on nominal rents, and here Indians are not allowed to trade.

I am not by any means against trading by Africans, nor are the Indians afraid of competition; they only resent preferential treatment to one section of the community over the other sections.

I would like to quote an instance to show how the local native council in South Kavirondo is trying to take trade away forcibly from the Indians. Indians were engaged in ghee-making in the South Kavirondo district before the Great War. Recently, at the instigation of certain African traders, the local native council passed a resolution ordering all Indian-owned cream separators to be removed from the reserve. There were over 300 of these separators, and Indians were forced to sell them as well as their buildings to those African trade agitators at a

(Mr. Kasim) considerable loss. By eliminating the Indian-owned separators from the native reserve, there is a feeling in the minds of the members of the local native council that, if they wish, they can one day refuse to renew the temporary leases of the Indian-owned trading plots in the reserve and order the Indians to go away.

The point I wish to emphasize is that a local native council should not be empowered to interfere with the trade of the country. This is a question which is greatly exercising the minds of the Indian community, and I appeal to Government to give serious consideration to it.

Council adjourned for the usual interval.

On resuming:

MR. COOKE: Your Excellency, it is sometimes said that hon. members, in this budget debate, are inclined to put parochial matters to the fore and touch on purely local subjects without thinking more of the country as a whole, and this rather lays us open to attack by hon. members on the other side of Council, as, for instance, the rather stupid diatribe against the Coast by the late Chief Secretary. Nevertheless, I am not deterred by that diatribe, and I hope to say one or two things on the Coast.

The first is coast communications, which has already been dealt with by my hon. friend Mr. Pandya and my hon. friend the Member for Mombasa. I should like to say that very few people in this country, especially in the highlands, realize how important roads are to the coast, and are inclined to think that because we happen to be on the sea we have communications the whole year round. As a matter of fact, that is not correct, because during the south-east monsoon, for instance, dhows cannot run and but for the help which we receive from my hon. friend the Member for Mombasa, by the motor vessel *Dumra*, parts of the coast would be entirely neglected.

But owing to the fortuitous chance of the war, we now get very good roads to the north, towards the Tana River. There still remain, however, those wretched ferries between Malindi and Mombasa,

which not only ruin one's car but are also a very great source of vexatious delays. I do hope that something can be done to build the bridge over the Shimo-la-Tewa Creek, which has been recommended by the Road Board. There is another point. That is the drift at Voi, which is in a very dangerous condition. There is also the realignment of the Tanga Road, and I venture to suggest the expediency of employing Abyssinian internees on that particular road.

From communications I must go on to that hardy annual—production on the coast. Personally, I cannot see any future for the smallholder on the coast. I think that if there is to be any scheme it must be a large scheme of settlement for Indians or Arabs or Africans on the Sabaki or on the Tana River.

I should like to pay a tribute to the work done at the Kibaranzi Experimental Station near Kilifi. I think the Agricultural Department have been very wise in centralizing research on that particular station, and they have some very good and keen agricultural officers putting the results of that research work into practice. And it is satisfactory to note that the Ghedi scheme, to which my hon. friend referred, has been inaugurated. I think it is progressing very well; it is a very courageous attempt to deal with one of the most vital problems on the coast.

While on the subject of agriculture I have a few criticisms to offer about this Settlement and Production Board, and I hope my hon. friend the Member for Nairobi North, who puts so much interest and energy into it, will not take exception to what I say. I do not know what the word "settlement" connotes in the minds of the hon. members of Council, but to my mind the word "settlement" means "settlement by all races" in this Colony and settlement in other parts besides in the highlands. Yet we find that this Board is composed entirely of Europeans and does not contain a representative of the Europeans of the coast, the planters. Although I am sure that everybody here agrees on the necessity of closer settlement by Europeans, I do not think that this country will ever go ahead unless settlement visualizes the settlement of Indians and Arabs and Africans also. I

[Mr. Cooke] think it is absolutely necessary, if I may use a phrase of my journalistic friends, for a complete reorientation of our views in this matter if we are going to make any progress.

The other word, "production". I took the opportunity to look up the economic meaning of production—if my hon. and gallant friend will forgive my trespassing on his domain—and found that "production" means in the economic sense "the study of methods by which the total wealth of the community is produced." Well, under that category comes the hon. Member for Mombasa when he builds tugs and also my hon. friend the Member for Uasin Gishu when he wins gold from the reluctant soil at Kakamega; but in the minds of some people in this country, production seems to mean merely the rearing of pigs and poultry and the growing of maize and pyrethrum. Well, I suggest that unless we widen our horizon in this matter this country will not go ahead, at least not very fast.

Still on the subject of agriculture, I should like to congratulate the Veterinary Services and I should like to congratulate the hon. Veterinary Director and the hon. Director of Agriculture on being the only really disingenuous heads of departments in this country. They never mind confessing that they have made a mistake. We find that some years ago in this Council my hon. friend the Director of Veterinary Services said that one reason, or the main reason, why destocking did not take place was that it would release a lot of native cattle which might have an adverse effect on the European market. And we found, about two years ago, in a report which the Government seems curiously reluctant to make public, a remark by an agricultural officer that cash crops in Kilui and Embu lead to very bad soil erosion.

In the annual report of the Agricultural Department, the Senior Agricultural Officer of the Central Province, whose loss to this country will be very, very great on his transfer to a South African Protectorate, has said on page 61:—

"... the expenditure of large sums of money on reclamation schemes, far beyond the understanding of the

native, has borne little fruit and has even aroused a measure of antagonism."

Does that mean that the thousands of pounds from the Colonial Development Fund and from the Native Trust Funds have been simply wasted?

I see in the Estimates this year that there is provision for £2,000 more, and I wonder if all that money too is going down the drain or, perhaps, is going down the gullies of the Machakos Reserve!

I come now, by easy transition, to my old friend the hon. Chief Native Commissioner. We have just received his belated annual report—and I should like to urge that that report, which should be an important one, might be published earlier. The report does not get us very much further. During the year a very revolutionary scheme was carried out, the smallholding scheme to give free freeholdings to the natives in Machakos. A good many people are very concerned about that revolutionary method. It is admitted, or at any rate, it is suggested, in Lord Hailey's book that it should not be actively encouraged, and most colonial administrators hold the same views, but the hon. gentleman dismisses the whole matter in about two paragraphs, and when he does reply I should be very grateful if more information on that subject could be given.

My hon. friend the Provincial Commissioner for Nyanza stated in this Council some time ago, about six months ago, that individual tenure was customary throughout the Kikuyu Reserve. It was a very curious statement, and when challenged by me on this monstrous assertion he replied that he would answer me at another time and in another place. Well, six months have gone by and I have not had an answer from him. I feel that if he delays it any longer I shall be forced to fall back on that quotation from Edmund Burke, who said:—

"He is more exasperated at the discovery of his error than thankful for an opportunity for correcting it."

MR. FAZAN: Your Excellency, on a point of explanation, I should like to

[Mr. Fazan] say that I did not say that there was individual tenure in any reserve.

MR. COOKE: I congratulate Government on the native paper, *Baraza*. I think the paper is just as good as the old one, *Habari*, was bad. The *East African Standard* has brought the professional touch to it, and the editor has adopted the happy medium between high-falutin' Swahili and Ki-Settler Swahili.

Some of my constituents have asked me to touch on the question of military expenditure. I know you, Sir, have not power over this, but I do think representations should be made from this country to the people at home to curb this very unnecessary expenditure which is going on. If ten per cent of the stories we hear are true it is very deplorable.

MR. LOCKHART: Why not repeat them?

MR. COOKE: I am going to repeat one of them if you will just give me time. I suggest that it should be possible for someone to be sent from home to keep an eye on this expenditure. My hon. friend has challenged me to repeat one of these stories. The case is that of a certain person in Mombasa who bought a lorry for Sh. 300. Just before the war this lorry was commandeered and used for about six weeks or two months, and then it was handed back to him, plus the cost of hire, which came to Sh. 1,350. This he received, plus the lorry, plus two new tyres. If this is not excessive expenditure I am afraid I do not know what it is.

MR. LOCKHART: Your Excellency, may we have the name of the owner or the number of the lorry, or something of that sort by which we can identify the case.

MR. COOKE: No, certainly not. Although, if the hon. member will keep it confidential I shall certainly be pleased to disclose it to him later on.

MR. LOCKHART: That is good enough.

MR. COOKE: There is one item—Censorship—on that I think the large expenditure in the Estimates is entirely

unnecessary. This is a matter of which I have personally practical experience. It is quite true that a hundred per cent efficiency is needed at home, but I do not think, with the enemy so far off as it is and likely to remain, that it is necessary in this country. I know the time may come possibly when it may be very necessary, but at the moment I do not think that this expenditure is at all justifiable.

I will give one instance. I happened to be a deputy censor myself in Mombasa. I do not think there is any need for deputy censors; I think the supervision for such work can equally well be done by the postmaster and his staff and thus £1,500 can be saved. If necessary the postmaster can be paid something extra for the work.

There is another point. Certain people have asked me to bring up the question of the opening and re-addressing of letters in this Colony. I understand that the other day the Mayor of Nairobi received a letter from the Chief Secretary which had been censored, and one of the members of Council who wrote to a friend in Fort Hall had his letter censored. I have mentioned this because it tends to show that the censors have more than sufficient time for the more serious work for which, presumably, they are appointed.

I am sorry to see, and I support the hon. Member representing Native Interests (Mr. Montgomery) who deprecates the fact, that the two labour officers were not provided last year. I signed the report of the Juvenile Labour Committee but I certainly would not have done so had I thought that Government would have shown such a lack of regard for their responsibility in this matter. I think the officers should be appointed.

I should like to touch on the question of water conservation in this country which I think is the most important, or at least, one of the most important questions of to-day. I happen to be a member of the Water Board and it is really wretched waste that occurs on some of the farms in this country which is almost incredible. The rivers are running dry and unless something very strong is done we shall be losing one of our greatest assets.

[Mr. Cooke]

The hon. the Director of Public Works is greatly handicapped because he has not enough inspectors, and this waste is largely due to the long trench irrigation furrows by which the waters are led to the land; a lot of people who have no sense of responsibility allow that water to be wasted.

Then, with regard to the question of forests, on which I find it difficult to speak with moderation. I must say, with deference to my hon. colleagues on this side of Council, that the Europeans in this country are just as responsible for this waste and for this destruction of the forests as a good many Africans; indeed more responsible—they should have more sense of responsibility. I refer particularly to the highlands. I think nobody who goes up the slopes of Elburgon and sees the enormous number of Mexican marigolds where forest trees at one time flourished...

LORD FRANCIS SCOTT: It is destruction by natives.

MR. COOKE: I think by the squatters employed by Europeans.

I do not know what the hon. Conservator of Forests thinks about this, but there will not be any forests to conserve at all before very long. I do not know what is going on behind his placid countenance but I think he must be feeling very strongly on the matter.

There is just the question of game preservation. At the moment we are working out settlement schemes and schemes also for the native reserves but I think it is very necessary that we should get down to work now with regard to the game reserves and the formation of national parks. I hope the Committee for game preservation will meet as soon as possible and get to work, for game is one of the most important assets which the Colony has.

I should like to finish with reference to the leave of officers in this country. There was a leading article to-day I think in the *East African Standard* with which I entirely agree. I do not think there is any valid reason for that unconscionable delay. If Uganda can make up its mind in a few weeks surely Kenya can do the same thing.

COL. KIRKWOOD: Your Excellency, in rising this morning I realize that this is an extraordinary meeting of Council, inasmuch as we are meeting under extraordinary conditions, that is, under war conditions, and anything I may say I hope will not be misconstrued, because I have in my mind, as I always have had, being an Imperialist, that under present conditions the first thing we have to do is to help to win the war. I do not propose to introduce anything into the budget, but there are one or two things I am going to comment on. One is my usual Trans-Nzoia budget, which will come first, and that will clear the way.

I wish to refer in the first place to the Kitale post office. In 1937 it was agreed that a new post office at Kitale was essential. The years have rolled on, and we still have the old building. It is a great inconvenience to the public, and it is a great annoyance and inconvenience to the staff. If you refer to the report of the Standing Finance Committee, page 29, you will see that there were nine items reserved, and it stated that these items would be dealt with by the Standing Finance Committee when £100,000 was available to be set aside. In that year that amount did appear, it was used for war purposes, and it has not been reinstated.

I mentioned this item twelve months ago and, as far as I know, it has been given no consideration. I do submit that I should not be put in the position of raising this question annually and at other times because of a breach of faith by Government.

My second item is Kitale school. On the 16th June last, at the sitting of Council on that date, I asked a question concerning this school, and this was answered, but I took the matter up again with Government, with the result that the hon. Director of Education toured the country and incidentally visited this school, met the school committee, and was satisfied that there was a very urgent and pressing case for staff quarters at the school. Ever since the school has been built there have been no recognized staff quarters except for the headmaster. There is a staff of four when they are there, and I consider it is a disgraceful situation. As I explained before, there is only one staff quarter. There are two

[Col. Kirkwood] agreement made with the Imperial Government as to the price they would pay, the articles they would take, and the amount they would take. I know Government have done their best and are still doing their best. The position may have improved during the last twenty-four hours, but I have had no information on the subject, and I consider at the moment that it is due to our peculiar form of government here, which is no fault of anybody in this Council, I am referring to the Crown Colony system, which is a complete failure as far as Kenya is concerned. We had an illustration only the other day, when hon. members on the other side of Council, the most experienced in the Council, who could give advice to Government, were not allowed officially to give that advice for the simple reason that it was against Colonial Office procedure.

As a result of all the manoeuvring it was agreed, I understand, that the Standing Finance Committee recommended £3,200 for extension. There is nothing appearing in these Estimates, and I should like to ask: Why? Is it because the hon. Director of Education is now chairman of the Information Committee? Because if so it seems to me we have lost a Director of Education and gained no information. (Laughter.)

The next question I should like to refer to is the question of price control. I am not talking now of farming. I maintain it has been adequately proved that the present conditions of price control are not only unsatisfactory, but are a failure. I had the pleasure of being present at a deputation which Your Excellency very kindly met some few days ago, and I think all round it can be admitted that there are glaring instances of profiteering, but it is very difficult to prove a case, for reasons beyond my comprehension. I do not wish to stress this point too much, but I do insist that it has been a failure to date, and I am going to ask Government very seriously to agree to appoint a small committee to inquire and report. That committee will take evidence and make recommendations. I myself would like to make some recommendations to the committee. I therefore submit that it is a much cheaper and quicker method than moving a motion in Council and keeping the whole Council here for half a day, which is very expensive. If Government will consider the question, the hon. Financial Secretary in his reply will intimate that there is no objection to a small committee. I wish to go no further at the moment.

Under the heading of "price control", referring to cereals, I do wish to point out that the position at the moment is very unsatisfactory. Had this been a self-governing colony, we should have had an

agreement made with the Imperial Government as to the price they would pay, the articles they would take, and the amount they would take. I know Government have done their best and are still doing their best. The position may have improved during the last twenty-four hours, but I have had no information on the subject, and I consider at the moment that it is due to our peculiar form of government here, which is no fault of anybody in this Council, I am referring to the Crown Colony system, which is a complete failure as far as Kenya is concerned. We had an illustration only the other day, when hon. members on the other side of Council, the most experienced in the Council, who could give advice to Government, were not allowed officially to give that advice for the simple reason that it was against Colonial Office procedure.

If I may touch on the question myself from the angle of price fixation, I would like to remind Council that it has been advocated and is still being advocated that there shall be an increased production policy. That I quite agree with. In advocating increased production Government have also, through no fault of their own, decreased the producing power, the man power. They have taken something like one hundred men from my own area plus forty aliens: one hundred and forty producers. How is it possible to increase production under those conditions? It is beyond me.

The very loosely spoken of group farm management system will not increase production, but it definitely will decrease production. No man when dependent on native labour to run a farm can increase production if he has to run three or four farms, and four is quite a common number to my knowledge. Some have found difficulty in increasing production when on a farm as full-time producers, and native labour has been getting difficult for the last two or three years, and they will get more difficult under war conditions, and the measures recently passed for decreasing the power of administrative officers is not going to improve matters.

The price of maize for the last eight years has been Sh. 5/95 to the producer. That is the average price he has got over

[Col. Kirkwood]

a period of eight years. That means he has produced for eight years at a loss, and the consumer has been buying maize under the cost of production. That price is also under the import parity, even if you allow for no import duty. I maintain it is the bounden duty of this Government to rectify that position. If the Imperial Government does not want us to export maize, Government should inform the producers; if they do want it, producers should be informed by Government of what they are going to get for their 1940 crop. The harvest is already coming in, and early in the year we are due to plant, and unless there is some definite announcement and condition that the production of maize is going to be made attractive maize producers will not produce under war conditions as in the past.

There is just one item in reference to that. I know Government have much information and that there is a memorandum on the subject of finance. I do not know what conclusions Government have come to, but I hope they have decided to do something in the way of financing, if only by short term loans, and giving finance for the crops that are going to be grown. I do not want to go into details of agricultural finance, beyond drawing Government's attention to the fact that information on these items is very urgently needed and will have a great effect on whether we get increased production or not.

Due to the delay in putting the Resident Labourers Ordinance on the statute book, there has been a considerable agitation for some time, and my hon. friend the Director of Agriculture is aware of it, because I have interviewed him on several occasions, to try and get some law or rule put into effect that will be a check against maize thefts. Each year these thefts are increasing, and under war conditions and group farm management conditions and the absence of owners these thefts are going to be colossal during next year. A lot of it is due to the conditions I have mentioned, the absence of the Resident Labourers Ordinance from the statute book. I do appeal to Government to make some arrangement, if only a temporary

one, for the coming year, to try and protect the producer against the growing habit of stealing maize throughout the Colony. I suggest they might do it under the European Area Maize Rules, and I am quite certain there is no difficulty at all. It is the will that is wanted, and the will appears not to be with Government.

I notice, looking through the annual report of the Savings Bank, that no Kenya securities are held. I do not know why. Both the Railway and the Savings Bank shy clear of Kenya investments, although as far as I know they are the safest investments in the British Empire. Why this money cannot be invested in Kenya securities I have still to learn, and I hope the Postmaster-General will tell us why he looks askance at the items I have just mentioned.

There are some items under "War expenditure, civil" which I would like to comment on.

Censorship, £10,300, seems to me a very excessive amount, and I cannot visualize how that has been or is likely to be spent.

Then, again, the Information Committee, £3,700, another very large amount, and I do not think we should lose anything if both were done away with. We have petrol rationing costing £600. From my own experience I consider it was quite unnecessary, and I have still to learn that there is a shortage of petrol or likely to be in the immediate future as far as Kenya is concerned. I have been told on more than one occasion that ships arriving at the coast have had to go away with petrol. If that is so, petrol control for the time being could be done away with. Another aspect of it is that in the country towns and districts it has restricted movement considerably, and it has also restricted the movement of those who are trying to run their farms under a disability. I think Government would be very wise if they could either ease up on the control of petrol or do away with control altogether. If necessary, it could be reintroduced at a moment's notice.

Apart from the decrease of man power, Kitale, Nakuru and Eldoret are also suffering from this petrol rationing, not because there is an absence of petrol but

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because Government are not liberal with the permits. I realize that if it is necessary to do without petrol we shall have to do without it, and if it becomes an Imperial or country necessity there is no question about it that men and women will take to their flat feet if the petrol is wanted to win the war. But until some such necessity arises, these irksome restrictions should be removed.

The hon. Member Representing Native Interests, Mr. Montgomery, mentioned the falling off in native revenue from taxation. I had made a note of that, because I had intended some weeks ago to speak of it in this Council. I have been trying a small experiment myself as an employer of labour on one of my farms. I have been using the kodi stamp, and I find the natives have no objection to it. As a result, I expect I have collected 80 to 90 per cent of the taxes those boys were due to pay without irksome or onerous conditions being imposed on them. I am quite satisfied in my own mind when I state that not 10 per cent of the natives would have paid those taxes if I had not intervened.

It leads me to the conclusion that there is something like 30 to 40 per cent—that may be an arbitrary amount—but a very large amount indeed, of uncollected taxes in the European areas. I think it is no injustice to the native if his tax is collected. I am quite sure Government should go into this matter and probably help the collections. I had in mind that Government might say it was advisable to pay a small percentage or allow a discount on kodi stamp purchases by employers. After all, it is cash in advance as far as I am concerned. I get Sh. 100 or Sh. 50 worth and keep them until they are required, and use them one or two at a time, thus making it easier for the boys to pay their taxes. What I have suggested would popularize the system with the big estates, whereas if it were made compulsory it would mean extra work. If an employer can guarantee collection he should be given some consideration in the purchase of the stamps. I would even go so far as to suggest Government might make the collection by employers compulsory. If that was done, they would probably get in 90 per cent of the tax.

but at present they are not getting more than 50 or 60 per cent in the settled areas. And what is happening in the native reserves I do not know.

The hon. Financial Secretary gave comparative figures with reference to the amount of goods taken out of bond before the increase in the Customs duties. I am not making any accusation at all, but I do not think he got the right deductions. His figures went to prove that the amount collected on that occasion was less than the amount collected the year before, and probably the year before that, but I maintain that the figures might prove anything, because after the declaration of war it has taken two months or over for ships to arrive from England, which was a lag of four weeks, consequently stocks were not in bond to take out. If they had been in bond I am quite certain they would have been taken from bond. However, that is only a small point.

I should like to give a word of warning to the Standing Finance Committee when they consider this budget. It is, that I suggest to them that every increase, no matter from whence it comes, should be blue pencilled and taken out. There are dozens of increases that I could put my finger on this morning, but I will leave it at that. I will criticize them severely when the budget comes back if they have not done so. I consider that the budget should be cut whether emoluments or any other item that shows an increase. It is rather astounding that Government have not appointed a Geddes Committee. I mean this to indicate to the committee the type of work I expect them to do, to show where savings should be made under war conditions.

It is impossible for any human being to prophesy the duration of the present war. I have been through three wars, including the South African war and the last war. My own conclusion was that the South African war would last three months, it lasted three years. The last war I estimated would take six months. When I went home in 1914 I expected to be back in six months, but I did not get back for six years. In was an extraordinarily long time, but I am an extraordinary person, and I was on active service. I mention that to show

[Col. Kirkwood] how dangerous it is to prophesy how long a war will take. We may have to face a long period now, and whether long or short I do appeal to Government to make some move in the manner I have indicated and get down to a war policy of finance.

We shall probably have to go through very very sticky times, and I think we will. We are already budgeting for a deficit, and I have never known Government to allow a budget to go through on the same principle as this. I am not complaining. After all, it is a provisional budget, and if I may say so I have no objection to it in principle. It is one of the usual budgets, and I see nothing in it I could take grave exception to, and from that point of view I can compliment the hon. financial secretary on putting up a budget which, under the circumstances, I think has been a credit to his efforts. Nevertheless, like all budgets, it is subject to criticism in detail.

I wonder what is happening to Government officials who are due for leave? I take it they represent one sixth of the officials in the Colony. What decision has Government come to? There must be many of them due for leave and have not taken it. If they are surplus to the establishment, can they not be used for some extraneous committees which have been appointed under the budget and help out in that way and save personnel in other directions? We might find some other ways and means of solving this very difficult problem.

I see that the adjoining territory has come to a decision, and on general lines it is up to Kenya Government to come to a decision also as to what is going to happen.

There is just one further matter I should like to refer to before sitting down. That is, I have come to the conclusion that Government by agreement has been a failure under present conditions. I think it is due to the present conditions. I am quite certain in my own mind that my hon. colleagues, including myself, on this side of Council have not been pulling our weight for some considerable time. We are not now. We are trying to be too friendly.

Another point that occurs to me is that some of my colleagues on this side of Council one would almost consider were on the other side. Due to war conditions, they are becoming semi-officials and not members of an important elected members' organization pulling their weight. I considered this matter very seriously before speaking as I have, and I hope it will have quite an effect on my colleagues on my right and left and also behind me, and I am prepared to meet criticism to improve my case.

In concluding my remarks, I hope when the blue pencils have been put through the budget I shall be given a further opportunity of speaking for a short time.

MR. SHAMSUD-DEEN: Your Excellency, as most of the hon. members on the unofficial side seem to be so reluctant in having anything to say in the matter, I suppose I must fill the gap. I feel it is useless to go into the details of these estimates and keep on nagging at the small items, but I take it that this is an opportunity and that one looks upon the budget session as one of the annual functions at which one is allowed to wander about a little and incorporate general subjects of public interest, and it is with that view I stand up to pass a few remarks. Otherwise I have the greatest admiration for the authors of this budget. It is a simple, clear and concise statement setting out the financial position of the Colony. Because of the fact that the budget has been prepared showing a deficit of a small sum I do not criticize the authors, and from past experience it has been shown that with a little juggling with the figures it could easily have shown a surplus. It is all the more reason why we appreciate their honest efforts at putting before this Council a bald statement of what the conditions at the present moment are.

So much has been said about war conditions. It is true that the man in the street cannot understand why all these colossal preparations are being made for the invisible enemy that we are pretending to fight. A large number of people seem to think that it might be one of those miscalculations that have been made in the last few months since the

[Mr. Shamsud-Deen] declaration of this war, when Great Britain declared war and gave a guarantee to help Poland. Everybody looked at the map of Europe and failed to understand how Britain could go to the help of Poland. As far as the map was concerned one could not see any way of Britain helping by land, by air or by sea. But then, all the people sitting at this distance contented themselves by saying, "Well, we cannot judge sitting here, probably the statesmen in England know better than we do." But we came to know when Poland was invaded that no such scheme and no such arrangement had ever been made and, similarly, we are beginning to doubt whether after all these preparations that are being made here that, in the long run, there might be nothing at all and no war at all as far as this country is concerned and that all this colossal sum that is being expended here might be wasted.

Of course the present position of ours is that of a community who is living at a distance, and though it may be a very long way away from the fire it may blow with a favourable wind—one never knows—and therefore one cannot help but take precautions in guarding our homes and hearths. And that is how I look upon the present preparations.

Well, as I say, it is a matter of some satisfaction to many of us to contrast the last war, when this Colony was within less than a week after the declaration of that war invaded by the Germans and the war lasted actually for four years and when preparations were not made on the same scale as we are proceeding with now. We are on the right side in having all these precautions. I look upon these things as one of those unfortunate epidemics such as a plague of cholera or any other disease or famine which generally appears in one little place and spreads all over the world. I look upon these mad gentlemen in Europe as suffering from one of these epidemics and we must try to keep them out.

As regards the share of this Colony in helping to win the war, I am very glad to think that we can assist in more than one respect.

In one respect it has shown us that although we are a small community in this Colony the value of our relationship with the British Empire—I know we have been taken very lightly in the past, and no doubt we are a very small community—but, nevertheless, had it not been for our connexion and relationship with the British Empire I think we should have been wiped off the map, like so many flies, long ago. I have no doubt about that, and therefore no sacrifice we are called upon to make can possibly be too much.

There are people who have only been asked to give a fraction of what belongs to them, but there are people who have lost all they possess in this world, their lives, and their children and everything. Well, we are only being asked to contribute a very small payment and a relatively small share.

I do protest on one thing, however, and that is on this question of profiteering. The Government, instead of fighting the important enemy—profiteering—is actually helping them in their nefarious activity. I am sorry to say that I do not agree with all this rigmarole of explanation my hon. friend Mr. Pandya talked about with that favourite expression of replacement costs. I was not convinced with the arguments of the hon. member. After all the traders and merchantmen are merely the middlemen between the consumer and the manufacturer and if he buys cheaper then he must sell cheaper, and if he buys dearer then he must sell dearer, and all that explanation I heard was that the stockists and tradesmen were trying to make hay while the sun of the consumers was shining in anticipation of a downfall in price.

I submit that if the Government was introducing this measure to help public funds I should certainly appreciate it. But it does nothing of the kind and we shall not get one single cent for the customs duties. These measures are going to serve as a windfall to the stockists, traders and shopkeepers for all their stock has been put up fifty to hundred per cent and that is the thing that is penalising the ordinary man, and in this profiteering Government is helping them. The people cannot understand it.

[Mr. Shamsud-Deen]

I for one made up my mind on the same day that I should not let any of the stockists have any profit from me and since this Council has met I have not had any alcoholic drink and I have tried to cut down my cigarettes and smokes as much as possible and I am not the only man I can assure this Council of that. People are taking to pipes, but I think in the long run that traders and shopkeepers who are so jubilant over what they consider the folly of the Government will find that theirs is an unwise policy in the long run.

Unless Your Excellency rules me out of order I should like upon this occasion as a sort of privilege to wander about on to subjects of general public interest and that rather brings me to the position which exists to-day since the declaration of war. As I say, most people are cutting out drinking and smoking and other luxuries, and this state of affairs has come about particularly in this town of Nairobi, where people are taking advantage of our liquor laws which have been referred to by one hon. member. They are taking advantage of the heroic and patriotic gentlemen of this town and they are breaking our liquor laws and making great merriment at the cost of the people who have come out and offered their services.

Our liquor laws were made to administer the whole policy of liquor consumption as fairly as possible. There was a provision in the liquor laws that one could take out a special licence on the payment of Sh. 30. I have been asked by some very responsible European friends of mine to bring this to the notice of Council that while there are hotels like Torra, the Norfolk, the Stanley and others which are permitted to supply liquor to their customers up to say 10 o'clock at night, there are springing up so-called restaurants in this town which go to the extent of getting out special licences to the extent of Sh. 30 for the purposes of dancing and all sorts of immoral things are going on there. In fact, these places are not restaurants but merely brothels, and I do hope that Government will do something to stop the abuse of the licensing laws.

Reference was made by the hon. Member for the Coast, with whom I find myself in general agreement, with regard to the extravagance of the military in buying up and then paying out high prices for lorries. But in this respect, in accordance to my information as a matter of fact, exactly the opposite is happening. I know of cases and which have been referred to me from Mombasa where lorries have been commandeered and have not yet been paid for. In other cases most ridiculously inadequate prices have been offered to the people, and since the Compensation Board—I think that is what you call it—sits in Nairobi these people have no means of bringing their grievances to notice. Either they must run up to Nairobi or engage expensive agents, and not only that, according to my information, the motor cars and lorries that were commandeered at the beginning of the war have been kept by the military people and run day and night, and after three months returned to their owners with the paltry compensation of £10—and that after they have wrecked the vehicles! That is what my information is, and I hope that that will be gone into.

While on the subject of the war I would like to say that while there is some obnoxious enemy against whom we are trying to prepare ourselves I submit that as far as manpower is concerned we are not making good use of it. A statement was made here yesterday that no less than 14,000 able-bodied Indians, between the ages of 18 and 45, had enlisted themselves under the Compulsory Service Ordinance. So far, all the use that the Government has made of them that I know of—and I do not know that that has much to do with the war—is that the police have decided to take on 16 special police officers from the Indian community! They have now been in training for some months and I have an official expression of appreciation of the Commissioner of Police on their smartness of appearance and eagerness to be trained and promise that they were beginning to be efficient police officers.

Well, I do submit to the Commissioner of Police and I submit to Government that out of that 14,000 people there could be at least 2,000 men who could be called

[Mr. Shamsud-Deen]

upon to prepare themselves for military and police service. I have submitted to the Commissioner of Police that to start an experiment say with 16 special officers is no scheme at all. But if he took on at least a couple of hundred, or at least one hundred, of these special police officers or recruits to be trained then there would be some sense in that. I have calculated very carefully what it would cost at the present moment, and it would cost not more than £25 for six months training for the recruits, and they might be put in the police or be made use of by the military. That sum includes uniform and an allowance for vehicles to bring them on parade every morning.

With regard to the 16 special police officers I have a good deal of information of what is happening there and my information is that these people are receiving a very thorough and a very good training which will enable them to be of very great service to the Colony. They have to do apart from parades, physical training, they have cross-country races and all sorts of other things such as musketry practice and so forth. And I think that at the end of their six months training the Commissioner will be quite pleased with this little squad. I forgot to mention also that they have air raid precaution training, and I submit that quite apart from military forces in the case of any trouble they will be of immense value as far as air raids in the town of Nairobi are concerned.

I even went to the extent of suggesting to the Commissioner of Police that he should take on at least 100 of these special police officers, and I as the chairman of the Man Power Committee have been inundated with applications for enlistment as recruits. The cost of this altogether would be something like £500, and I have very good reason to believe that if the proposition were placed before Nairobi Municipal Council they would consider very favourably indeed a contribution of half the training costs. And, after their training was completed, the cost to the Government would only be small, for they would have these special police officers at hand at a moment's notice for no payment at all with the

exception of when they are called on patrol duty at nights. They will be a great deterrent to the criminal-minded natives of the town to disabuse them of the fact that the police have too much to do and that there are not enough of them to keep these people from their activities.

I wonder what our friend, Herr Hitler, would do if he were made the offer of these 14,000 young fellows? I think he would take them in both hands and welcome them, but Great Britain is as slow as a snail in making use of them. I do hope that something will be done and an opportunity will be given to the Indian community to prove that all we have been saying in this Council is not merely lip service. They really want the opportunity of taking part in the defence of this Colony.

While on this subject of police patrols, I should like to make a few references to the police force. As I said before, it is not with the intention of criticizing, because I think this budget is really too carefully prepared a document to be criticized.

I do not know whether it is due to the fact that the Police Department is not represented in this Council, but it is one department which has not received a fair deal and fair share of the expenditure it requires. I will allude first of all to the police lines. Everybody knows that they are an eyesore to the inhabitants of this town. During a debate in Nairobi Municipality a few days ago, it was alleged that there were quarters there each eight feet by eight feet or ten feet by ten feet, in each of which were housed native askaris and their families. Few people know that those lines were at one time serving the purpose of H.M. Prison, and those rooms were really solitary cells meant for prisoners condemned to death, and to-day they are used for housing members of the police force.

Government have passed laws condemning, or declaring that there should be no more, wood and iron houses in the town, and most people are not very unhappy now that the Secretariat building, which was constructed of wood and iron has been burnt down, but these police lines are nothing short of a disgrace to the whole town and the Colony.

[Mr. Shamsud-Deen]

They should have been demolished at least twenty years ago, and I submit that steps should be taken at the earliest date to have them removed and a respectable and decent building erected to serve the police force. The buildings are not only of an unsightly appearance and create a hideous environment, but they are a perfect nuisance. The smell that emanates from them is awful.

The second item I want to refer to is that of the service of the Indian sub-inspectors of police. I have previously referred to this subject in this Council, and I submit this is definitely a discontented branch of the police service. It will never pay any Government department to have discontented employees. It was a Persian writer of about 1,000 years ago who said, "Mazdoor-i-Khush-Dil Kunad Kar-i-besh" ("A happy and contented labourer does much (or more) work"). I have found it by experience in my own household. I have a boy who has been with me at least 25 years. He started at a few shillings, and to-day is getting Sh. 40, but I find that he saves me every month anything from £5 to £10, and he more or less is a member of my family. Similarly, if you do not treat your employees properly and they are not contented, they are a perfect waste and loss; for whatever you pay them is sheer loss.

Some of these sub-inspectors have been working twenty or thirty years, and I looked up their case to find that they are in comparison on less favourable terms than the clerical staff. Commission after commission has sat in this country and gone carefully into the terms of the clerical or local service. The clerical service, who do not require any special training at all, are far better off than these people. I had a lengthy letter from the Secretariat trying to convince me that clerks were not in a more favourable position than these sub-inspectors. I consulted some of them, and they said, "All right, if you think we are better off than the clerks, we as a body (about forty of them) authorize you to ask Government to place us in the same category as clerks whether the service is better or not."

I submit that a policeman is a much more responsible officer than a clerk. He is an executive officer of His Majesty's police force, is supposed to be on duty twenty-four hours a day, and he has to be treated quite differently from a clerk. Now that the war is on, every policeman is on active service.

With your permission, Sir, I should like to quote a few extracts—I shall not be long—from letters I have been writing to the Commissioner of Police. He expressed his sympathy with these sub-inspectors and promised to do all he can for them, but evidently he has not been successful in getting all the money he requires. There were three posts of chief sub-inspector in the police force, the highest positions to which any Indian policeman can rise. One of the holders died suddenly, more than a year ago, and the post has not yet been filled, although in the Estimates all three posts are shown as provided for. The answer given by Government, as reported in the *East African Standard* on the 8th June, 1939, to a question by the hon. Isher Dass was:—

"The number of vacancies in all grades of sub-inspectors in the Police Department which occurred during the period from 1st January, 1936, until April, 1939, through deaths, retirements and resignations, amounted to four.

"Of that number, one post has been abolished, one filled by the promotion of a serving African police subordinate officer, and two posts remain unfilled at this date."

The impression is that Government did not even propose to fill the vacancy caused by the death of one of the chief sub-inspectors.

I submit that it is not a right policy to follow to give these people the idea that there is nothing to aspire to. In that connexion, I take the liberty of referring to page 3 of the Memorandum where, under the head "Senior Agricultural Officers," it says:—

"There is no similar post on the non-native side to which officers on that side can aspire. Consequently, there is a tendency for such officers to stagnate on their maximum without prospects of promotion."

[Mr. Shamsud-Deen]

I submit that Estimates should not be a medium of providing for the aspiration of people; it should really be the machinery for supplying what is necessary. But there is a lot in what that paragraph says, that if a person has no hopes for the future he stagnates, vegetates, and loses all interest in life, and all the money we pay him is simply wasted. Especially is this so in the case of these police officers who, I think, are in a peculiar position: that, if you do not pay them well, you place all sorts of temptation in their way to become corrupt.

In one of the letters I wrote to the Commissioner of Police, I mentioned that I had been "jeered at in Legislative Council for my apparent inconsistency in alleging the existence of corruption among some of these people" and then in the same breath asking that their salaries be increased and their terms of service improved—

"... but I maintain that unless you pay these people well and treat them as responsible executive officers should be treated, you are placing an irresistible temptation in their way to be corrupt, to the peril of the general public who have to come in contact with these people in the course of police investigations."

I submit that if Government cannot do anything else for them, why not place them in the same category as the clerks? They are quite willing, and if necessary I can get their consent to that. I have asked to appear before the Standing Finance Committee to give evidence, and I hope I shall be able to convince the

Committee that clerks are far better off than sub-inspectors of police, but in any event they will be quite happy if they are graded as clerks, and I shall be able to show the Standing Finance Committee that that is so.

I think it is quite proper for me to quote from another letter to the Commissioner of Police:—

"My humble submission is that while a clerk is like a beast of burden, being mere quill-drivers buried under piles of paper or banging a typewriter, a sub-inspector of police is an executive officer of His Majesty's police force and the custodian of public peace and property, more or less in the capacity of a watchdog or, more precisely, a shepherd-dog. If the former is neglected or underfed he collapses and is perished, but the latter, in similar circumstances, not only relaxes his vigil but becomes a menace to the flock he is supposed to guard. A well-paid and contented police force is an inestimable asset and source of security to the public; but a discontented and underpaid police staff can easily constitute a danger to the public."

I am afraid, Sir, that I shall take up quite a good deal of time, and if some hon. members, as I see, are asleep or bored perhaps I can continue to-morrow?

HIS EXCELLENCY: I will accept that offer.

ADJOURNMENT

Council adjourned until 10 a.m. on Thursday, 14th December, 1939.

Thursday, 14th December, 1939

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Thursday, 14th December, 1939, His Excellency the Acting Governor (W. Harragin, Esq., K.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of 13th December, 1939, were confirmed.

PAPERS LAID

Mr. Wolfe laid the following paper on the table:—

Select Committee Report on the Flax Bill.

Mr. Wolfe gave notice that he would move the adoption of the Report at a later stage of the session.

ORAL ANSWERS TO QUESTIONS

No. 64—CUSTOMS WITHDRAWALS

COL. MODERA asked:—

(a) What were the respective amounts of Customs duties paid on withdrawal from bond between 1st and 14th November, 1939, on—

- (i) tobacco,
- (b) cigars, etc.,
- (c) wines,
- (d) spirits,
- (e) imported beer?

(b) What were the respective amounts paid on withdrawals from bond on the same articles between 1st and 14th November, 1938?

MR. NORTHROP (Commissioner of Customs): As new rates of Customs duties came into force on the 14th of November, I assume that the hon. member's question is intended to relate to the period from the 1st of November to the 13th of November, both dates inclusive.

That being so, the answer is:—

(a) 1939—	£
Tobacco	641
Cigarettes	2,113
Wines	234
Spirits	1,865
Imported Beer	708
Total	5,561

(b) 1938—	£
Tobacco	960
Cigarettes	1,740
Wines	169
Spirits	5,391
Imported Beer	455
Total	8,715

PERSONAL EXPLANATION

COL. KIRKWOOD: Your Excellency, I am rising on a point of personal explanation, with your permission.

Yesterday, when speaking, I requested the Standing Finance Committee to cut out all new items of expenditure and increased items in the budget. I was not referring to Government's contractual obligations to the Civil Service.

DRAFT ESTIMATES, 1940

The debate was resumed.

MR. SHAMSUD-DEEN: Your Excellency, yesterday I was speaking on the question of the Indian sub-inspectors, and I took up a longer time than perhaps I should have done on the subject. I will conclude that matter by just reading one more extract from one of the letters I have written to the Commissioner of Police. On the 29th July, 1939, I wrote, *inter alia*, and said:—

"These people fully realize, although they may never express in so many words, that in this country stricken with the plague of racial prejudices their field of activity is for perpetuity restricted to that of the hewer of wood and drawer of water, and for this reason all sorts of bastard nomenclature such as assistant sub-inspectors, etc., has been concocted, and invented, an expression perhaps unknown in any other part of the world as far as the police force goes. They know perfectly well that in the history of East Africa, European police constables have risen on their merits, of course, to the position of Superintendents or even Assistant Commissioners of Police which, after all, is the correct interpretation of the British principle according to which dictum 'Every private ought to have a field marshal's baton in his knapsack'.

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With the political advancement of the British Indian Empire, this racial disability of the Indian members of the police force has become particularly poignant, because they fail to understand why, if an Indian in India can be in charge of law and order with the Commissioner of Police working under him, if an Indian can be the Governor of a province larger than the Colony of Kenya, why an Indian, no matter how efficient, how capable and deserving, cannot rise above the rank of a wretched sub-inspector in this Colony. After all, you cannot treat this Colony as a watertight compartment divorced from the British Empire."

I hope that the Standing Finance Committee will give this matter their attention and, if nothing else can be done, I reiterate that these people should be placed in the same category as the clerical staff, because some have had no increments in the last ten or twelve years.

While dealing with the police vote, I should like to refer to one more item, which appears on page 70: item 6, assistant accountant and storekeeper. In the Memorandum, the explanation is that this is a new post and carries with it an emolument of £500. Further on, you will see the item "Storekeeper, Asian", and if he is really performing the duties of storekeeper his salary should be in the same proportion as the newly-created post in item 6. But what does he get? This man has been in the department since 1930 and, as far as I have been able to ascertain, his record is a good one and his services have been approved, but today he is getting £158 annually.

There again, I submit it is much better to place these people in the clerical grade. A storekeeper after all does clerical work and it is only fair to include him in the clerical staff. But this unfortunate man, because he is a storekeeper, has had no increments for ten years, having reached his maximum of £158, at which he is probably condemned to serve until he dies.

I submit that the result is again nothing but stagnation and complete lack of interest, and this matter ought also to be taken into consideration by the Standing Finance Committee.

Having dealt with the Police Department, I should now like to go to the Department of Local Government, Lands and Settlement, which has the distinction of having the longest designation of all departments in this Colony. As a rule, I must state, all the heads of this department have been amenable to reason and sympathetic to any case put up to them, but there are one or two cases of long outstanding grievance in the Indian community.

As far back as 1903, the Indians in this town were given ten-year leases to occupy certain pieces of land, usually called shamba plots, on the banks of Nairobi River. Those leases expired in 1913, and after that some Indian lessees, who were more educated and articulate than others, applied to Government and got an extension of their leases to ninety-nine years. The other unfortunate people, who had had leases granted to them by Government during the time of John Ainsworth—who actually went from door to door asking Indians to take up land—did not do so. The matter languished until the time of Sir Edward Northey, when a deputation waited on him, and a definite promise was given by him that these leases would be extended to ninety-nine years as had been the case with the others.

Unfortunately, after the demise of the late Mr. Martin, then Commissioner of Lands, new office holders were appointed, and they took up an entirely new attitude. They ignored all the promises given by previous Governors, and said that as the leases had expired, if an extension were wanted the lessees would have to pay the price of the land. There was a time, and it should be on the records, when Government actually offered the Indian community an extension of the leases, but there were some disputes as regards the portions of land required by Government for roads and drains. Later on, the old officers having gone, the new action taken by Government was that the Indians should pay an exorbitant price for the land. Had Government confined themselves to the actual expenses which had to be incurred on those areas in roads and drains it would have been all right, but the price actually demanded by Government was exorbitant and put

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of all proportion to the price of the land prevalent in that vicinity.

I submit that the matter is one of long outstanding and requires immediate attention from Government. It has remained open for a quarter of a century, and I think the time has arrived when some final action should be taken in the matter.

Then there is another small matter which was a great surprise to me.

This department has insisted upon re-planning and reorganizing Ruiru township. I was specially asked by a deputation from Ruiru to visit the township, and I went there the day before yesterday. I quite agree that the township is by no means an ideal location, especially for visitors to see, and it will have to be remodelled sooner or later. But I submit that during war time, when prices of everything have gone up, for the department to insist upon auctioning the plots and insisting upon the present plot holders, who have been occupying plots for many years, to evacuate them and acquire new-plots, which require new buildings, is certainly not a wise policy.

I tried to ascertain whether there was any real desire for these plots being auctioned at the present time, because auctioning means abandoning the present township and building a new one. With the exception of one solitary person, who is trying to ruin his competitors in the petrol trade, no one wanted the plots sold at the present time. I have written proof in my possession of that, and will produce it to the hon. Commissioner for Lands and Settlement if necessary. I have had a little conversation with the officials of the department, and I represented to them that the present was a most inopportune time for rebuilding, because the price of all building materials had gone up and, as a result, all building operations in Nairobi have practically come to a standstill.

Unfortunately, the information at their disposal was not a correct statement of affairs as it exists to-day. I told them that my information was that the price of iron sheets, which was 45 cents a foot before the war, had gone up to 90 cents. They said their information was that the price

had only gone up 15 per cent. People have told me that the prices of all building materials had gone up tremendously. Nails went from Sh. 1 to Sh. 1/75 a packet, cement went up by Sh. 18 a ton, roofing nails from Sh. 2 to Sh. 6, screws from 35 cents to 75 cents. It is true that probably the only cheap item in building is labour, because on account of this type of pseudo war existing in the Colony all business is dislocated, all building operations have been brought to a standstill, and the majority of artisans and the working class have been thrown out of their jobs, and to-day they will take anything for little wages. Except for that, the price of everything has gone up 100 to 150 per cent during the last few weeks, and this will be the cause of a great hardship.

As regards the few shopkeepers at Ruiru, I think it should be fully realized that all are entirely dependent on the settler community in the vicinity. Since the outbreak of war, all credit has been stopped to all small shopkeepers, who are called on to pay all arrears and to buy everything for cash. They cannot, however, apply the same principle to the settlers who have been their customers for years. They have to give them credit, which sometimes is three to six months. The traders' prosperity is dependent on the prosperity of the settler community in the vicinity, but owing to drought, locusts and other causes the latter are by no means in a prosperous condition at the moment.

Therefore, this step is unwise and harsh to proceed with the replanning of Ruiru at the present time, and uncalled for.

One other excuse brought forward is that the present buildings are not in a very sanitary condition. I admit that some are rather ramshackle and dilapidated, but surely the shopkeepers can be called on to remedy this and will comply with any reasonable orders of the medical officer of health in order that the buildings shall be put into ship-shape?

As regards medical officers of health, I have always had the same opinion: while they can inspect some places and condemn them as unfit for human habitation, they become absolutely devoid of any

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human feelings and do not take into consideration what will happen to these people and where they will go. The same thing has happened in Nairobi: places have been condemned wholesale without any arrangement either by the Municipality or Government as to where the people should go.

Those gentlemen who belong to the health staff do not act in quite the same way towards Government buildings. I referred yesterday to the police lines in Nairobi, which should have been the first buildings to have been condemned by the medical officers years ago, but they have not done it, because if they had they would have probably lost their jobs. I submit that that is no reason to condemn the whole township of Ruiru. The proper thing is for the medical officer of health to give the people notice to carry out repairs, make improvements, and comply with the health requirements, not to proceed with the demolition of the whole of the buildings.

I rather admire the obstinate way in which the hon. Member for the Coast expressed his views as regards the encouragement of the Indian community. I make the statement with a full sense of responsibility that the Indian community is alive to the question that there are no more openings in this Colony for them in the future. It will be realized that, after all, it is an African country, and with the advent of Makerere College and the consciousness of the Africans, the time is not very far distant when Africans will take their rightful place in the Colony and the Indians will be driven out of jobs and artisans out of trade. Agriculture will be the only avocation they can take up.

In this respect, very active preparations are being made by various communities, but I am afraid that nothing can be done unless Government play their part. There are no doubt at the Coast very fertile areas capable of being developed, but unfortunately, with the abolition of slavery about fifty years ago, more than that, they have gone back to bush, and the areas are now so infested with mosquitoes, tsetse flies, etc., that unless Government can do something which is really active to encourage settlement I really

do not feel I should like to very enthusiastic about encouraging people to go there, because I think I should be the means of making a number of people die there unless the land is first cleared.

In this connexion, I would inform Council that last year when I was in India there was a great deal of interest evinced as regards settlement at the Coast, and there was a lot of people seriously ready to invest their capital. Of course, things have changed with the outbreak of the war, but I wrote to them that, as far as I was able to understand the attitude of Government, production was not going to be interfered with owing to the war and there was no reason why the interest in India as regards settlement should flag. I think if a fraction of the money which has been spent on the publicity office in London had been spent in opening an office in India, the coastal area would have been developed a long-time ago. There is still an opportunity if the powers that be will take it.

I should like to speak of the Department of Public Works. Now, this is a department which has been very unfortunate indeed in having inherited a legacy from the time of Mr. MacGregor Ross, and in so many ways that the public interest has suffered accordingly. I have never been able to understand why the sum of £31,000 should appear in the vote of this department for rents of offices and houses and house allowance in lieu of quarters. I submit that that is entirely wrong accountability to charge that every year, and so artificially inflate the vote of this department. The proper way of accounting for this is for all these rents and repairs to be charged to the various departments which occupy those quarters. If the Public Works Department workshop people go to make repairs, the departments should pay for them and all charges be debited to a department.

As a result of these artificial inflations, we were told yesterday that the Public Works Department has no reserve for the maintenance of roads at all. During the times of peace and war, roads are the only means of communication that can be relied on. In case of anything serious happening here, one bomb dropped on

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Macupa Causeway or any other bridge renders the railway useless for weeks, whereas in the event of such a thing happening to a road the road can be repaired in the course of a few hours.

One would almost think there is collusion between the Railway and Government in order to give the monopoly of communication to the Railway, but the latter are not capable of keeping or maintaining the roads properly, because they are afraid that if there was, for instance, an all-weather road from here to Mombasa, the railway would lose a good deal of traffic of goods and passengers and so forth. I submit that that is an entire fallacy. One is rather staggered to read of what the Italians have done in Abyssinia so far as the roads are concerned, and in a very short period, more than we have done in forty years.

That brings me to the road from here to Thika. I am really surprised at the condition of the road. I think if all the users of that road, the motorists, were to sit down and calculate the amount of damage done to their vehicles and the amount they have had to pay for spare parts, they would probably think it would be better for them to come forward voluntarily and provide for the rebuilding of the road. It is in an appalling condition, and does make motoring an expensive item.

As I said last year, look at Zanzibar, they have good macadamised roads there and there is absolutely no reason why there should not be any here. In connexion with that I want to say that representations have been made to me from Fort Hall as regards the obstacles that have been placed in the way of the Indians who are carrying their goods from Mombasa to Uganda that they need C licences. The authorities have closed the road at Vol which makes it absolutely impossible to pass and this Transport Ordinance again has been worked out in such a way that instead of regulating the transport it has done all sorts of entirely difficult things for motor transport. I had before me cases in which C licences were handed to me yesterday and which were only issued on the 6th December of this year and apart from

that the endorsement on the licence says that the licence prohibits the carrying of goods from Kitui to Thika even supposing the owners are carrying goods belonging to themselves. There is no railway running through Kitui from Thika but it is all part and parcel of the road policy which is not being carried out properly. I submit that the time has come when we should pay more serious attention to this matter.

As regards the departments, there are three departments on which we should not be very harsh as regards monetary concerns. They are the Education, Police and Medical Departments, and although they are social departments we cannot be too generous to them. I must say here that during the year there has been a complete change of staff in so far as the Director of Education and the Inspectors of Schools are concerned who are newly appointed. The Indian community was rather concerned when these new appointments were made because there had been one or two instances when the Directors of Education and some inspectors, due to lack of understanding and sympathy, had been exceedingly harmful to the Indian community, although as a general rule we have been very fortunate in having the superior staff of the Education Department who were very sympathetic. These fears, however, have been completely dispelled as a result of practical experience and contact with the newly appointed staff who are as sympathetic and considerate as most of their predecessors.

I have not got much to say with the exception of one item and that is the Government Indian Girls School in Nairobi. The school itself is situated in a very awkward position and it is very dangerous for the children owing to the traffic, and the accommodation there is entirely inadequate. I hope Government will do something about this. I cannot ask them to build a new girls' school at the present juncture but I hope that they will do something about it by making additional accommodation.

There is only one other item as far as the Education Department is concerned and that is that I notice in the Memorandum under the Education head

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that the grants to special schools was increased from £500 to £700. There is a note there which states:—

"The special schools in Nairobi and Mombasa providing for the education of children of mixed parentage have not in the past received the full grants provided by statute, and consequently have found it difficult to carry on. An increase is therefore necessary, but the amount provided still falls short of the full sum payable."

I am not aware of the statutory requirements but it is my duty to bring to the notice of this Council that although Government is doing all it can to encourage education for the children of the Colony there is one unfortunate community which is mentioned in this paragraph—that is those of mixed parentage—that have not had a full share of education. I am referring now to the Anglo-Indian community. They have no school of any kind. They cannot possibly go to the Goan schools, European schools or Indian schools.

I saw Colonel Sir Henry Gidney about ten years ago in India, but then he was very busy and he said he would come out to this Colony as soon as he was able to about this question. Therefore I think it is my business to bring to the notice of Government that the Railway, who are the employers of most of the male members of this community, should do something about it. At the present moment they are a very degenerate community, the lowest of the low. Colonel Sir Henry Gidney told me himself—he is a regular Colonel in the army and a very clever fellow—that the trouble was that if there was a dark Anglo-Indian he went as an Indian and if there was a member of the same community of a lighter colour, he would say that he came from Brighton or Yorkshire and went as a European. Although they are not Englishmen they are the responsibility of the Englishmen and the sooner notice is taken of them the better.

As far as the Medical Department is concerned I congratulate the hon. Director of Medical Services for including in the Estimates provision for Indian nurses.

I should like to refer to one more item. I think one hon. member mentioned something about the censoring. I should like to say something of my own experience of censors. A petition of mercy was made to the Secretary of State and a very expensive telegram, costing over £5, was sent to the Secretary of State. A reply came from there and was forwarded on to me through the Chief Secretary and the Secretary of State had intimated that the prerogative of His Majesty the King was delegated to the Government and implied that an appeal for mercy should be made to the Governor here. That was dispatched from the Chief Secretary on the Monday and I did not receive it until the Friday afternoon and the man was hanged on the Saturday morning.

I submit that this was a most important matter on which a man's life depended. And it was simply lost on account of the carelessness of the censorship. I submit that something should be done to stop that.

There is another matter that was mentioned by the hon. Mr. Pandya, although it is all past history but it does deal with the whole of the wheat production of the Colony. I think the only hon. member who can remember is the hon. Member for Ukamba who will probably correct me if I am wrong, but in 1922 a statement was made by the late Lord Delamere that the Indian community had boycotted atta made from local-grown wheat and as a result of that some hundreds of bags of atta were lying idle and there was not a single customer to buy it. Well, if there was any such boycott or any such movement I should have known of it and I promised the committee inquiring into it, presided over by the then Colonial Secretary, Sir Charles Bowring, that I would make inquiries and let them know. My inquiries elicited the information that the wheat grown by Lord Delamere was totally unfit for making chapatties, that is the bread eaten by the Indians. The Indians had tried it and everyone who tried it suffered from diarrhoea and all sorts of diseases and they would not touch it again.

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I was very surprised the other day when I went into the office of the Agricultural Department and met an officer, I could not remember his name but he was rather elderly, who cooperated with me to find out which kind of wheat was best for Indian chappatties. I spent a long time on that experiment and took a great part in making local wheat atta a success. But I did not know at the time that in making the local wheat atta a success I was unconsciously creating a very awkward position for my own community, because before the year had lapsed a law was brought into force putting on prohibitive customs duties. At any rate the position to-day is that this industry has had about 18 years of protection by this most prohibitive imposition of customs duties, and if an industry that has had 18 years' protection and cannot stand on its own legs I do not think it is worth helping.

The position to-day is that the Indian is not only told where he must buy the stuff for his bread but he is also told what price he is to pay and he is also told what stuff he must accept for the making of the bread. The hon. Mr. Pandya yesterday quoted a circular which makes it incumbent on millers to take a percentage of what is called Sabanero wheat. My hon. friend confined his remarks with regard to the millers but did not say anything about the consumers. I have made inquiries of consumers and they say that this wheat is worse than the worst type of maize and they would have nothing to do with it. So, we are back to the same position as we were in 1922. They cannot eat it or make chappatties out of it and I submit that the whole question of this wheat agency and monopoly requires further investigation. It is a case where one interested party purchases the wheat from the producer and deals with it himself and sells it again to the consumer at any price he likes. As a matter of fact the Indian community is thoroughly fed up with the way in which this particular commodity is monopolized, probably by the genius of one single man

who is against them and who is only doing this for his own benefit.

I do not want to threaten anyone but had not the war broken out the Indian community had completed all arrangements to bring in their own type of hand-mills that are called chukkies and which were used in India before all this cursed machinery came in. And every house would have its own small hand-mill and the women of the house would grind the wheat flour, wholesome wholemeal instead of having to have this superfine flour and inferior production which has affected the health of the people and given them enormous bills for the doctor. I submit that all arrangements had been made and every house-holder would have been a miller unto himself. The price would have been not more than Sh. 10 and everyone would have ground his own wheat. Unless we try to keep in view the interests of all concerned, that is the millers, consumers and producers and try to do something about it something is bound to happen.

As far as the millers are concerned my hon. friend said yesterday that most of the millers were going out of business, but I assert that every miller has already gone out of business with the exception of Unga, Ltd., which is managed by the agents who enjoy the monopoly of purchasing wheat. I submit the whole question requires looking into.

There is one other subject I wish to refer to and that is about the District Councils. Representations have been made in this Council over and over again that it is essential that there should be some sort of representation for the Indians but there is not a solitary Indian on these councils. Sir Joseph Byrne actually promised that representation would be granted to Indians on these councils so that Indian interests were safeguarded, but nothing happened. As a result, most of the applications put by Indians before these councils were turned down. I will quote one example, that of Ruwaka Council. An Indian made an application for the erection of a petrol pump there. He asked for permission to build in this township and gave the size of the shop and the petrol station and

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even went to the extent of offering quarters for the police constable for living. But that application was turned down because there was no one on the council to put a word in on his behalf. That applies all over the Colony and I hope that the members of the community will keep on pressing for this year after year until they get a reasonable reply.

I think I have said more than enough.

COL. MODERA: Your Excellency, the debate here in Council reminds me very much of a cricket match in which everyone is put on to bowl and in which the style of one may be similar to that of another. So I hope that if my remarks are similar to those of other hon. members I shall be excused. At the same time, I feel, in carrying the analogy a little further, that though a number of balls have been bowled and the wicket has been hit, yet when anyone has hit the wicket the balls have not necessarily come off; that is why we, on this side of Council, never get the other side out. I do not think I shall be able to sustain my attack for the same length of time as the hon. Mr. Shamsud-Deen and I hope I shall not bowl any wides.

When this motion goes to the Standing Finance Committee I would draw attention to the fact that if hon. members will consider the increases in the budget they amount to a sum of £84,000. And if hon. members will look at Heads 1 to 41, excluding the Kenya Naval Volunteer Reserve and the Military votes, Pensions, Gratuities, Police, Posts and Telegraphs, Public Debt, Colonial Development Fund and War Civil Expenditure, there is an increase of £84,000. I know there are considerable reductions throughout various heads, but the fact remains that this budget shows actual increases of £84,000.

Mention has been made of income tax and there is a Bill which will presently come before this Council for raising additional revenue during the present war. That it is a war-time measure is stated therein, and whilst everybody is desirous of doing their bit and paying their fair contribution to the war, none the less at the appropriate moment after

the war it will be possible in this Council to discuss whether that form of taxation should be imposed without proper representation.

I would like to refer to the remarks of one of the hon. speakers when he asked why we were told a little time ago that an increased taxation would produce some £200,000, whereas the hon. mover in opening this debate referred to it as £165,000. The military expenditure is a one-line vote and therefore it is not possible to go into the details of it, but there are three matters to which I would refer and I would ask Council to bear with me.

The first is in regard to the guarding of these internees. We have been told that there is a shortage of man power and of the necessity of economy in man power. I do suggest that it is a waste of man power to have the number of Europeans on that guard which are at present employed.

Secondly, I would refer to the question which was asked by me long ago, on the 22nd of October, with reference to the future of the Kenya Defence Force and what its functions are to be during the present war. I know there have been discussions but as yet no answer has been given. I would also refer to the fact that when I spoke on the last occasion the hon. Chief Secretary told me that I had no business to ask that question and that my information should be gleaned from my Commanding Officer. As far as my position as an elected member is concerned I would maintain that in this Council I am entitled to come and ask questions the answers to which must rest with the Government.

One expression that the hon. Mr. Pandya used appealed to me very much, and that was the expression "keep prepared". I do suggest that the implementation of any recommendations to the military authorities should be carried out at the earliest possible moment. I do suggest that the decision in regard to the guarding of internees and in regard to the future of the Kenya Defence Force should be made known at the earliest possible moment, so that if training has to be carried out the present

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time, which is of great value, may not be lost in carrying out such training.—

Thirdly, I would refer to the question which was asked not so long ago by the hon. and gallant Member for Nairobi North which related to the differentiation of the rates of pay between the Kenya Defence Force and the Kenya Regiment, and I would refer, for a moment, to the answer of my friend the hon. Financial Secretary:—

"At the time that these rates of pay were decided upon it was considered that some differentiation as between the higher ranks of the Kenya Regiment and of the Kenya Defence Force was justified in view of the difference in the duties which these forces were designed to perform and the difference in their period of peace-time training."

First of all, taking the first few words, and the statement that these rates of pay were justified, presumably there is likely to be a reconsideration of the question in the light of the experience which has now been gained: the duties of the respective ranks are similar in the Kenya Regiment and in the K.D.F. when both are mobilized and called out, and both are on an infantry basis.

Secondly, one of the reasons given for the differentiation is the difference in the period of peace-time training. I should think that this force is unique in this respect. If we go back to the last war, whether a man was in the infantry as a regular soldier, territorial, or in Kitchener's army, he was paid precisely the same, whether he had pre-war training in the regular or territorial army or not. I suggest that in view of that, that there is no ground for any differentiation here. A quartermaster-sergeant in the Kenya Regiment is, I suggest, entitled to no more than a quartermaster-sergeant in the Kenya Defence Force—and these rates are applicable when and only when the forces are on active service—for the quartermaster-sergeant's duties are the same in any unit of infantry, and both Kenya Regiment and the Kenya Defence Force are on an infantry basis.

Then the reply goes on:

"The duties on which the Kenya Defence Force was employed on the outbreak of war were such that its members were able to keep in touch with their ordinary civil occupations and they were generally on duty near their homes. The members of the Kenya Regiment are on full-time military service."

As this Council well knows, the men of the K.D.F. have been taken a long way from their homes in the course of service, and are serving still, and while so serving are on full-time military service.

There are three other small matters to which I wish to refer. One is with regard to education. I would support the hon. Member for Nyanza for urging some extra expenditure in regard to the Girls High School, Nairobi.

I would also like to ask, with the hon. member, Dr. Wilson, why there should appear under Head 17—"Expenses of Settlement and Production Board", the sum of £1,800 when there is not a word in the Memorandum or the Estimates themselves to explain that?

Finally, if I may endeavour to understand what the hon. member Mr. Pandya meant, I gather that he said, or endeavoured to convey to Council, that losses in peace time should be turned into profits in war time. I do not subscribe to that policy. Rather would I say that we can afford less in war time than in peace time to incur losses. I would plead with the noble lord, the hon. Member for Rift Valley, for an increase in the basic wealth of the country. The poverty of the farmer means poverty generally to business as a whole. It may be that, as the noble lord stated, this is a small community, but if the Imperial Government wishes to retain this Colony within the Empire it must support that small community and assist the Government here in its trusteeship of all the races whose production in the land means their all.

Council adjourned for the usual interval.

On resuming:

MR. WILLAN: Your Excellency, the only reason for my intervention in this debate is with regard to remarks made with reference to the paragraph on page 7 of the Memorandum under Head 15, Judicial Department.

The noble lord, the hon. Member for Rift Valley, contented himself, after reading that paragraph, with asking a question. He asked "How does this fit in with the additional judge to deal with cases all over the country taken out of the hands of administrative officers?" That question was re-echoed by the hon. Member for Nyanza, and then a rather more aggressive tone taken by the hon. Member representing Native Interests, Dr. Wilson. The hon. member Dr. Wilson, without quoting any facts or without quoting any figures, made this definite assertion: It is obvious that there is no provision for extra judicial staff so that 34 millions of natives should get justice; and he finished with a challenge: What has the Acting Attorney General to say to that?

Well, the Acting Attorney General has not very much to say to that, but what he has to say I hope will effectively answer the question put by the noble lord and also rebut the dogmatic assertion made by the hon. Member representing Native Interests.

I have here before me a return which was called for by His Honour the Chief Justice at the end of 1936 and which relates approximately to the period November, 1934, to August, 1936, and in that return there are shown a number of sentences exceeding 2 years which were given by administrative officers in their capacity as magistrates. This return covers 266 individual cases. By that I mean that it covers 266 individuals, but in quite a number of cases there were two or more individuals to a case, so it covers 266 individuals but a lesser number of cases.

An examination of this return shows that if this Bill had been law for that period, of those 266 individuals first class magistrates could still have dealt with 105 of them on account of the power in the Bill to impose imprison-

ment in default of the payment of a fine, costs, or compensation, so that leaves 161 individuals who would have been committed for trial by Supreme Court. Of those 161 individuals, 77 pleaded guilty before the magistrate, and I submit it is not unreasonable to suppose that these same 77 would have pleaded guilty before the Supreme Court if committed there. Therefore, that would have left the Supreme Court for that period November, 1934, to August, 1936, with 84 individuals who would not have pleaded guilty and 77 who would.

Secondly, I have been in consultation with His Honour the Chief Justice, and he has authorized me to say here that when the additional judge, who is now on his way out, arrives and thereby the judicial staff of the Supreme Court is increased by one—the Chief Justice and four puisne judges—and provided that when any judge goes on leave an acting appointment is made as is the case with most other Government departments, His Honour is satisfied that that staff will be able not only to deal with the present work of the Supreme Court but the extra cases thrown on it on account of this Bill becoming law.

MR. ISHER DASS: Your Excellency, I congratulate the hon. mover of the motion regarding the provisional Draft Estimates for his eloquent speech delivered in a very very able manner and with the utmost calmness. I hope he will equally appreciate the frankness in criticism offered concerning some of the methods he has adopted, not as Financial Secretary alone but also as Chairman of the Supply Board.

Much has been said about the war. The object for which we are fighting will be achieved in the end. That part I shall leave to future historians, but that we are bound to be successful is a foregone conclusion. There are different factors absolutely essential to win the war. Different factors are required in the war itself and other factors in those zones where the war has no direct effect.

The hon. Member for Nyanza has suggested that we have our grievances and difficulties with the Colonial Office and have got to keep on bombarding them.

[Mr. Isher Dass]

No useful purpose will be served by bombarding the Colonial Office at this critical juncture, because there they have so many other worries and problems to deal with that it will not be beneficial to the noble object for which the war is being waged. One fact we must not lose sight of. We all know there will be none of the horrors or ruination as a consequence of the war likely to be felt in Kenya. It is sure to be felt at home near the war zone, but we are so distant that we shall only be called on as we are to-day to help to bear the burden both during and after the war.

There was one point made by the hon. Member for Rift Valley with which I entirely agree, that 10 per cent of the total European population or one third of the able-bodied European community are at the moment already engaged on military service. While I appreciate and agree with those figures, I also express sincere regret at Kenya Government's inability to use the Indian man power when it was suggested a couple of years ago. I also express my sincere regret at the stupid and foolish and sentimental reasons which make some people object to the inclusion of Indians in combatant service in Kenya. I do not know the reason, whether it is prejudice or otherwise, but it is to be regretted, because if we had at the time taken the advice of the hon. Indian members of this Council it would have been found to-day that a good number of Indians would have been in combatant service, which would have released some of the Europeans who are on active service to-day.

Before I actually deal with some of the points in the budget, I wish to say one thing. My hon. friend Mr. Pandya mentioned in his speech that he was very very glad on the whole that every community in Kenya was contributing according to its mite, but what I am afraid of is that some of the Government officials, heads of departments, may land us by their short-sighted policy into the hole.

I will refer in detail to some of the methods in connexion with which I offer my criticisms. Those criticisms, I sincerely

hope the hon. Financial Secretary will not take as sarcasm but are due to the difficulties being experienced under the Defence Regulations. Therefore I hope he will view the remarks in that light and take them into consideration and try to remedy the situation.

For his information I will first refer to Ordinance 64 under the Defence Regulations, which covers the control of prices of commodities and imports and exports. To deal first with the latter, imports and exports. The total import of goods during 1938 from foreign countries in the non-sterling block amounted to £3,643,000, and the customs duty obtainable on that was £390,000. Under the present system which is being worked out by the Commissioner of Customs as the representative of the Supply Board, because powers have been delegated to him, he has refused 75 per cent of the permits to the merchant community for importation, which will undoubtedly result in a reduction of 75 per cent of the duty from the non-sterling block. This automatically reduces the customs duty to the extent of £250,000.

Secondly, during 1938 we had imports from Japan to the extent of one million pounds and from the United States of America of £750,000. I am perfectly sure that if we place certain restrictions in the way of imports from those countries in the non-sterling block we are not only creating a difficult situation but some one of those countries may invoke the Congo Basin Treaty which would in turn affect the local exports of coffee, pyrethrum and other produce. If they take the same attitude and resent our restrictions, what would be the result? I sincerely hope that the hon. Financial Secretary or someone on his behalf will inform the Council of the position.

Another point is the restrictions imposed and non-essentials when permits are applied for. Up to this time, after three months, no list of essential or non-essential articles has ever been published by the department concerned, so that people cannot differentiate between either. You may call nails essentials; at the same time, according to some people's ideas, they may be non-essential articles.

[Mr. Isher Dass]

Another thing is the restrictions imposed under this Ordinance. We are always complaining and are reading in the newspapers every day that neutral ships are being sunk without warning by the enemy. Here again we have exactly the same thing. Some firms from neutral countries who have been established in Kenya for the last 25 years, by the imposition of these restrictions are having their business cut down and sunk without warning. What is going to be the effect on those firms which have been established here for so many years?

The restrictions are not working smoothly as they seem to some people outside the commercial community, and I will prove from figures that when you apply these restrictions you strangle trade itself. I will show what permits have actually been granted when permits have been applied for. Deltz lanterns of the value of £200 were applied for, Sh. 33 worth were granted; globes for lanterns £200, and permission for only Sh. 330 was given; paper tailed £150, and Sh. 20 granted; medicines, £300 worth, Sh. 530 granted; printing paper for newspapers, £2,000 asked for and Sh. 55 granted; stationery worth £250 was asked for, and a permit given for Sh. 750.

Those are only a few instances, the total of the actual permits sought being £3,550 while permits were granted for £1,718. This is the way the restrictions are being worked out.

There is another difficult position. The commercial community have to suffer by the imposition of the restrictions, and they are not allowed in certain cases to import any goods, while the ordinary layman in the streets can write to any concern or firm in London or any country and get business articles for his personal use by parcel post. The restrictions apply in the case of commercial houses but not in the case of an individual or layman in the street. Therefore, the commercial community suffers more under the restrictions than the ordinary man in the street.

Neither are these restrictions workable or practicable in ways. People who before the war were earning £10, £20 or £25 a month, most of them have joined

the army, and get very good wages to the extent of £45, £50, or £60 a month. Therefore, with that increase in their economic condition, they naturally expect to buy more things and spend more money, but these restrictions work in an opposite direction. That is one great difficulty.

What I am afraid of is that the people in the Customs Department at Mombasa who are actually handling the position—I will be fair and honest in passing the criticism—do not understand anything about commerce at all. In fact, they are expected to know all about commerce while their attitude in recent cases shows that they do not understand commerce or the implications of these restrictions and the hardships created.

Another hardship and difficulty caused by the imposition of these restrictions is that when they found it was very difficult for commercial houses to get permits for imports ordinary people in town with tons of money began to indulge in speculation. They have never been in trade before, but are paying cash prices for articles and are holding the stuff. Consequently, prices will go up to such an extent that the poor consumer, who will in the majority of cases be Africans, will have to pay through the nose, so that instead of being any good to the consumer in controlling prices the object of the restrictions will be totally defeated. It is resulting in speculation and thereby causing hardship to ordinary people.

There is one more difficulty which nobody seems to take any notice of at the moment in the Customs Department at Mombasa. That is, from the non-sterling block countries come purchases paid for in England and India before war broke out. For instance, printing paper comes from Sweden, but certain firms in England have bought and paid for those goods in London, in the same way that firms in India bought goods from the non-sterling block and have stored them in India. It may be that it would not affect the control of currency at all, because there would be no loss of currency if we bought them from Bombay or London and brought them to this country. But the position is that

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when the name of the country of origin is given as the non-sterling block, the permit to import is refused. This is another hardship.

So much for control of imports and exports. As I have pointed out in my arguments, the object of price control is not advanced at all by the imposition of these restrictions but, on the other hand is being defeated. Another difficulty I should like to point out to the hon. Financial Secretary in the matter of price control is that a list of such articles controlled and their prices should be exhibited by each merchant and their houses. I walk into a shop, and am absolutely ignorant of the price fixed by Government at which an article has to be sold. The most I can do is to get out of the shop and go in the next, but I am still no wiser. This should have been done from the beginning, that prices should be exhibited in prominent places in all shops for the consumer to know what he is called on to pay as compared with the price he paid before the war.

I quite agree that there is some kind of control required, but the method at the moment adopted under the Defence Regulations controlling the price of commodities, etc., is not working in the proper manner and is not beneficial to the public as a whole, and not even in the interests of the commercial community.

I will refer briefly to the revenue and expenditure.

Under Customs Department £50,000 is shown in increased revenue. I do not know whether this will be realized or not but, as I have pointed out, the restrictions imposed on imports and exports are not likely to result in any extra revenue from customs but is likely to reduce it to a very great extent.

Fears have been expressed by one member of this Council that the imposition of the extra duty on wines and spirits will not result in the amount mentioned in the revenue being realized. I am sorry that I do not agree with that idea because, as the hon. member Mr. Shamsud-Deen pointed out yesterday, people are indulging in more drink, and we should therefore expect to get more

revenue from these duties. Again, it has been mentioned that these increased duties might result in some people ceasing to drink. There are two reasons for doing that. Either they do not believe in paying the extra prices, or from a moral point of view they will stop drinking altogether. If it is from the latter it is welcome, but if from the first they may drink something cheaper.

During the course of his speech the hon. member Mr. Shamsud-Deen criticized the restaurants in Nairobi. I am sorry that I cannot agree with him. Either he is not in a position to say what he did or he does not understand the matter. People undoubtedly may be indulging in a little extra drinking, but we cannot forget that the chief factor is that the conception of life in peace time is very different to a conception of life in war time. In peace time everything goes smoothly, in war time most of the people engaged in combatant and non-combatant services try to take as much as they can out of life in the face of danger. Therefore we cannot in all sincerity condemn them wholesale, and so I do not agree with the hon. member on this subject. Another difficulty is that the conception of morality to some people is very different to the conception of morality with other people. Some people if they smoke cigarettes become the most sinful people in the world; others may smoke a cigar with the greatest of pleasure.

I think my hon. friend was harsh in passing the undignified remarks and condemning wholesale the attitude of certain people and restaurants.

On the expenditure side I would refer to pages 14 and 15 of the Memorandum, under Head 41, "War Expenditure, Civil," to item 7, "Import control, £760". It has already been pointed out by the hon. Member for Mombasa that £760 is not enough to run this department. I personally believe that the amount of work entailed in this department is likely to result in an increased cost when so many people send in their applications and the replies are in the negative and they have to send in their applications again for reconsideration and so forth. I think in view of this the amount is not enough to meet requirements.

[Mr. Isher Dass]

I will now refer to item 8, "Man Power Committee, £840". In this connexion, the amount allotted here is absolutely reasonable, but I would like to pass one or two strong criticisms in connexion with man power affairs. I have noticed that since the formation of the Indian Man Power Committee in Kenya, there has been some difficulty with some of the military authorities in their co-operation with that committee. This fact has been brought to the notice of the Deputy Director of Man Power and the hon. Chief Secretary from time to time. I appreciate that the Deputy Director of Man Power is also a member of this Council, and he has made every effort to bring home the necessity of close co-operation between the military authorities and the Man Power Committees. But from my own experience I feel that all his efforts and energies are in vain.

The general complaint is that the committees are not asked for advice as to the persons required for military departments, and the list of persons available for employment, for only in a very few instances have people been referred to. In this connexion I will give one instance, it is a very unfortunate and a very unpleasant one. I have noticed, as a member of the Man Power Committee, that every preference is given to employment in the military departments and by military authorities to Goans and other non-British subjects. If necessary, I can quote instances and give names, but it will serve no useful purpose to mention individual names here, though if I am asked for that information I shall be only too glad to furnish it to the parties concerned.

I will now refer to the next item, on page 15, "Information Committee". Under this head, the sum of £3,700 is provided. I have a very strong objection to this. First of all, not on personal grounds, but with the Information Committee it is thought that nine Europeans are required. With the amount of work, I do not know how much there is, I feel that if one editor and one sub-editor and two reporters can efficiently run a paper like the *East African Standard*, there is certainly no need for a staff of nine, in

addition to people released from departments and transferred to it, for this Information Committee. The Committee, too, I notice when dealing with matters concerning imports and exports, apparently have to refer them to the Commissioner of Customs, who has to send them a reply. If that is the case I do not know what the functions of this department can be. In any case, I think the employment of these nine people is absurd and in excess, and I think it is only a "Nossey Parker" body.

Under "Censorship", on page 15 of the Memorandum, the sum of £10,200 has been provided, and to my mind we meet with the same difficulties. Here we have a European staff of twenty-two and an Asian staff of one. That does not seem to me to be at all rational, that there should be twenty-two Europeans and only one Asian for this department. For the censoring of letters is out of all proportion to the amount of work the Asian has to do compared with the Europeans. Again, if we look at the matter seriously, there is not enough information available to the enemy or anyone else outside the Colony, and I am perfectly certain that this European staff of twenty-two is not essential. The department should have been placed under the control of the Intelligence Department of Kenya. I do not know why, under all the circumstances, Government agreed to a separate department, because in the last war, where I personally served myself for five years, in Mesopotamia, the censorship was carried out by the Intelligence Department. Here, there is nothing very much of value that could be of assistance to the enemy, and certainly nothing to justify the employment of all these people. And to my mind, I do not think they are very intelligent people who are being employed. In fact, I have a very strong objection to their methods. I know I am one of those few and unfortunate people who are looked on with suspicion by Government, but I would like to give one instance of a letter which was posted to me on the 30th September, 1939, a registered letter, which was censored and did not get to me until the 7th October. In another case, a letter containing only two cheques in my favour was posted

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to me in Mombasa on the 27th September. It contained no correspondence, only the two cheques, yet it was handed to me on the 8th October, ten days later. I do not know what information there could have been in those two cheques for the censorship department to worry over. But I must say that I was disgusted, and I went to the department myself and complained to one of the officials. I said that I could not see any possibility of getting information out of those two cheques, and I doubted whether anybody else could use them for their personal benefit, and I wanted to know why they had been delayed. He said he was sorry that there had been a delay, and added that in future it would not occur. But even this request of mine was of no use, and I feel that I cannot under the circumstances support this item in any way. I sincerely hope that in Standing Finance Committee some way will be found, if not to abolish the department and to hand it over to the C.I.D., thus greatly reducing the staff of the censorship department and enabling them to deal with them more efficiently and promptly than is being done under the present circumstances.

Before I go further, I would also like to refer to one letter sent to me by the chairman of the Indian Man Power Committee, the hon. Member Mr. Pandya, which was so mutilated by the censor that it was hardly readable and which was not handed to me until sixteen days afterwards, and when I made reference to the matter the only reply I received was that an inquiry would be made into it.

That is all so far as the expenditure side of the Estimates is concerned.

I have not much to offer in the way of criticism about the departments, but there are one or two instances in connexion with the working of departments which I would like to bring to the notice of Council; it is only fair to the hon. members in charge of those departments.

Dealing with the Administration, I need not go into the history of the unfortunate incident at Moyale. Why the district commissioner did what he did is no business of mine, but the fact remains that as a result of the evacuation, heavy

losses have been suffered by the commercial community there. I sincerely hope that this matter will be brought to the notice of Government and seriously considered by them, and that the matter will be favourably and promptly settled.

There is another point. Government have now thought fit after my five years of efforts in this Council in connexion with the Rent Restriction Act, that I have tried to ask Government to bring about to help the poorer classes from the capitalist landlords of Kenya, to appoint a committee. Yet, very unfortunately, of all the members of that committee none of them represent the interests of the rent payers; they are all members of the capitalist class or landlord class. How on earth you can have the true facts represented to you after a thorough investigation by them, I fail to see. And I am not the only one to voice the resentment of both European and Indian at the formation of this committee without anybody being there to represent the rent payers' interests at all.

Referring to the Agricultural Department, I would only like to voice the remarks again of my hon. colleague Mr. Pandya, who has already suggested the appointment of an Indian Settlement Board. And also of the hon. Member Mr. Shamsud-Deen who has placed before this Council the facts concerning the wheat pool and the way it is carried on. I sincerely hope that these two suggestions will receive the very favourable consideration of Government.

Would it be possible also for Government to appoint a Native Production Board, in view of the fact that there is a Settlement and Production Board for Europeans. Such a board would be very useful as advisory to Government.

Under Education, I have nothing much to offer in the way of criticism, but there are one or two points, however, to which I would like to refer, with regard to what the hon. Director of Education seems to be able to include in the 1941 Estimates. I am glad that Kitale school will be included. Nyeri Indian school has been on the list for a very long time, and I hope this matter will receive the very sympathetic consideration when the Estimates for 1941 are prepared.

[Mr. Isher Dass]

There is one more point I wish to bring to the notice of the hon. Director of Education, and that is in the cases of bursaries being granted to Indian scholars to proceed to England or India. The sum of £100 has always been granted for the amount of bursaries. That £100 represents, as a matter of fact, Rs. 106 or £8 a month, and if you give that to a student in India it is a very big sum. But, on the other hand, the sum of £8 a month granted to a student studying in England, is very little. It hardly pays for his expenses to his landlady with whom he is living in a boarding house. I think there should be some consideration given with regard to this matter, and that amount should be fixed at a maximum of £5 for India, and that in the case of a student studying in England there should be a corresponding increase.

There is another point which has also been raised by my hon. colleague Mr. Shamsud-Deen. He referred to the education of Anglo-Indian children in this country. This problem should not have arisen, because those Anglo-Indian children who are very handsome and white are taken into the European schools without objection, and those who are black are taken into the Roman Catholic school. I do not think there is any serious consideration that should be given to this matter.

In connexion with the Lands and Settlement Department, my hon. colleague mentioned the question of Indian settlement on the coast, and I have already pointed it out too, and said that with the development of Makerere College and so on the time has already come when the Indians in the subordinate services will be replaced by the Africans, and in trades and other enterprises as well. What he said was a very honest thing, but I am afraid that outside this Council it might be construed that we are not in favour of this change. I wish to make it clear that the Indian community whole-heartedly appreciates that change, and know perfectly well that the time must come when with the advancement of education the Africans must take their places in their own country. We are not sorry that these places should be taken by the Africans,

but what we are sorry for and would be sorry about is that, owing to the racial restrictions put in the way of the Indian community, they are not having their fair deal in this country. That is the actual point which the Indian community resent, and have resented in the past. They do not, however, object to the Africans taking their proper place in their own country.

Dealing with the Medical Department, I have already spoken on the subject of the Hospital Rates Bill, and paid my tribute to the way in which efficient services are rendered, with the very limited means at the disposal of the authorities. But, in that direction, I hope the hon. Director of Medical Services will see that that dream of a grouped hospital is definitely realized. So far, I understand, to-day the ward for Africans is being built, and should be completed early next year. I sincerely hope that the hon. Director of Medical Services will see that the building of the ward for Asians will be taken up seriously and will be completed in the very near future.

The Military Department is a very difficult department as it stands to-day. We have had appointed by the Imperial Government a General Officer Commanding, and his job consists of controlling all the military operations in the whole of East Africa. Since he is in control, would it not be better to leave to his intelligence and experience what is actually required rather than that they should try and judge from so great a distance. I have already mentioned that there should be more co-operation among the different communities, especially in this time of need, for some people believe that things are not as they should be on the military side.

Turning to the Police Department Extraordinary, on page 10 of the Memorandum, in Item 2 the sum of £1,375 is provided for the purchase of motor cars and lorries, and the explanation is this:

"It is proposed to purchase five motor cars for the use of police officers, who are unable to afford to purchase their own cars. The cars are essential . . ."

[Mr. Isher Dass]

There is no explanation here as to whether the five officers are to have free cars at the expense of Government or whether it is because these officers are not financially well off and that they are expected to repay this amount by easy instalments. One is striving to help in the interests of efficiency, and I have very strong objection to five officers being chosen within the whole police force to enjoy free rides at the expense of Government in future years.

Before I conclude, there is one more point I wish to refer to emphatically, and that is the point my hon. friend the hon. Member for Mombasa mentioned when he said the time has come when there should be closer union between the three territories. It is very unfortunate that this controversial point should have been raised at this juncture. No one has ever thought and no one has ever suggested seriously that Tanganyika should be handed back to Germany or any other nation. The Indian community have from time to time opposed such a union of the three territories, and this opposition is not based on sentimental reasons but it is based on facts with regard to the policy of Government concerning native affairs in this Colony and the attitude of the European community in the past which has been such as not to warrant any confidence on the Indians' part in such a union. I am very sorry that this unfortunate point should have been raised, and mention should have been made of this unpleasant thing at this particular time.

As I said before, in order to win the war, not only in the actual zone of the war are prompt intelligence and proper appreciation of military tactics required but also behind the lines in the base and communications is comradeship, unity, self-control and intelligence required, and chief of all mutual goodwill necessary to help win the war and bring it to a successful issue.

MR. LACEY: Your Excellency, in view of the fact that further opportunities will arise of discussing in detail the provisional draft estimates of the Education Department and of the Infor-

mation Committee, I propose to deal now only with specific matters which have been raised during the debate.

The noble lord, the hon. Member for Rift Valley, referred to the increasing pressure on the accommodation in European schools, and Government are entirely aware of this situation. Certain steps have been taken at the Eldoret and at the Prince of Wales Schools to deal with the situation, and I am glad to say that I think it possible that some balances of unexpended loan funds may be available for increasing the accommodation of at least one European primary school in the near future. Further, sympathetic consideration will be given to raising further loan funds for education which, in the case of Europeans, will be primarily devoted to relieving the pressure on primary schools.

The noble lord stated that in Standing Finance Committee he would require very cogent reasons for the necessity of making provision for bursaries at Makerere. These I shall hope to give him. However, I would state now that it must be understood that Makerere has got to stand financially on its own feet. The grant by Kenya of £50,000 to the endowment fund brings in an average annual revenue of £1,500 to £1,600. We have 31 post-secondary students in Makerere, and they will be continuing next year courses in medicine, veterinary work, agriculture, engineering, and teacher-training. It must be realized that all these students are in the post-secondary stage, and are really approaching a university standard and, as the number of pupils at this institution is limited, the costs must be high. But I am certain that other members of this Council who are also members of the council of Makerere will support me when I say that Makerere is making every effort to combine economy with efficiency.

The hon. Member for Nyanza also raised the question of the deficiency in accommodation in European schools. Government is aware that there is a waiting list at Nairobi of over 30 children, but I have already indicated that every effort will be made to relieve the situation. I would, however, point

[Mr. Lacey]

out that there is provision in the Estimates for a grant-in-aid to private schools, which will enable us to place more children at private schools.

The hon. member also raised the question of a farm school. This is a matter in which I am extremely interested, and there has been a good deal of useful co-operative discussion with the Agricultural Department and the Production and Settlement Board. A definite scheme is now before Government which, if accepted, should allow for the opening of the school in September. I would add to the expressions of gratitude to Lord Egerton of Tatton for his munificent gift of 400 acres of land at Njoro on which it is proposed that the farm school should be established.

The hon. Member for Mombasa asked what action had been taken on his suggestion that legislation should be enacted to control the opening of schools. This proposal was considered by the four advisory councils on education in the Colony, and three out of the four accepted it as a necessary measure, with the result that draft legislation was prepared and submitted to the Secretary of State. He has, however, recently replied to the effect that he is not yet convinced of the necessity of giving to this Government power to control education which is not granted to the Board of Education at home. I personally cannot accept the parallel, as the situation in Kenya differs from that in England, and the matter is being pursued.

The hon. member Mr. Kasim raised the question of the Indian school building at Kisumu. I visited it not long ago. I agree with him that it is absolutely overcrowded and insanitary. The school has stood high in the list of precedence for school building to be erected if loan funds become available, but as it is improbable these funds will be available to the extent required consideration will be given to a proposal made by a member of the school committee that the Indian community should build a new school and Government rent it.

On the subject of Indian education, the hon. member Mr. Isher Dass raised

the question of making some differentiation in the amount of bursaries paid to students going to India and to those going to England. It is not, of course, only a question of local expenditure. It depends to some extent on what course of study a student is going to pursue. Some are infinitely cheaper than others. Medicine, for instance, is a longer course and costs more than teacher-training, but I am prepared to lay before the committee the suggestion he has made.

The hon. Member for Trans Nziola wanted to know whether the fact that no action had yet been taken to provide additional accommodation at Kitale school was due to the fact that the Director of Education had been transferred to the Information Committee. I can assure him that this is not the case and I believe that funds are available to increase the accommodation.

Before I pass on to the Information Committee, I should like to deal with two other points which have been raised. One was by the hon. member Mr. Shamsud-Deen, the other the question of the Government Girls' School, Nairobi.

The department realizes that an additional classroom at this school is desirable, but at present we are having a little difficulty with the Municipality, who so far have not agreed that in the present emergency they can go back on their decision that corrugated iron buildings should not be erected in Nairobi. That matter, however, is being pursued.

The question of the education of Anglo-Asian children was brought up by the hon. Member for Nyanza in the Advisory Council on European Education the other day. A grant is made to parochial schools, and has to some extent remedied what might be regarded as a racial inequality in the distribution of the grant, and should assist in any cases when difficulty arises of Anglo-Asian children who cannot get entry into other schools. But careful inquiries have been made, and during the past six months only one case has occurred; this child was accepted by and is now in attendance at a parochial school.

Turning to the Information Committee, mentioned by the noble lord, the

[Mr. Lacey]

Member for Rift Valley, the hon. Member for Trans Nzoia, and the hon. member Mr. Shamsud-Deen. I was a little surprised at the suggestion of the hon. Member for Trans Nzoia that we had lost a Director of Education and found no information. If that is the case, he must be rather worse than the deaf adder in that he must have shut both his eyes and ears, because if he reads the daily Press or listens to TLO there is quite a lot of stuff going over from the Information Committee. If it is so well disguised that he does not recognize it as coming from us, no higher compliment could be given us.

I will not attempt to go into a detailed explanation of the working of the committee. The idea of information, or publicity, is one entirely new to the British public, and as a result we have been badly handicapped in the present emergency in catching up with the enemy in this matter. It is obvious that the machinery can only be made entirely efficient as the result of practical experience.

The point of view that the committee take of its work is that its primary task is to prepare and form a background of public opinion. It is not for Government to use it purely as a political machine. If any such action were taken, it would obviously discredit a great part of the value of the work. But it is necessary that the committee should be in a position to advise Government about the state of public opinion.

During discussions you, Sir, and the hon. Chief Secretary have had with the committee it was stated that the obvious thing was to make Government information-minded. From the number of questions raised here it is obvious that the committee has not fully succeeded, at least to 100 per cent, in making Government information-minded; but obviously with such a radical change in the tradition of the Civil Service hon. members must give the committee a longer chance. If the committee succeeds in educating the Government by an expenditure of £3,700 a year it will, I suggest, be fully justified. (Laughter.)

EARL OF ERROLL: Your Excellency, a great number of the points I was to raise on what I might describe as "an adjectival budget" have already been raised by other hon. members, and I will try not to reiterate more than is necessary. I am, however, in entire agreement with other hon. members, that it is practically impossible to criticize the Estimates of Revenue at all events, because, as we know, they are mere guesswork. But I am not quite as despondent as others that these estimates will not be reached, and I hope sincerely that the hon. Financial Secretary will find he has chosen low field in his gamble.

A great deal of stress was, quite rightly, laid on the question of agricultural production, *vis-à-vis* revenue, in this country, and I would like to ask hon. members to bear with me for a moment if I mention the coffee industry.

It will be remembered that some time ago I made a plea in this Council for assistance for that industry but luckily, before such assistance was necessary, prices had risen, and we found that added finance at that moment was not needed. But to-day I think I cannot be contradicted if I say that the industry is facing an even greater crisis than it was then. This has been brought about mainly for two reasons. Firstly, because world markets have been upset owing to war conditions, and several mid-European markets have, of course, disappeared entirely; secondly, because of the unprecedented drought in this country.

It is quite astonishing, I think, and a tribute to the planters, how well the coffee has stood up to these drought conditions. But unless we do get some rain now prior to the normal rains in March, if we can ever call them again as such, I fear the industry will suffer very greatly. It is unlikely unless we get rain before March that the crop for next year will exceed 6,000 tons instead of the 16,000 tons average we usually get.

I hope, therefore, that Government will do everything in their power to try and help the industry to find markets, and if at a later stage that industry finds it necessary to make application for

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financial assistance and can put up a sufficiently good case, that Government will regard it sympathetically.

Turning more directly to the Estimates, I do not intend to touch on very many items on the revenue side, but I must refer to that ill-fated number 13, under which income tax now appears year after year. Some of my objections to the tax in this country have been removed owing to the fact that it is being brought in in other territories, but I would remind hon. members—and I might say "I told you so"—that when this tax was first brought in it was designed to bring in about £43,000, whereas the estimate next year is £154,000. I am not objecting to the increase at this moment, because I believe we have to make our war effort, and we have been told on previous occasions that this extra taxation is only a war emergency. I still say I am opposed to it in principle. I believe it is wrong in a territory such as Kenya. Our principles and even our traditions have been swept away in the last few months in an effort to win the war, but I hope that when these traditions and principles can be restored to us we once more can revert to this question.

I would like on the expenditure side to say one thing only which has already been said, that a reduction in expenditure should be chiefly on recurrent expenditure, and I sincerely hope when the budget comes back from the Standing Finance Committee to find a good many reductions in recurrent expenditure, although I feel certain that many heads of departments at the moment feel unhappy as to how to meet the ever-increasing demands from the general public.

I should like now to mention two parochial matters.

One is that I hope the hon. Chief Native Commissioner will give serious attention to the possibility of stationing a district officer at Kiambu. I think this can be done without any additional expense. I am never one to advocate any additional expenditure when anything can be done by rearrangement of re-

organization. It is extremely difficult for numbers of farmers and planters in the Kiambu area to get hold of the district commissioner as he resides in Nairobi, while he is a busy man, being chairman of some 35 committees and a member of something like 40. It is difficult for them under present conditions, with petrol rationing and other things, to have that access which they desire.

The other matter I should like to refer to comes under Head 23a, and I should like to know from my hon. friend the Chief Native Commissioner the position of the right-holders and how the exchange is going on.

The chief talk on the Estimates this year, and rather naturally, has been with regard to Head 41, War Expenditure Civil, and had it not been for this head we would have found that the budget could have been balanced. I am in entire agreement with my hon. friend the Member for Trans Nzoia with regard to the points which he brought up as regards Information Committee and the censorship. I believe substantial reductions can be made in both votes. I am quite certain that an enormous amount of work done by the Censorship Department is entirely unnecessary. Owing to the fact that it is an Imperial scheme it cannot be done away entirely, but I hope careful consideration will be given to it in Standing Finance Committee.

Turning now to Item 8, Man Power Committee, it is a very small vote. I think, and I rather regret that another item, Contingencies £160, bringing the total to £1,000, was not included as has been included in the Supply Board estimate. (Laughter.) I will give my reasons for this forthwith.

It really has to do with the Indian Man Power Committees. I should like here to pay a tribute to the hon. Indian members who voluntarily gave their services in what has obviously been a difficult task in registering the Indian man power. As we have heard from the hon. member Mr. Pandya, 14,000 registrations have now been made, but they will be completely useless unless the records can be kept up to date. There is at the moment no provision for this.

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I would also just like to pay a very real tribute to the members of the local district committees, the European man power committees, who for months pre-war and since the war have given a great deal of time to a difficult and not pleasant task voluntarily, and have had a great deal of work to do.

The noble lord, the hon. Member for Rift Valley, at the beginning of this debate—which seems a long time ago!—said that about 2,000 Europeans in this country have been called up for military service. Well, that was completely correct at the beginning of the war, and one might say that in effect a good many more than that were called up for various reasons, such as guarding the main railway points and so forth. But the position has changed very considerably now, and I can say that out of the 2,114 Europeans under the command of the G.O.C. Troops about 1,324 only came from Kenya. When I say only I do not mean to say this is not a large percentage of our population. It is, but I am pointing out that not all the troops are from Kenya alone.

On November 14th, in your communication from the chair, Your Excellency informed Council that a review of man power was proceeding and that a scheme, with the approval of the G.O.C., had been undertaken whereby certain releases from military duties of those considered more valuable in their peacetime occupations was to be made. All the local man power committees, the Associated Chambers of Commerce, and heads of departments were circularized and asked to give careful consideration to the problem. They were asked whether there was anyone who, in military service at the present time, could in their opinion be more usefully employed on either farm or production or industry. The question was very carefully considered by those committees, was carefully considered by firms in this town, and carefully considered by the Director of Man Power. I am able to say that the G.O.C. has now issued orders to unit commanders for the release of 65 to 70 men to return to their normal peacetime occupations. There were a

few others asked for, but on consideration and on going into their case it was the considered opinion that their cases were not good enough to put up.

I think this shows that, although from the military point of view it is rather a large number, from our point of view these selections by the military were made with care and forethought because the various committees were only able to request the release of from between 65 and 70 men. There are, of course, a certain number of vacancies now existing in military service in certain categories which we need to fill, such as fitters in the Royal Air Force, but these men will, no doubt, come along in time.

I have no more to say on this subject. I have a certain amount more to say, so perhaps Your Excellency would wish to adjourn now for luncheon after which I can conclude my remarks.

Council adjourned at 1 p.m.

Council resumed at 2.15 p.m.

EARL OF ERROLL: Your Excellency,

I want to assure hon. members that I shall not be offended if they enjoy their post-prandial siesta!

I was, prior to the adjournment, speaking on the question of man power, and I indicated what had been done in this respect as regards release from military service. I might now turn to the question of the local man power committees.

They have been in operation for some time but, in view of the fact that they are to consider production as well as man power problems, in certain instances the personnel has been increased very considerably. This brings me therefore to the point raised by the hon. Member for Trans Nzoia. I think he mentioned that 100 Europeans had been taken, and then 40 foreigners—with whom I am not concerned—and that production was in danger of falling off.

Well, the question of releases was, of course, referred to the Trans Nzoia Man Power Committee in the same way that it has been referred to other committees. That committee is a very large one, and their report on this question is as follows—they were asked whom they con-

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sidered it necessary to retain or return to the district:

"The only man from this district who, in the opinion of the Trans Nzoia Man Power Committee, would be better employed in his civil occupation is Mr. J. C. Joubert, last known to be serving with the Kenya Regiment."

They go on to state various reasons for his replacement, and also state that there are two men, unemployed and elderly, but "tough", and so on, and add that a list is attached "of other men whom my sub-committee feel can be spared for military service", and the list numbers 53 people. So I suggest that there is a good deal of loose thinking on the question of man power generally, and I do not think the hon. member can sustain his contention that too many men have been taken from his district when his own committee in that district suggest that another 52 men, subtracting the one they feel essential to their needs, can still be spared from that area.

Apprehension has also been expressed in certain districts that farmers will be unwilling to start planting their crops owing to the fact that they are in the uncertain position of not knowing whether they will be called up or not. This has been represented to me from various quarters. I am now able to state quite definitely, after very close co-operation and talk with the G.O.C. in the last few days, that no other volunteers for the Kenya Regiment will be called for until May, and that those who have already been enrolled in the Kenya Regiment but not called up can consider their enrolments void. It will be remembered that when the Regiment went to Kampala they took 240, and 150 were enrolled but did not go.

This is a very great help. It definitely proves that nobody need volunteer until May for the Kenya Regiment at all events. The G.O.C. has authorized me to say this, because he is anxious to see that the agricultural production of the country is interfered with to the least possible degree. I feel we ought to be very thankful to him for his interest in this respect. Other volunteers may be

called for prior to that date, but I considered it necessary to retain or return quite certain, that none of those who enrolled in the Kenya Regiment and have not been called up will be asked to report until May, and then only if they wish to re-volunteer.

The hon. member on my right, Colonel Kirkwood, also raised the question of group farm management. He stated that under this system production could not possibly be kept up. Well, if group farm management were universal throughout the Colony one would naturally have to agree with him, but even if an enormous number of men were taken from the districts I would like to know what other suggestion could be made. The fact remains that group farm management as a whole, although active in certain districts, is not so extensive as we are led to believe.

For example, in a very large farming area, of whom there must be a very large number of group farm managers already appointed, only seven farms in that area are actually managed under the scheme. This is the report of the committee:

"There are, of course, many more farms than those mentioned whose owners are on active service, but steps have been taken with the concurrence of this committee to have them managed by private arrangement, and in no case where group farm managers are actively employed are they unable, in the committee's opinion, to manage the farms under their control efficiently in the busiest season and maintain the same level of production on them."

At this stage a general review of the group farm management system is also being undertaken, and every local committee has been asked to submit a report on the subject. I have only so far received three replies but in no case do they indicate that these farm managers are unable, under present conditions, to maintain production on its present level. That is, I think, the important point. It may be that if we ourselves are more actively involved in the war production will fall but that would be, I think inevitable. At the present present this system, however bad we may think it,

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is the only one thought out, and it was the only one that is apparently possible under present conditions. I would suggest that, as far as possible, this group farm management system is working to the best advantage.

There have been one or two other questions raised by hon. members on the general question of the man power.

The hon. member Dr. Wilson raised the question of staff surveyors. He pointed out that four were now working with the military. This is quite true. Efforts are, however, being made to release at least one of them; two others have already been released. These surveyors are carrying out work in survey which although not part of the programme laid down by the hon. Commissioner of Lands and Settlement, nevertheless is useful work for the country. Unfortunately one of them is working for the K.R.N.V.R., and the O.C. of that unit is not quite as pliable as the G.O.C. with regard to releases. I hope he will, however, in due course, agree to the release of this man, who I believe is essential to the carrying out of a programme which has been laid down by the hon. Commissioner of Lands and Settlement. I think I am right in saying that one of these men is essential to his department before the land can be surveyed to which the squatters are to be moved.

We are in an unfortunate position with regard to this, and I hope it may be found possible to amend the K.R.N.V.R. Ordinance whereby Your Excellency has power to release an individual without the consent of the O.C.

The hon. member Dr. Wilson also referred to certain instances of an individual being called up, as he put it, for military service. It is not a question of calling up, it is a question of the individual volunteering.

I do not think any other questions have been raised on these points during the debate, and I think I have said enough to show that as far as possible everything is being done to rectify any mistakes that became apparent after the outbreak of war. I said first of all,

getting away from the question of man power, that I would never ask for any increase in expenditure, but I would suggest that, in order to preserve the dignity of this Council, a little extra expenditure under the Head 34A, Legislative Council and Secretariat Extraordinary, might be in order to purchase a new gown for the Clerk to Council! (Laughter.)

MR. FAZAN (Provincial Commissioner, Nyanza Province): Your Excellency, in the course of this debate there have been raised certain criticisms of provincial commissioners and provincial administration. During most of the year we remain dumb as a sheep before his shearers, but the budget debate is our opportunity, and these criticisms ought not to remain unanswered.

The first, in order of time, to be made in this debate was a criticism that provincial commissioners had been remiss in that they did not take part in the debate on an important ordinance enacted earlier this session, which had the effect of removing, or curtailing, judicial powers which up to that time administrative officers had enjoyed. We did not speak then, and I do not propose to speak now (laughter), except to say that there is no administrative officer who does not and would not welcome any ordinance which would have the effect of relieving him to a certain extent of judicial functions, in order that he may be more free to carry on his administrative and executive functions. Whether that will be the result of the ordinance passed, time will decide. (Mr. Montgomery: Certainly not!) The intention, however, we welcome.

There is just one thing one would wish to say, that although the new order may be preferable to the old, the fact remains that through many years, in some cases exceeding twenty years, we have carried out these functions with some degree of credit and we should, perhaps, have welcomed a little more applause as we returned to the pavilion after our long innings! The natives, I think, bear no ill will for the way in which we have dispensed to them during that period our tender mercies.

The next point was the criticism that, as provincial commissioners said so little, they should not be members of the

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Legislative Council. Your Excellency, the value of a member of Legislative Council cannot be gauged by the frequency or the length of his speeches. We may not speak often, but we make notes which are passed on to those of the Government team who are more articulate, and they make use of them in their speeches.

Sometimes it occurs to us that there might even be some small point in a Government Bill which might well be amended when it reaches the committee stage. In that case we pass on our idea to the proper member on the select committee. And I might say that we have usually been allowed to do this, even if the proper member of the committee happened to occupy a seat on the other side of Council.

It would not have been surprising if it had been said that heads of departments are concerned with the subject matter of their departments, and it frequently happens that Bills before Council do not relate to their departments, and they in so far do remain idle—I will not say waste their time, but they do not contribute to the debate. But the Administration is not a department. There are very few Bills indeed before this Council which do not concern the Administration. If that is doubted, I only ask hon. members to look at the clauses of most Bills which cover the point as to how the Ordinance is to be carried into effect and there is generally a reference to "the authority". Somewhere or other you generally find that "the authority" is the district commissioner, and he is given all sorts of powers, functions and duties. We, Your Excellency, hold something of a watching brief in regard to that to make certain that the district commissioners will in fact be able to carry them out.

That is part of our function on Legislative Council. In the afternoons, other than this time, we are generally to be found worrying heads of departments, singly or in groups, over some matter which we consider will be advantageous to our particular provinces. We do not deny that, in comparison with the work we do in our own provinces, the average day's work in Nairobi is light. Provincial commissioners are busy men. We seldom

have an opportunity to take anything like the local leaves to which we are entitled. We do not, of course, regard attendance at Legislative Council in the light of local leave—(Mr. Nicol: Why not? and laughter)—nor should we by preference spend our local leaves in listening to debates in Legislative Council. Nevertheless, on these occasions we all have a little more freedom and a little more chance to mix with heads of departments and those members on the other side who are doing so much for the country and that helps us to get together. I shall not over stress the argument; I only say that while we do remain here we are glad to be here and hope we are doing our duty.

Turning now to what is a more direct concern of ours, namely the criticism directed against us in our administrative capacity, I come first to the criticism made by the nominated member representing native interests, Mr. Montgomery, who has expressed some puzzlement and concern at what he regards as a peculiar phenomenon. The natives are getting richer and richer as a result of the care lavished on them, making them better agriculturists than they were, making them better labourers than they were, commanding a higher wage: why is it, therefore, that the gross yield of the hut and poll tax has not increased and there is some suspicion that it may even be declining?

He has criticized the returns for Nyanza. Well, that was the principal point made in the speech of the representative of native interests. One wonders whether natives, if speaking in their own interests, would have singled out that particular point for special mention in the budget debate, but it is most certainly an important point. We do not deny that in so far as natives are capable of contributing to the revenue they should, and if there has been laxity in collection we must take the responsibility. I will deal first with the direct criticism as applied to Nyanza, that the yield of taxation has gone down.

The figures on which I surmise the hon. member has relied are the Treasury's figures supplied earlier in the year. They contain the figures of collection in the year on account of the year and in the year on account of arrears from previous

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It is very easy to get a good collection in one year if one wants to do so, merely by the expedient of collecting a little tax in December and collecting large arrears in January. Anybody can produce good results by that method, or apparently good results. But the only means of making proper criticism of the figures is to take the figures of the tax collected in the year on account of the year and the subsequent tax collected afterwards on account of that year, until you have the full collections on account of that year, and then compare a series of years, and then you know what is happening. That is what I propose to do to enlighten the Council. I could give it district by district, but I will not weary you, and will only give provincial results.

From 1932 to 1938—the reason for not including 1939 is that it is not yet finished and there remain certain arrears to be collected next year—it so happens that the discrepancy is exactly £3,000 between 1932 and 1938, so that as that figure is less the hon. member so far is right. There has during those seven years been a decline of £3,000, from £204,989 to £201,989, £3,000 spread over seven years on a percentage basis?

It has not been a gradual decline, it has gone down during the first three years, and the fourth year it was low, then it began to go up again until 1938. The figures are: 1932, £204,989; 1933, £198,783, so that they dropped about £6,000; 1934, £195,564; 1935, £193,702, so that in those four years they dropped about £11,000; in 1936 they were raised by £7,000 to £200,098; in 1937 raised again to £201,789; and in 1938 raised again slightly to £201,989.

You will see in the picture the decline and subsequent recovery which is shown by these figures. I can well understand the misapprehension created in the mind of the hon. member in thinking that there had been a practical decline constantly from year to year. It was in the first three years of that series that there was a very definite decline, and these three years were when the hon. member was Provincial Commissioner, Nyanza! (Laughter.)

Passing on from that point and talking on the more general question as to why

is it that the tax does not increase in proportion to the increase in population, I think we must admit that there is a decline actually in the whole hut and poll tax over these years. But there is undoubtedly an increase in the population, especially in the more civilized areas, and at first sight one would expect an annual increase of round about 1.5 per cent. Now what is the reason why this does not come about? There have been many analyses presented to the hon. member in typescript when he was Chief Native Commissioner, and were on record, but I think they have now been burnt.

But really it boils down mainly to one thing, that when natives first used money, they used it as a new thing. They went into employment and they were paid wages, and they used their wages to pay their tax. If there had been no tax, they would probably not have gone into employment to earn wages. That is to say, they did not begrudge even 100 per cent of what they earned to Government; they had in fact no other use for money except to pay it to Government. But as the years have gone on they have become, like us, the victims of the monetary system, and they need money. They contribute to Government something like a month and a quarter of their earnings. That is to say, the average wage throughout the country cannot be very much different from Sh. 9 a month, and the tax comes to about Sh. 12 per year, so roughly the tax amounts to a month and a week of what they earn.

Production goes up, and so does the cost of production go up. There was a time when the cost of production was practically nil, and the native and his wife merely used the *jembe*, but it is a fact that it has now become a great deal more, and when the native becomes a peasant farmer of a civilized kind we may expect perhaps some increase both in farming skill and in the cost of production, with the result, as has been realized in other countries where they have peasant proprietors, that you can get quite a lot by indirect taxation out of the farmers but very little by direct taxation, and we shall most probably find that that will happen here. These matters have concerned us very much in the Provincial Administration, and we

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have tried to work out ways and means of a fairer incidence of taxation so that the same or a better gross total may be produced, and for this fairer incidence some account must be taken of the ability to pay.

I am not going to argue one method against another. The Provinces have worked out what is needed for the present emergency. We realize that certain methods can be improved but, some months ago, or perhaps a year ago, when we realized that we were in for a war, it seemed to us that it would be better for us all to go on with the machinery we had, even though it was defective, rather than introduce new machinery at such a time, and for that reason we have consented to put all our brain work on one side and not ask for sweeping changes.

The Provincial Commissioners, with your permission, Sir, have appointed a sub-committee to inquire into the ways and means of improving the present position, and that sub-committee will report in due course. I have only said this with a view to showing hon. member that we are not asleep and that we realize what a problem it is and that, as occasion arises, we shall try to improve the situation.

There are other points that are not quite so important, but at all events I do not propose to say very much on these points, although there is one which is important in itself, and that is the relations between the Local Native Councils and the central Government. I understand that the hon. Chief Native Commissioner will deal with that point in his speech. I have no more to say at the present moment than this: that I did write a report on the subject, but it so happens that hon. members can congratulate themselves on being saved reading that report by the fact that it was burnt in the Secretariat fire! I have another copy, though, which has suffered no other depreciation except from a domestic parrot!

Coming to the speech of the hon. member Mr. Kasim, there were just one or two points of inadvertent inaccuracy. One was with regard to agricultural officers in Nyanza. He said there were

only four. Well, in actual fact, there are six, and we have the use of another one, making seven. We had nine, but three were called up for military service, leaving six, and then we were loaned one man, making seven. The effect of calling up personnel in Nyanza, both Government and civil, has by no means been negligible on production, but I am confident—this is my opinion after having consulted other people—that we can pull together and that production will not suffer.

That is not to say that we have been over-staffed in the past. But the particular circumstances of the war have enabled us to set aside certain functions which we can allow to wait; the improvement of certain types of produce, for instance, which have reached a certain standard. Emphasis can be placed on quality rather than quantity, and I have no doubt that if climatic conditions remain favourable production will go up in Nyanza.

The other point which the hon. member made was with regard to trading centres and markets. He stated, or implied, that there was some racial differentiation with regard to trading centres and markets. Well, I deny categorically that that is the case. The real difference between trading centres and markets is that in the trading centres they trade on plots held on leasehold, the main feature being a line of plots which people have on lease, whereas the main feature of a market is stalls where which people take on payment of fees. There is no objection in principle whatever either to a native taking a lease of a shop plot in a trading centre or a non-native taking stallage in a market. There may be objections to one particular person in certain circumstances, but in principle there is no objection whatever, nor are we unfriendly to any attempt of that kind. That, I think, disposes of that point.

His other point is what he described as the recent trouble in Nyanza relating to ghee-dairies. This point arose three years ago, and there was nothing more done about it. In the South Kavirondo district there were dairies, he gave the number as two hundred and something—I am not in a position to dispute it, although my own recollection was that there were about 130 dairies—which were

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managed by natives and which were to all appearances owned and run by natives but for which the original churns and separators had been provided by Indians. Well, the time came when it seemed advisable to challenge the position, and to ask the Indians: "Do you purport to own these dairies or do you purport merely to advance certain implements and assistance for which in due course you get a return?" Well, they said they claimed the dairies and put in, under the Native Trust Ordinance, for the lease of land, but their applications were refused.

It was a test case. Their applications were refused by the Local Native Council, and were referred to the Central Lands Trust Board, which supported the refusal. That actually was to a certain extent against the advice of the Administration. My instructions to the district commissioner as chairman of the Local Native Council was to leave the matter fairly open and to take a lenient view; that is to say, where there was a dairy established to let it pass. We then told the Indians that the position clearly was that they could not have this land in the native reserves.

The natives in every case have gone on with the dairies and they are still running. With the Indians we said: "If you want a dairy or a shop in a trading centre where there is room for a site, we shall do our best to get you that facility". I am prepared to say that we should grant that facility, but no one has applied except one European, who has got permission, and the Indians would have got it too if they had asked.

That leaves me with only one point remaining, which is almost a personal one. The hon. Member for the Coast challenged me, I think, to embark on an exposition on native land tenure.

MR. COOKE: No, no. That is the last thing I dreamt of!

MR. FAZAN: That is what I thought. I will give the question he asked me, which was: "Will the hon. member distinguish between the *githaka* system north of the Chania and south of the Chania?" and my reply was: "At some other time and in some other place".

MR. COOKE: On a point of explanation, on that particular occasion, without wishing to be in any way offensive, the hon. member is misleading Council. He has suggested individual land tenure throughout the Kikuyu country, and that is what he referred to when he said "another time and in another place".

MR. FAZAN: You can see my reference in the records of what actually happened, or what the transcribers thought actually happened, and if the hon. member misconstrued my views I would tell him now that there is no complete system of individual tenure in native reserves nor is there a complete communal system in native reserves. There is a progress from communal tenure through private tenure towards individual tenure, and we may take the various tribes and possibly mark down the position in the transition which they now occupy, and it was in connexion with that that I spoke when I said that another time and another place were more suitable.

MR. McKEAN (Acting Provincial Commissioner, Coast Province): Your Excellency, I was to have gone to the dentist this afternoon, but I would rather be there than having to answer the hon. Member for Mombasa. I feel the hon. Member for Mombasa is not so much seeking knowledge as trying to achieve another object and that is to make one of the four Trappist monks break his vow of perpetual silence. As two Trappists have spoken to-day, the hon. member's cup of happiness must now be complete.

The hon. Member for Mombasa wants to know about the vegetable-growing in the Teita hills. In 1938 there were 182,000 lb. sent to Mombasa. This year, I have not got the figures for January and February, but for the nine months, March to November, over 100,000 lb. were sent. Unfortunately, it would appear that the number is decreasing for the month of November. Although up-country vegetables are very difficult to get in Mombasa, I think they are selling usually at 20 cents a lb., these natives are only getting 1 cent a lb. for cabbages and 2 cents a lb. for other vegetables. That is not at all satisfactory, and we hope to make provision for them to get 6 cents

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a lb. The reason is that there have been transport difficulties. We had the Local Native Council lorry to collect the vegetables, but unfortunately this year the lorry has broken down. We still have it, but it is quite incapable of being used as it is so unsafe. We hope to make some provision next year for a new lorry, as well as to bring about a change for the better in the prices. It is hoped to enter into a contract to supply the Ethiopian camp at Taveta with Teita vegetables, which will also reduce the cost of the carriage.

The other thing is the question of settlement on the Coast. There are two places in view: one is the Gedi settlement, and the other is at Kikoneri, twenty miles south of Mombasa actually in the Digo Reserve on a large piece of land not cultivated. There are to be ten-acre plots. We think that occupation could be arranged under native land tenure, that if land is not occupied for a certain number of years it can be occupied by anyone. Unfortunately, we cannot get on to this until we get the road going down to Tanga. I think the Agricultural Department believe that until that road goes to Tanga it will be a complete waste of time to venture any money on the scheme, and that it is bound to be a failure and a loss of money with no opportunity of getting any interest taken in it by the people.

The Gedi scheme is getting on very well indeed. It was begun in 1937 in a sort of preliminary way, although it did not receive the sanction of His Excellency the Governor in Council until March, 1938, but it was a foregone conclusion that it would be agreed to. We started in a more or less quiet manner and got the ground and made things ready, and in January eighty families arrived. Each man was given ten acres on this particular plot, which comprises 10,000 acres, about seventy miles from Mombasa on the Malindi road, which is actually Crown land.

The object of this settlement is not to attract natives down from the reserves, but to collect vagrants sitting on various other lands—such as private lands and people simply wandering from place to

place making the worst use of the land, possible and a travesty of agriculture in that the fertility of the soil is soon worn out unless there is a proper rotation of crops. With the object of starting this scheme, natives were collected from various places, and put on the various pieces of land. As I say, eighty families came down, and we had an agricultural officer stationed near by in order to direct their activities in the right channels. But by the end of February they found it too hard work and they did not care for the supervision, and so the number came down to fifty-one. These fifty-one kept in, and during the first year they had a very satisfactory yield of millet and maize, and also of a third crop, but I forget what the third crop was.

Now it has gone on, and the position is so much better that we have 180 families on these ten-acre plots, and we hope to have eventually 700 families. We have also got a social centre, and an administrative plot, and we feel that it may be a very fine show. The fact that we have now 180 families when at first it went down, shows that the natives are appreciating what we are doing for them.

There are two other points that I wish to mention.

One is the question of a dam for the water supply. For that we need either £600 or £800. That was sanctioned by the Colonial Development Fund, from which £600 was given for the purpose. We made out our allocations, and a certain amount of money was to be given to the northern part of the Coast Province, of which the £600 was to go to the urgent necessity of supplying a dam for the settlement. Now the war has broken out, but we still hope to get it although the matter has been slowed up. In the meantime Government is naturally taking stock of what money they can give, but I do ask the Standing Finance Committee and Council for this small sum. It is only £600, and it will make all the difference to that settlement if we can have a proper water supply.

The other is also a question of finance. That is, of £1,571, which we were also to get from the Colonial Development Fund. His Excellency the Governor in Council agreed to it, and that was about six months ago, and it was a new item.

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But since then the war has broken out, and whether a new item can be sent home for consideration now it is difficult to know. It was part of a five-year plan, actually of £300 a year for various purposes including the provision of an Indian agricultural instructor, and it would be a very great pity if we cannot get that £1,571.

As regards the production going on now, I think Council will be pleased to know that this year we hope to get 80,000 lb. of cotton.

MAJOR CAVENDISH-BENTINCK : Your Excellency, I did not mean to raise very many points, but in addition to the two or three I do wish to raise, one or two matters have been alluded to in the course of the debate which may cause me to be longer than I originally intended to be.

I will begin with the few comments I have got to make on this budget. In the first place, I would point out that on the revenue side, in spite of estimated returns from fresh taxation, we are only suggesting that we shall get a sum which amounts to £9,000 odd less than the total estimated revenue for last year. I point out that difference because in the course of the debate we have had various criticisms of methods by which this new taxation is to be raised, but I have not heard any suggestions made of alternative or better methods of imposing the necessary taxation. Admittedly the return from these taxes was purely an estimate. My only fear is that we may have chosen or selected certain articles to tax which possibly restrictions on imports will not allow to come in in normal quantities, and we may have over-estimated their returns.

That brings me to the question which has been discussed by most speakers in this debate, the question of import restrictions which, in my own opinion, are absolutely necessary and essential. Everybody seems to get up and talk about there being a war on, and then proceed to criticise in every sort of way every effect that war conditions are bound to impose on everybody, not only in this Colony but in the Empire. I think we have got to make up our minds that

there are bound to be a great many inconveniences and we are lucky in this country not to have some of the inconveniences that people are suffering in Europe. (Applause.)

I welcome very much the announcement by the hon. mover that he hopes in connexion with import licences to arrange that there shall be some responsible person in Nairobi, the capital, whom people who feel they are aggrieved and have representations to make can approach in connexion with these rather intricate restrictions. I think this is badly needed, and I sincerely hope that before long some such officer will be appointed. I would also plead for a little bit more elasticity. You cannot run a very complicated system of this kind by a complete rule of thumb. You must have somebody—and no doubt we have him in the shape of the Commissioner of Customs, but I doubt if he has the time—someone in authority who can exercise discretion as between one individual and another. I do not think I need go into that in detail, but I think it has been proved to the satisfaction, I think, of most members of the Supply Board.

I should like also to say something about price control. This also has been alluded to by most of the hon. members on this side of Council who have spoken. When first price control was introduced it created a great deal of opposition and met with a great deal of criticism. Personally, I think that under war conditions we have got to have some control of prices. However, that view was not shared by a great many people in my constituency. All I can say is that they will find to an increasing extent that it will not be a case of criticism of price control but criticism that there is not enough price control in this country, and that has been alluded to already by the hon. Member for Trans Nzoia when he spoke on this budget. In addition, I welcome the remarks of the hon. Financial Secretary in regard to action which is being contemplated to stop speculation or hoarding, or what some people persist in calling a legitimate form of trading.

There is no doubt that there are large numbers of people who, knowing that many prices of commodities are bound to

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are taking steps to secure large stocks of such commodities and are hiding them away in anticipation of the day when prices will have to be raised. Some people claim that that is quite a laudable and legitimate transaction, and if a man has money and likes to take the risk why shouldn't he? and, more than likely, in the ordinary ebb and flow of trading he will sooner or later get his fingers burnt. In wartime there is no normal ebb and flow of trade. There are shipping and all sorts of other difficulties, and what Government has got to do is to be fair to the trader by all means, but also to ensure there are sufficient stocks in the country for our requirements during war and that such stocks can be obtained at reasonable prices by the consumer. I think there is a lot of loose thinking over this, and I am very glad indeed to hear that, if necessary, drastic steps will be taken against people who are speculating really on the extent that the war is going to inconvenience their fellow citizens.

As this budget, as has been pointed out again and again during the last two days, is a war budget, I have nothing further to say in regard to the revenue side. As regards the expenditure side, I have one or two remarks to make.

My first one is in connexion with the Labour Department, page 5, under the head Administration. My remarks are only going to be general, and are these: In the first place, I was horrified to find that at the outbreak of war certain labour officers had been allowed to join His Majesty's Forces. I am aware that these gentlemen—quite rightly from their point of view—had volunteered to serve with the Kenya Regiment and that when war came they naturally felt they had to fulfil their obligations. But it is lunacy to let people in key positions like labour officers, when the country is denuded of men, do that, when they ought to be sticking to what is from the country's point of view a far more important job. At least two or three are coming back, but not only should they all come back but I am not at all sure we should not appoint extra labour officers during the next few months.

I have one other point in this connexion. I believe Government will find it advisable to seriously consider whether they should not give approved labour officers third class magisterial powers. (A member: No.) The fact remains that there are large numbers of ladies running farms on their own whose menfolk have been called away. We want to get those farms regularly visited by competent labour officers with experience of dealing with native labour, and it would be of inestimable help if, when going around the farms they could deal with any little troubles that may arise.

I believe some exception was taken by a colleague of mine on this side of Council to a paper which was privately circulated to certain people by the Settlement and Production Board, merely giving them information and general opinions received from experienced farmers on the board and farmers associations. The general consensus of opinion expressed by those people was that at no time has there been such a tendency towards lack of discipline and lack of control amongst the native population. Of course this is officially denied. I do not say necessarily that that applies to the ordinary labourer, but it applies to those large numbers of natives wandering about who should not be, and to labour taking jobs temporarily, and causing trouble. For that reason I believe that even if it does cost a little more money we should see that our staff of labour officers is fully up to strength during the period of the war.

The next head I want to refer to is Education. It has been referred to already by previous speakers, notably this morning by the hon. Director of Education himself. I think that every member on this side of Council is very worried about the position regarding European education, especially as regards accommodation in primary schools. I am pleased to hear that certain attempts are being made to meet the situation. I am not sure whether the seriousness of the position is appreciated even now. I think it is essential that more buildings are provided, and these need not necessarily be Buckingham Palaces or a Prince of Wales or Nakuru school. For the time being we

[Major Cavendish-Bentick] should be content with modest classrooms and sleeping accommodation composed of any material which keeps the rain out. But accommodation we must have, and we cannot allow the coming generation to suffer and not get education, and even if it does mean increased expenditure I think we have simply got to find it.

Another matter is the proposal for a farm school. It may be said that this is no time for embarking on a new venture of that kind, that all we can do is to try and keep our schools going, and that we cannot start something new. I would make a special plea that this proposal be persisted with. For one thing, it will relieve the strain on both the secondary and primary schools, and it will give an opportunity of providing education to those young men or boys who probably are not sufficiently advanced academically to profit by going to a secondary school like the Prince of Wales school, and also for dealing with a number of young men who want to go in for farming when they grow up and who, if they did want to go to the Prince of Wales school, might through lack of accommodation there have to be kept on in the primary schools. A carefully thought out plan has been worked out, and we know that a large block of land has been donated for the purpose; therefore I do hope that the scheme will be proceeded with in spite of the war.

The next item I want to deal with is that headed "Lands and Settlement". Under that head will be found an item of £1,800 for the Settlement and Production Board. Questions have been asked by the hon. member representing native interests and also, I think, by the hon. Member for Nairobi South, as to why that appears in the Estimates without details and how that money is going to be spent. I am sorry the hon. member representing native interests is not here, but he will have the opportunity of making his inquiries of the Standing Finance Committee and he may get all the satisfaction he wishes to. But the reason why the details have not been given is that it was difficult to know exactly to what extent or what amount of work the Board would have to under-

take, and also there was a complicating factor in regard to the secretary of the Board. Therefore it was not possible to make any detailed estimate until it was too late to have them printed in the budget. These will, of course, now be gone into by the Standing Finance Committee.

As is known, the Board is supposed to deal with two activities: settlement on the one hand and production on the other. We have had a good deal said about the latter in the course of this debate. On the settlement side unfortunately, owing to war conditions, not an awful lot can be done, but I do hope to obtain a little money with which to continue the work started so as to be ready to go ahead as soon as the war ceases. In the meantime, a certain amount of useful work can be done.

I have been asked by my colleague representing the Coast and the hon. Indian members what about Indian settlement. I understand they wish to have an Indian Settlement Committee or board or some such body. I have spoken on this subject in this Council before now, both on the Carter Commission Report and the Settlement Committee Report, and my opinion has never changed. If the Indian community wish to produce a settlement scheme I should be the first to wish to try and help them, but I would point out that this is no new idea or scheme, we have tried to do this for many years and they have not availed themselves of the opportunities which have been given them. If they now wish to try again they will not lack any assistance that I can give them, that is providing it is a settlement scheme for the settlement of suitable people in suitable areas.

As regards production, the noble lord the hon. Member for Rift Valley, drew a picture of all the problems Kenya was faced with as regards production. The trouble, of course, is as everybody now realizes—but I do not think they did a short time ago—that we have got rising costs of production to meet, and it looks as though, in the case of many commodities we produce, that we are to be faced with a very strict control of prices for the produce we export. One can understand, at least I can, what has

[Major Cavendish-Bentick] brought this about: the vast sums of money that have to be found by England without recourse to borrowing from overseas, and the dangers to a big industrial population of prices going up too fast, and wages not going up equivalently, a serious problem which has to be faced by the Imperial Government. Therefore they have taken every step they can by arranging in every possible way with the Dominions and other countries in order to be supplied with their requirements at lowest possible prices.

It is no good blackguarding the Cabinet individually and collectively in England because they have adopted this policy, it gets us no further; we should realize the facts and see if we can do something to alleviate the position all we can. In the first place, it is quite fair to point out to the Imperial Government that although we do understand the position in which they find themselves, their policy has a very unfair incidence in certain specific regards on such a country as this. I will quote examples in which it is very unfair.

Firstly, there is an idea that anything once shipped, whether afloat or landed on the shores of the United Kingdom, is subject to the Requisitioning Act and can be taken and paid for at whatever rate and when the Imperial Government seem to think suits them. We have been very hard hit over that. The shipments of tea from August to November were requisitioned recently and no payments have as yet been made. I know of one plantation alone which now has between £20,000 and £30,000 owing. I am told that quite recently, within the last few days, a preliminary payment has been sanctioned at the rate of 7d. a lb. months after the tea was requisitioned and this only in respect of a part of the shipments made from this country. Another unfair incidence of this policy is that we have been asked to keep on one side and allocate a quota for the use of Great Britain and France of certain commodities month by month, and we are told that subject to that quota we are free to deal with any surplus. No country can carry on under that sort of scheme. If a quota is to be reserved I maintain they

should make a contract for it; if they want supplies guaranteed for six months let us know: if for the duration of the war we shall be only too willing to make adequate provision. But it is quite impossible for us to do anything in the way of making reasonable commercial arrangements to sell our produce if we do not know what they will take or when or what we have to set aside and allocate for the use of the Allies.

A third example is one, perhaps, the unfairness of all. In England they have introduced control of prices to an extent to which we have not even dreamed of here, including prices which can be charged for manufactured articles. In explaining what an excellent system had been evolved, an article appearing in the *Economist* the other day said the great beauty of the system lay in the fact that the moment goods were exported no price control was exercised. We are forced by various circumstances, and by a natural desire as far as that goes, to buy from England and not from where suits us best. That being so, there ought in equity to be some control of prices which are charged for goods, often necessities, which are supplied to the Colonies. One cannot have it every way: if the prices of our products are subject to artificial limitation we should equally be assisted in the matter of acquiring necessary importations at reasonable prices.

Now, Sir, I have brought these matters up because I consider that these are specific instances in which Government should intervene and in which Government should press the cause of this country and do all it can to remedy very unfair incidence of British policy. I am not saying that Government will not make representations, but I think Government should have done so before now. I have, however, some reason to believe that some effort is now going to be made to do so.

As regards contracts, I have mentioned what has happened in the past in regard to requisitioning, and very satisfactory offers which have been made. In future we must try to prevent various control boards which exist, and there

[Major Cavendish-Bentick] are any number in the United Kingdom, dealing piecemeal with individual producers and the individual producers' organizations in Kenya. It would be infinitely preferable to make comprehensive contracts for what this country produces on decent and fair terms. Our selling terms should undoubtedly be f.o.b. at port, at a fixed minimum price, subject to revision if we can put up a case, because we do not know what is going to affect costs of production here, and leave the insurance and freight as payable by the purchaser. I hope Government will take a more active part in intervening in any such negotiations. We have it on the authority of people of good standing like Dalgety's that such intervention would help as at present their representatives go from one control board to another and get very little satisfaction. We can quite imagine that the present chaotic position will rectify itself; but, in the meantime, it is up to Government and the Secretary of State on behalf of these dependencies to bring a little pressure to bear and to help normal trade in these difficult times.

Several speakers have referred to the problem of controlled prices on top and rising costs below, and we have asked, what is the solution? Also in the same breath we have the request for "more production, more production". I have heard these somewhat contradictory references made by hon. members on both sides of Council, but no solutions have been vouchsafed, beyond the panaceas advocated by two stereotyped schools of thought one of which recommends devaluation of the East African shilling and the other provision of direct subsidies as has been done in England and elsewhere.

There is a motion on the order paper to-day on the subject of devaluation, thus there is no necessity to go into that subject now, which has been debated on more than one occasion in this Council. I would only like to make my own position clear. I make it perfectly clear in my minority notes to the Report of the Economic Development Committee in 1935. All I wrote then

seems to me to be perfectly true to-day. No doubt, revaluation of the East African shilling would relieve internal indebtedness, but I want to know a great deal more about its full effects on the country as a whole in other directions before I could regard that as the sole and only panacea for all our ills in this country. As regards subsidies, we have the budget before us. We can see what our resources are, and subsidies on a large scale by Government are out of the question. Apart however from these two generally advocated wholesale alleged panaceas there are a number of small and some not so small measures which can be taken and which would help agriculture.

In the first place, as I said just now, everybody says "produce more" but they do not tell us what to produce. We can watch the markets and keep the farmers informed every fortnight as to prices of Kenya produce, and I am perfectly certain, as sure as I am standing here, that the next few months are going to see a complete change and a change for the better in our agricultural prospects. I hope that a comprehensive price list will be published every fortnight for the duration of the war. We can also search for more profitable and perhaps permanent markets, and thanks to the visit to the Near East by the hon. Director of Veterinary Services and the General Manager of the Kenya Farmers Association I believe prospects of new markets there are very bright. We can also assist farmers in various other ways. We must help them financially, and a Bill has been laid on the table to-day which is a first step in that direction.

It is all very well for certain people to say that we should not lend more money to farmers who are already in a bad way, and that it is bad economics to do so. Whilst admitting there is something in this contention, I would nevertheless point out that the Bill which has been laid on the table of this House was not designed for any such purpose, but was designed to meet a situation—really a war situation—which has arisen during the last few months.

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In order to illustrate my meaning, I would take the example of a farmer—a perfectly good farmer—who, however, has been through very bad years, and who normally has had access to money advanced by a merchant banker, or possibly by a private individual, on the security of a mortgage on the farm or land. Normally, before the war, these merchant bankers and individuals, where necessary, made anticipatory advances, that is, advances against crops the farmer had put in or was about to put in.

Under the circumstances of to-day, however, merchant bankers have been forbidden to make anticipatory advances by their head offices, and individuals have no longer the means to do so, even should they so desire, with the result that there are a certain number of farmers who find themselves entirely bereft of any resources with which to carry on normal farming operations.

I therefore claim that it is not unreasonable to meet circumstances which war conditions have created, to help production, and to give farmers a chance to carry on, and I deplore the tendency which appears to be on the increase towards uninformed criticism. One minute we are told nothing is done, and whenever something is produced to meet a difficult situation, instead of trying to understand it, both some members here and the outside public are apt to be over critical.

In referring to this Bill I was amazed to find in the leading article in one of to-day's papers a suggestion with regard to the Land Bank which I hope the hon. Financial Secretary, who no doubt will reply to this debate to-morrow, will be able to knock sky high. If misstatements of this kind are allowed to get to England, people will get the wrong impression—the article may not be meant to give that impression—but nearly a million pounds had been lost in the agricultural industry since the Land Bank started, or, if not lost, at any rate was unlikely to be recovered, and this just at a time when we are trying to get additional finance for our

Land Bank. Actually what has happened is that a large proportion of our agricultural indebtedness formerly carried by merchant bankers and ordinary bankers at high rates of interest has now been transferred to the Land Bank on far more equitable and fair terms. Nor can it be said that our Land Bank is other than sound. On the contrary outstanding are comparatively few. What we need is more capital for the Land Bank. I make that point most deliberately, because I do not want a wrong impression to get abroad with regard to this country.

In addition to short term finance, it is proposed to assist with fertilizers, increase cold storage facilities, and bring in possibly certain reorganizations in the agricultural industry. All these various measures, quite apart from non-racial measures of relief, such as revaluation can afford a tremendous amount and will afford a tremendous amount of relief. I think it is up to all of us to try and contribute, and make suggestions, and not simply sit down and say it is somebody else's job to devise remedial measures. It is not of the least practical utility looking up in the dictionary what the word "production" means. We have been told by one member that it is a study of the methods by which the total wealth of a country can be produced. The meaning I give is a careful study of the methods by which the total production of a country can be preserved. If we can succeed in doing that through this war, then I maintain that we have done a justifiable job of work.

I have been asked why we have not got representatives on the board of various sections of the community. We never had any intention, as I understand it, of having sectional representation. Already the Board is large and rather unwieldy. But it cannot be said to be unrepresentative, because although people were not put on as representing sections or areas it so happens that among others, we have the Director of Veterinary Services, the Deputy Director of Agriculture, the Commissioner of Lands, the Chairman of the Kenya Farmers Association, the Chairman of the Stockowners' Association, a director

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of the Kenya Co-operative Creameries, and leading representatives from other parts of the country. If, as I understand it, the coast area feel that they would like to have some little body of their own, and if we can help them and collaborate with them, we shall only be too pleased and delighted to do so.

I have also been asked what about the native side, what about the Indian side. As regards the native side, I had the privilege of discussing the subject with the hon. Chief Native Commissioner, and I do not think it would be the job of a board such as ours to intervene directly in native reserves. I think that job would be far better done by the Department of Agriculture and by administrative officers. But possibly we can give them some advice as regards what may be planted and when with prospects of a good return.

That brings me to a point I wish to make, and a very important point. I have never yet understood who is responsible for policy implemented in native reserves. We have heard two provincial commissioners speak this afternoon, who have thrown no light whatever on this matter, but no doubt we shall have the hon. Chief Native Commissioner speaking either later to-day or to-morrow. To give a very useful example of what I mean, latterly I have had a good deal to do with the inquiry being made with regard to the reorganization or organization of the pig industry in this Colony. And one of the difficulties—and it is a major difficulty—we have come up against is the fact that an uncontrolled native pig industry has suddenly sprung up. At least, a large number of natives own pigs in one area. And this has been started, as far as I can make out, without any reference to the hon. Director of Veterinary Services and, as far as I am aware, without any reference to the hon. Director of Agriculture. We are lucky in this country in one respect, and that is that so far we have been practically free from pig measles, but pig measles have now been started and already on a very substantial scale in this native area, which means that natives going from

that area to work on farms will spread pig measles throughout the country, or might do so: And here we are talking about raising money to start a new industry on a substantial scale for exporting pig products from this country. We can produce pigs, but we find right at our back door something started without any discussion with the authorities who are to advise in these matters. And so it goes on.

I am going to ask that, in the interests of this new industry we hope to start, that until we see daylight a native pig area be immediately demarcated. This is an area between Sagana and Nyeri. In that part of the world natives may be allowed, subject to control, to breed pigs, but no further natives should be allowed to start pigs until we get our industry properly on its feet. If we do not do something of this kind, we never shall get started any industries in this country on a proper basis.

As regards Indian production, the board of which I have the honour of being chairman was appointed by Government after careful consideration and I do not myself see that any useful purpose would be served at the moment by adding an Indian member to it. I am well aware that Indians are producing a few of the commodities in which we are interested, and if any advice is needed, or we can give any assistance, we shall be only too pleased to do so.

There was some discussion as to what the Production Board did. I did write out a page or so of our various activities during the two and a half months we have been in existence, but time is getting on, and so I shall produce that list in Standing Finance Committee for them to judge for themselves whether money expended on this board is wisely spent or wasted.

I will now deal with two or three small matters connected with the department of the Registrar General.

In this connexion, I only want to point out that on page 86 of the Estimates there is no provision that I can find for a gentleman who I believe is known as the "Examiner of Accounts", and I do

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also want to support what the hon. Member for Mombasa said in regard to delays in bankruptcy. I want to draw the attention of the Standing Finance Committee to the fact that an Indian gentleman who is a Fellow of the International Association of Accountants, London, and a Fellow of the Chamber of Commerce, Birmingham, was found in this country. It was suggested that he was an eminently suitable person to deal with these Indian accounts. Having found this person, with these qualifications, who I believe was doing other remunerative work at that time, he was engaged that thought he was going to be appointed Examiner of Accounts. But apparently he is only Examiner of Accounts when he gives evidence in the witness box in the High Court, and when he emerges from the High Court he reverts to being paid merely as a temporary clerk. If that is so, I think we should see to it, and I hope the matter will be put right, because if he has these qualifications and is doing this valuable work a proper place should be found for him.

Passing on to the police, in the war expenditure you will find—and it was alluded to by the hon. Financial Secretary—a sum of money for extra police, and I believe I am right in saying that in that sum 20 European police officers were provided for. If that is the case, I sincerely hope these 20 extra European police will not be regarded as temporary war gentlemen. This is not the first time in this Council that I have asked for more European police. I maintain that one European is worth twenty to thirty askaris. We have not enough of them, and I hope we shall make this additional number permanent and add at least twenty Europeans to our police force.

In conclusion, to the relief of you all, I was a little bit apprehensive of a statement made by the hon. Financial Secretary when he referred to military expenditure. He said that while a satisfactory provisional arrangement was in sight, which I understand is a process of negotiations, it was probable that the final settlement of financial responsibility must await the end of the war and be

settled in the light of the country's economic and financial situation at that time. I do not quite know what the hon. gentleman meant by that. No doubt he will clarify that when he answers the debate. I quite understand there may be some categories of accounts which may have to await final settlement until the end of the war, but I do hope we will not do what we did in the last war. I hope the hon. member will leave no stone unturned to come to some arrangement with the Imperial Government now as to what proportion of this vast expenditure we have got to meet and what proportion we can fairly ask them to meet but that it shall not hang over our necks all the time; that we know now exactly where we are as regards military expenditure in this Colony.

Finally, it has been suggested that we on this side of Council do not pull our weight and that government by agreement, as it is called, is a mistake, and that some of us have become more government than we should. Well, if that soft impeachment is aimed at myself and one or two of my colleagues who have spoken, as far as I am concerned I accept it unrepentantly. We are in an emergency at the present time, and instead of sitting on this side of Council nagging and yapping I maintain that if we have any sort of qualifications and experience we should try to pull with Government and see the country through the emergency. (Applause.) I have no fear that in times to come if necessary I am going to attack Government again. I have done it as often as any member on this side. But, as long as the emergency lasts, as long as Government do as they are doing, taking advice from those who have been out here a long time and consulting with them, my services at any rate are at the disposal of anybody who is running things in this country. (Applause.)

MR. HOSKING: Your Excellency, the debate has been remarkable for the few points raised as to natives. Some of the points have already been referred to by my hon. friends on the cross benches, and I would like to express the

[Mr. Hosking]
pleasure it gives us when those strong, silent men break their self-imposed Trappist vows and deal so eloquently and adequately with problems of their provinces which no one understands better than themselves. But there are certain points left for me to deal with.

The first came from my hon. friend and critic, the Member for the Coast, and concerned what he described as my belated annual report. I must admit that the report was late, owing to circumstances over which I had no control, or little control. My report, as is self-evident, mainly a matter of scissors and paste, and depends largely on the reports of other people. When these reports are not available it is difficult to get a complete picture of native affairs, but had the sanction of the Secretary of State been granted earlier to omit certain chapters of departmental interest the report would have been laid much earlier.

My hon. friend gave me the opportunity of filling in the gaps in this report. I must resist the temptation to do so, but when he has the temerity to quote Lord Hailey at me I cannot resist the challenge to quote back at him in return. It was in connexion with individual right holding that he cited Lord Hailey as being opposed to any acceleration of that form of tenure. I will refer him to page 296. As you know, Lord Hailey's report is a representation of facts, and he seldom gives advice or even a hint. In this case, however, he says:

"It would not be to the interest of Africa to refrain from making that gradual advancement towards individualization of property in land which may lead to improvement in production."

As time is short, I will merely refer my hon. friend to the bottom of page 875 and the top of page 876, which I think is a complete vindication of our policy of encouraging demarcation of individual plots in Machakos.

M^R. COOKE: My point was that Lord Hailey said we should not give active assistance to natives in encourag-

ing individual tenure. He said it was not to be resisted but should be passively acquiesced in, not actively.

M^R. HOSKING: The hon. member has only been browsing on Lord Hailey's book, and I shall be pleased to argue with him in another place as to his intentions.

Coming to the hon. Member for Trans Nzoia, I resent the imputation that there is a lack of goodwill on the part of Government in dealing with maize thefts and the application in this Colony of the Resident Labourers Ordinance. Theft of maize is but a symptom of a deep-rooted disease. I wish there were more hon. members representing the highlands here, for what I have to say I would sooner say to their faces than to their seats.

The disease to which I refer is the payment of labour in kind rather than in coin. There is no such thing as cheap labour. You won't get more than Sh. 10 worth for Sh. 10, you will be lucky if you get as much, but you will not get more. If you expect full value from your labour you must pay for it, and you will pay for it in cash or kind. I take the strongest exception to those who pay labour not in cash but in soil fertility. This squatter system is, I think, sapping the life out of the Colony. In one district alone, 65,000 bags of squatter maize were inspected for export. The provisions of the Native Marketing Ordinance have had to be applied to the White Highlands to deal with this problem.

How can Government intervene to any great effect when natives are encouraged to be producers of the same crop as the European on his own land? It is difficult to protect the European when he fosters a rival producer actually in his farm.

As the hon. member pointed out the Resident Labourers Ordinance will go far to help us control the planting and disposal of crops. There has been no lack of energy or goodwill in getting that Ordinance applied. The Secretary of State, as hon. members know, insisted that an area should be made available

[Mr. Hosking]
for such squatters as were likely to be got rid of from farms owing to the provisions of the Ordinance. Only one section of the Ordinance is likely to have any such effect, that is the one dealing with local option, and personally I have grave doubts whether even that section will have much effect on the ebb and flow of squatters at the present time. The Native Lands Trust Board of officials and unofficials, and the Highlands Board, again of officials and un-officials, have shown no lack of goodwill or energy in trying to meet this problem, but it was only during this month, I think last week, that even partial consent has been obtained from the Secretary of State, and every effort is being made now to get the area surveyed so that a proclamation may issue and the rest of the necessary action be taken.

I am grateful to the hon. Member for Trans Nzoia for his advocacy of the use of *Kodi* stamps. I wish other employers would follow his good example, with or without remuneration. I know the influence that the hon. member has in that area, and I trust he will use it to get other people to follow his example in this matter.

The noble earl, the hon. Member for Kiambu, brought up the question of a District Officer stationed at Kiambu, a reversion to the old system whereby Kiambu was a mixed area. I understand it is proposed that a limited number of farms should be re-included in the executive district of Kiambu. I myself some twenty years ago was District Officer at Kiambu, and I still remember the long queue of boys arriving with chits about 10 minutes to 1: "Please deal with this at once as I want him back at half past one."

It is not possible to make any changes at the present time, but when we are up to strength in staff or possibly over strength I trust the question may be reconsidered by Government as to whether the duties now performed by the officer stationed in Nairobi could be more effectively done at Kiambu.

I come to the hon. Member for Nairobi North. I am glad of his

advocacy of full strength, or even additional staff, in the Labour Section. I wish him good luck before the Standing Finance Committee! He has criticized us for letting Labour Officers join the fighting forces. Some of the officers had these commitments before they were taken on as Labour Officers, and we certainly did not think it right to turn down otherwise suitable people simply because they showed their loyalty and keenness to serve their country. It is a difficult situation, but I trust those very necessary officers will be provided.

He then brought up the question of the origin of native policy, where was it to be found? Native policy, I might say, originates at the District Commissioners meeting held in every province. Ideas of these practical officers are then discussed by their colleagues, and the next stage is that there is a meeting of Provincial Commissioners, where they have an opportunity of meeting Your Excellency, the hon. Chief Secretary and various heads of departments and discussing matters of native policy.

There was a certain lack of co-ordination—I have referred to this before—and to meet that lack of co-ordination between departments a Native Welfare Conference was recently instituted, and the officers of the departments which deal with native welfare serve that conference, such as the Director of Education, the Director of Medical Services, and the Director of Veterinary Services. We have only had two meetings so far, but I have great hopes that we shall be able to make suggestions as to the formulation of a native policy. But policy is eventually formulated in Your Excellency's Council.

I will leave the next matter of pigs to my hon. colleagues. (Laughter.) It is a matter which has cropped up before, at the inauguration of the Native Welfare Conference, and as soon as I heard of the controversy I agreed to refer it to that Conference. But it has not yet come within the purview of its deliberations.

EARL OF ERROLL: Your Excellency, on a point of order, can the hon. member answer the query or not?

HIS EXCELLENCY: This is not question time, and the hon. member having made his speech has sat down and has been heard.

MR. HOSKING: I resumed my seat, seeing a certain amount of excitability in my hon. friend opposite!

I have been asked the position as regards the native right-holders. I am glad of the opportunity of reassuring him that every effort has been made and great sacrifices have been made by the Colony in general to get a fair and just settlement for these right-holders, for whom many of us have much sympathy. We have at last obtained suitable areas at considerable cost, and at great sacrifice to this Colony, and the move is actually now in progress. The settlement officer is working continuously so that, when they have got their maize crops, they will be offered land in exchange for those areas. Where a settlement cannot be reached, they are allowed to appeal to the Native Lands Trust Board which hears these appeals. We have had already several sittings of the board to deal with appeals, and we have dealt with these cases, and eventually made recommendations to His Excellency. Orders have been signed by His Excellency in, I think, about 100 cases already. Other cases are being prepared, and certain natives have actually moved to their new homes.

I think the moves would have been entirely voluntary were it not for a certain amount of political agitation. They have had a difficulty in trying to get the right-holders to fight to the last ditch over the question of *mbati* rights, or clan rights. Everyone recognizes that a just and adequate settlement is made for the existing right-holders. We have not contemplated and will not contemplate a settlement of these clan- or *mbati* rights. That matter is finished with finally and decisively.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 10 a.m. on Friday, 15th December, 1939.

Friday, 15th December, 1939

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Friday, 15th December, 1939. His Excellency the Acting Governor (W. Harragin, Esq., K.C.) presiding.

His Excellency opened the Council with prayer.

ADMINISTRATION OF THE OATH

The Oath of Allegiance was administered to:—

Provisional Nominated Official Member—

G. P. Willoughby, Esq.

MINUTES

The Minutes of the meeting of the 14th December, 1939, were confirmed.

FLAX BILL

SELECT COMMITTEE REPORT

MR. WOLFE: Your Excellency, I beg to move that the select committee report on the Flax Bill be adopted.

This measure proved to be more contentious than I had anticipated, and the tension was only relieved when proposals were made by my hon. friend the noble lord the member representing Rift Valley, which I happen to know are against the wishes of the flax growers of his constituency. I mention this merely to advise these growers that had it not been for these proposals the matter would not have been settled yet, the Bill would probably have been postponed, and they would have been more disappointed than ever.

The contentious issue was concerning the appointment of the agency. The Bill as it stood provided for the appointment of an agency by the board with the approval of the Governor in Council. Owing to the differences of opinion, among the flax growers in different parts of the country, on the suggestion by my hon. friend it was felt desirable that the opinion of each flax grower should be obtained. Hence the proposed amendments to the clause dealing with the appointment of the agency. This is clause 10, and the recommendation of the committee is that "The board may, on the recommendation of the majority

[Mr. Wolfe]
of flax growers licensed under the provisions of this Ordinance"—that is the important point—"and with the approval of the Governor in Council appoint an agency or agencies for the purposes of this Ordinance, and may in like manner revoke or vary any such appointment." So each licensed flax grower will have the opportunity of voting as to whether an agency shall be appointed or not and whether there shall be one or more, and who the agents should be if they wish an agent or agents to be appointed.

Another amendment proposed is the appointment of the Director of Agriculture or his nominee to the board, which was not provided for in the original Bill. They thought that necessary because of the desirability of the presence of the Director on the board in the early stages of the industry at least.

In regard to the definition of "flax grower", I would like to take the opportunity to make it clear that this Bill does not apply to all growers of flax crops but only to those growers of the varieties that are to be specified by the Director in the Official Gazette. These are certain pedigree varieties which have been imported and which it is desired to control to avoid crossing the different strains. Sellers of linseed will not have their operations controlled under this Ordinance.

It will be observed that the report is not unanimous and that the hon. Member for Ukamba has submitted a minority report, about which I think he would like to say something.

MR. DENNISON seconded.

LORD FRANCIS SCOTT: Sir, I would like to point out that the hon. mover is quite incorrect in his statement that the amendments I suggested caused the holding up of the Bill. I suggested in the original debate that instead of having "the agency" only, it should be "an agency" or "agencies." That amendment by me was accepted by Government and could have been dealt with there and then in the committee stage of the Bill. So it was not my amendment which held it up. What really held it up and caused it to be sent to select committee was the

request by the hon. member for Trans Nzoia, who specifically asked that it should be referred to select committee.

This clause 10, which is the big question under discussion, is this appointment of an agency. The position is that at the present time, according to the figures of the Hon. Acting Director of Agriculture, there are about 170 growers of flax in the country. Of this 170 people, over 100 are in the Trans Nzoia constituency, and it did seem, if one looked at this thing fairly, that it was wrong to have a board where there would be a majority representation of the minority of the flax growers who could, therefore, overrule the representatives of the majority. If that was possible, you would then have a position in which an agency was forced on the majority of the growers contrary to their wishes. So as to obviate that, this amendment has been put in: "That the Board may, on the recommendation of the majority of flax growers . . . and with the approval of the Governor in Council, appoint an agency or agencies", etc. That is the reason why this has been put in.

Further on, at the end of the report, we have added another clause—

"prescribing the procedure for obtaining the recommendation of the majority of licensed flax growers under section 10 of this Ordinance."

The position is really this. A number of the flax growers and those in my own constituency were anxious to get on right away with the sole agency. The other part of the flax growers in the Trans Nzoia, Hoey's Bridge, Turbo, and Kipkaren, which do comprise the majority of the flax growers, wish to have a paragraph inserted in the Bill making it impossible to appoint an agency for two years. The committee were not prepared to accept that, but we did agree on this addition here which will ensure the majority of the flax growers being in a position to appoint an agency or agencies and which agency they may wish. I think it is a fair provision. It may cause certainly a delay in the appointment of an agency, but it need not cause a delay of two years.

I do not think I have much to say about other amendments. They are all

[Lord Francis Scott] with a view to making the Bill much clearer than it was by doing away with one or two ambiguities which might have existed.

On the whole question of whether we should interfere with ordinary commercial workings by appointing a sole agency, and therefore cutting out other agencies, I do not think this is the time to deal with that, as it was dealt with at the second reading, but it seems to me it is a mistake to interfere with ordinary commercial procedure unless there is a very strong reason. In the case of the wheat industry it was essential, and in the case of pyrethrum, perhaps it is advisable; in the case of the passion fruit growers it did not seem to have any useful effect.

I support the select committee report.

COL. KIRKWOOD: Your Excellency, I am in favour of the report of the select committee. Also, I accept the responsibility for holding up the Bill. I did so in the interests of the flax growers themselves. I had no particular idea as to who the agency should be or whether there should be an agency or not. What I did maintain, and still maintain, was that the growers themselves should be consulted, and every endeavour was made to prevent them from being consulted. They will now be consulted under clause 10 as to whether they want an agency or agencies, and who the agency or agencies shall be.

I think hon. members of this Council will agree that it is a very reasonable paragraph, and only gives the producers what they are entitled to, that is, some say in the management of their own affairs. From the Imperial point of view, and also to help the Imperial Government to get the article they require for the purpose of winning the present war, I think everyone will agree that clause 10 is a very reasonable one indeed.

MAJOR GROGAN: Your Excellency, I suppose it is incumbent upon me to give my reasons for having signed this minority report.

My reasons largely are that I object to the Bill. I regard it very largely as an impractical nonsense Bill. Quite clearly,

as the hon. Director of Agriculture explained, it is confined in its application to certain specific varieties of flax, and only presumably to those specific varieties. I think it is almost impossible for anybody to identify these varieties at any given time. Personally, I do not believe in this ever intensifying and expanding control. They lend, perhaps, an added sense of importance to the gentlemen in control of these controls, or alleged controls, of these supposed controls, but the majority are like the Passion Fruit Ordinance, which is now as dead as mutton, and no longer capable of practical application.

I suggest in the realms of sanity that to impose a fine of £100 or 12 months imprisonment on a gentleman who has not paid his Sh. 10 for specifying or not specifying the variety of flax which he grows, seems to me too fatuous and such a measure qualifies for a free passage to Mathari.

MR. WOLFE: Your Excellency, the noble lord, I am afraid, misunderstood me. The contentious issue to which I referred is not the question of the appointment of one or more agents, that was already settled in the first debate: it was the question as to whether the appointment of an agency should be postponed for two years or not. A proposal has been made in committee by my hon. friend, and what the proposal has secured is relief from this contentious question, and brings the realization of this measure very much closer than would have been the case had the differences persisted. Had this not been the case, I do not think the Bill would have been enacted this session, and the growers would have been more disappointed that ever.

I must take exception, and very strong exception, to the statement of the hon. Member for Trans Nzoia that every endeavour was made to prevent the growers from being consulted. After my intimation to the Council that meetings had been called in every flax grower's district, that every flax grower received from my office an invitation to attend that meeting, with a copy of the draft Bill, and that a request had been made for a discussion at these meetings of the

[Mr. Wolfe] question of appointing an agent, the statement is surprising. At each of these meetings the question as to whether an agency should be appointed was not discussed, and resolutions were carried without a single dissentient.

The hon. Member for Ukamba suggested that because the Passion Fruit Ordinance was dead this Bill should not be enacted. I rather gathered that was his suggestion, but the only reason that Ordinance is very nearly dead is because the industry itself is very nearly dead. These control measures seem to become more and more unpopular with certain hon. members on the other side of Council, and I therefore feel it necessary to say there are two more on the lists to come, I hope, before Council in the next session; there will deal with eggs and oyster nuts.

COL. KIRKWOOD: On a point of explanation, I am prevented from explaining, but had I had that privilege I would have given the facts to refute what the hon. member has stated.

The question was put and carried.

THIRD READING

MR. WILLAN moved that the Flax Bill be read the third time and passed.

MR. DENISON seconded.

The question was put and carried.

The Bill was read the third time and passed.

DRAFT ESTIMATES, 1940

The debate was resumed.

MR. DAUBNEY: Your Excellency, in the course of this debate there have been frequent references to the need for increasing production, and I made some notes on these points as a member of the Production Board. But the hon. Member for Nairobi North has dealt with the whole question of production much more effectively and adequately than I could have hoped to have done, so that it only remains for me to support him in one or two of the main principles he enunciated.

The first of these principles was that when His Majesty's Government or one

of the numerous boards acting on behalf of that Government asked us to set aside a quota from each month or each year's production of any particular commodity, that request should be accompanied by some sort of guarantee as to the willingness of the board in question to take over the quota that has been set aside in this manner, or at least, if there is any undue delay in shipping the quota, that arrangements should be made to pay for that produce once it has been allocated for this particular purpose. I think we all agree that that is a very reasonable request, and unless some such arrangement is made it is going to be very difficult in these times for producers to carry on and to wait for long periods for returns from their crops.

The second point to which I should like to refer relates to the control of the prices of our primary products and the possibility that prices of manufactured goods from Great Britain which are essential to the production in question may be allowed to rise abnormally against us. Here, again, I think we have an equally good case to ask that if our prices are to be controlled at the top the prices of manufactured goods, which in England are subject to control, should not be allowed to rise unduly against us, particularly when we remember that the prices offered for our agricultural produce are generally considerably below the level at which contracts are made for similar agricultural produce grown in Great Britain.

Those are the two main points which, as an official member of the board, I wished to support. There are a couple of points of detail in connexion with production to which I should like to refer.

The noble lord the Member for Rift Valley pointed out that all we required was a shilling for butterfat and 50 cents a pound for our bacon. I think there is every prospect that we shall be able to get a shilling a pound for our butterfat and if, as he stated, the price of a shilling a pound for butterfat will result in an increase in our dairy production by enabling farmers to purchase cows from ranching districts and putting them into dairy production, we shall achieve I hope during the war a very satisfactory position in our dairy industry.

[Mr. Daubney]

With regard to baconers, the hon. member stated that no offer had yet been received for our bacon. The position is that prior to the outbreak of war, Your Excellency was corresponding with the Secretary of State on the subject of our obtaining a quota for the admission of our bacon to the United Kingdom market, and a communication was received after the outbreak of war in which we were asked what our production for the next year of bacon was to be. There were certain minor difficulties in the way of answering that question.

In the first place, we had not the factory accommodation to go in for commercial export of bacon immediately; we had not the shipping facilities after the outbreak of war; and finally, we did not have the pigs (laughter), and it would have taken us a year to produce them. So that I do not think one need complain that no offer has yet been received for our bacon from the United Kingdom. Fortunately for us, other markets—to which reference has been made—are nearer at hand, markets to which the run by sea is comparatively safe, and I think it is possible that we shall be able to take advantage of those markets to establish our bacon industry—the bacon industry we hoped to establish on London market before war broke out—during the period of the war with considerably less difficulty and inconvenience than we should have had in peace time.

There is one other point of detail raised by the hon. Member for Trans-Nzoia: I understood him to say that had this country been a dominion we should have already been able to conclude agreements as to prices which should show a reasonable return to the producer. I would point out that in every case where an agreement has been concluded, it has been concluded on precisely similar terms accorded the dominions. There is one exception, the matter of wool. An offer was received for our wool which was below the offer made to certain dominions, and an agreement on that particular commodity has not yet been reached. But the difficulty has been that for some reason we have been trying to obtain for our produce prices that

were higher than those at which the dominions were prepared to sell.

The hon. Member for Mombasa dealt with the question of freight rates and regularity of sailings. With regard to the question as to why there should be a differentiation between freight rates from Bombay to Mombasa and Mombasa to Port Said, I shall give him the particulars he desires. On the question of regularity of sailings, I quite appreciate the difficulties that shipping control boards are up against when asked if they can give any idea as to how frequently such and such a service will run. But in respect particularly of our refrigerated produce, it is essential to have some sort of idea as to how frequently one can expect the sailings of ships with refrigerator accommodation before we can plan such things. Bacon is a perishable article and, incidentally, as the Supply Board pointed out, it is impossible under wartime conditions and with the present slowness of transport to ship cured bacon to Great Britain. But we can ship to the Mediterranean and India, if we can have at our end sufficient information about the frequency of the services—to enable us to plan our curing and the necessary refrigeration accommodation for holding the bacon before shipment.

That, I think, is all in connexion with the Production Board. There are one or two points about the activities of my department, not so many as usual.

The noble lord stated that he had had a complaint that the Naivasha Experimental Farm was not an entirely satisfactory institution, and he wished to know whether it was performing any useful purpose at the present moment. In the first place, I should like to point out that Government's expenditure on the station since 1925 is something under £9. In 1925 a grant was made by the Colonial Development Fund to the Rowett Research Institute to enable it to carry out certain experimental work at the Government Farm, Naivasha. That grant ran to 1935, and during that time the station was administered by the Institute. It was handed over to my department with a grant of £11,000. £2,200 a year, made by the Colonial Development Fund, in order that we might investigate the relationship between nutrition and reproduction of

[Mr. Daubney]

domesticated animals under the tropical conditions of East Africa. That was long range work, and work which would be of general application if one got results of value to most tropical countries in the Colonial Empire.

We found in the first place that it was necessary to establish normal behaviour in respect of reproduction before we could begin to assess the influence of nutrition and climatic conditions in this country upon domesticated animals. The results may seem to have been slow in coming, but they are coming. We have derived very valuable information from the work that has been in progress. As I said before, it is long range work, and we have no right to expect any results of practical value in this country from that study during the short period; but, in fact, you have had results that are eminently practical in the work that has been carried out in artificial insemination.

I think I said in this Council not long ago that this country is probably ahead of any other country in the Empire in the practical application of artificial insemination to the breeding of domestic live stock. To attain that position it has been necessary to carry out a good deal of careful ground work on the subject. Last year I believe that more than 10,000 cows were inseminated on farms in this Colony, a great many in the constituency of the noble lord. Fortunately cows cannot complain, and they have no votes. (Laughter.)

As I said, it is long range investigation, and when at home last year I had the opportunity of discussing the matter with certain members of the Economic Advisory Committee and Colonial Agricultural Advisory Council, and I then had every reason to believe that when the grant expires in March, 1940, a renewal would be made. In the changed circumstances of the present day I do not know whether the Colonial Development Fund will be prepared to renew that grant. I shall make an application. If they do renew the grant, after reviewing the results of five years work then I think that would be an adequate answer to the question as to whether the institution was serving any useful purpose. If they do not renew it, then it may be

necessary to go to Government and to ask Government to support this institution for a further period of years. But before I approach Government in this matter I should certainly consult the Farmers through the medium of the Stock Owners' Association, and ascertain whether it was their wish that the work should go on or that it should be abandoned, and I have very little doubt as to the answer.

If I may say one word more. I think a complaint which was received by Government through the elected members on the subject of this experimental institution is probably the one referred to by the noble lord. As far as I can see, the only real cause for complaint in the matter was that artificial insemination in cattle had been a success and in sheep a rank failure. That supports my view that the work should go on, because we realize that we have not yet solved the problem in respect of the insemination of sheep, and that is one of the things we are concentrating on at the present moment.

I do not attach very great importance to this complaint. If I may borrow a word from my hon. friend the Member for the Coast, I would say it is thoroughly disingenuous, and I do not mean that as a compliment either!

The only other question I wish to refer to is that of the pigs in South Nyeri Reserve. My hon. friend the Chief Native Commissioner has dealt with the framing of Government policy and left the pigs to me! Well, we have got to face the fact that these pigs are there, 4,500 of them, in the South Nyeri Reserve, and I do not think we are likely to get rid of them, unless for any very cogent reason. There has been a good deal of discussion in Government circles about the future of these pigs, and not long ago, at a provincial commissioners' meeting, I expressed myself, as being opposed to the general idea of natives keeping pigs in the agricultural reserves for two reasons: one, the danger of the rapid spread in particular of measles—and the measles of pigs is the intermediary stage of tapeworm of man—and the danger of the spread of other diseases; the second reason was that I felt that pigs might compete for foodstuffs which would be

[Mr. Daubney] better employed in being given to the family of the native farmer.

I painted a lurid picture of the rapidity with which measles would spread, and I think some of the members of that meeting thought that, like the fat boy, I was trying to make their flesh creep. But as events turned out, there is a very rapid spread of measles infection taking place among these pigs. The average incidence of measles infection in pigs slaughtered in this Colony was in past years about two per 1,000 in pigs, and you can judge the degree to which the spread has taken place when I say that last week in Nairobi among 18 native pigs there were six cases. That fact rather rules my second objection out of court, because if this parasite is spreading so rapidly, then the inference to be drawn is that the natives are eating pigs only and that fact will overshadow any disadvantage that might arise from the competition of the pig for certain foodstuffs of the human being.

What can we do about these pigs? If we are going to have a bacon export trade, as we must have to keep pace with the dairy industry, we have got to have some system of controlled marketing, we have got to have registration of all producers. Incidentally we have registered all producers of native pigs already, although we have no legal control over them. At the present moment, very few of these pigs are being marketed. There is a slump in them, and I am very anxious at the earliest possible moment to get a large number of them on the market to enable them to be inspected, because by that means we shall be able to trace and follow up the cases of measles that are found when pigs are slaughtered, and to correct conditions on the farms.

I have recently been able to station a veterinary officer in this area, and we are collaborating with the agricultural officer and with the Medical Department in an effort to control the spread of this parasite. If we do not control the native pig, the industry will ruin itself in a very few years, and I can imagine a very serious risk of the infection spreading to such an extent in the European pigs that we shall not have a European pig industry either.

as I have said, the whole question of control is now under consideration, and we hope to be able to devise measures for the control of the whole industry, to exercise full control over this particular parasite, and to reduce the incidence to what it was before this particular branch started.

I am quite prepared to support the suggestion of the hon. Member for Nairobi North, that until we have satisfactory control and until we make some real progress in dealing with this problem in the South Nyeri Reserve, Government should not allow pigs to be reared in any other native reserve. I put that forward in the interests of the natives themselves, and in the interests of the country as a whole.

MR. GHERSIE: Your Excellency, certain hon. members have congratulated the hon. Financial Secretary on the manner in which he introduced the draft estimates, and I should like to associate myself with those remarks in that connexion.

We all realize that we are living under abnormal conditions at the moment, and therefore these estimates are nothing but provisional. This point was made by the hon. Financial Secretary in his opening remarks. Provisional estimates are, I presume, of an elastic nature, and adjustments will be made from time to time in the light of experience. I hope in that connexion Government will keep in touch with each and every industry and review each industry if requested to do so by accredited representatives.

I propose to be very brief and, with one or two exceptions, to merely seek information regarding the estimates themselves.

Turning to the memorandum, the introduction reads:—

"The provisional draft estimates for 1940 have been framed on the principle that, as far as possible, no new services should be provided other than those necessitated by the war, and that existing services should be maintained at the lowest possible cost."

I notice certain departments asking for increased emoluments in special cases, and I submit that under existing conditions there is a principle involved. I am

[Mr. Gherisie]

perfectly certain that, due to civil servants having been seconded for military service, there is scarcely one department that is adequately staffed. Those remaining behind are carrying in some cases the work of two men and in others the work of their immediate senior officers. Where there is an exceptional increase of work, as is in departments such as those of the Registrar General and Lands and Settlement and the Legal Department, and I was very pleased to see that the Governor of Uganda paid tribute to the assistance rendered by our Legal Department to the Government of Uganda.

If one department is entitled to increased emoluments because of some particular individual post, I submit that that should apply to every department. I have no doubt that the Standing Finance Committee will bear that in mind and take good care of this subject.

I should like to congratulate the hon. Director of Education on the efforts he has made to solve some of our problems during the past 12 months, particularly the resolve to close down farm schools and thus centralize education.

Turning to the Game Department, there is an item there, "Expenses of game and vermin control, £1,000", of which the memorandum says:—

"This item has been increased by £400 to enable the department to comply more effectively with demands for crop protection."

I should like to know how that is to be effected, because on the Plateau there are a large number of unoccupied farms, which are becoming game reserves and an absolute menace to neighbouring farms. Personally, I feel that the only effective remedy would be to give farmers permission to shoot game on unoccupied farms adjoining theirs where the game encroaches within a given distance of the boundary of the occupied farm.

Under head 15, Judicial Department—I am sorry to have to revert to this, but I do not propose to go into details of the increased expenditure involved in the change of policy in this particular department; that was gone into very thoroughly

in the debate on the Criminal Procedure Code (Amendment) Bill—I want to refer to the statement in the memorandum that "The establishment of resident magistrates has been reduced by one. In addition, it is proposed, for the time being, not to fill one vacancy in the cadre of resident magistrates, and one additional post has accordingly been put into abeyance."

I think that is a bad principle, as it discourages junior officers. Why not promote them, and, in any case, I consider that the number of resident magistrates should be increased rather than decreased.

We notice under head 17, Lands and Settlement Department, that this department has less staff than formerly due to officers being seconded to the military. I trust that the Standing Finance Committee will give this department every possible assistance, not as proposed under item 17 by decreasing the staff surveyors but by increasing them.

I should like to associate myself with and endorse the remarks of the noble lord the hon. Member for Rift Valley in regard to up-country native hospitals, and would like to express to the hon. Director of Medical Services my opinion that although Nairobi may be the headquarters of the Colony, the health of the natives up-country is every bit as important as the health of the natives in Nairobi.

Under Miscellaneous Services Extraordinary, item 1, is £2,000 as compensation to the K.U.R. & H. for the removal of houses. I should like an explanation as to what that has reference to, and whether it is really necessary that that amount should be paid in 1940.

Pensions and Gratuities, page 69, head 24, shows a further increase of £5,000. I wonder if the hon. Financial Secretary could possibly inform us when we are likely to reach the peak period in this particular commitment.

I realize the difficulty in obtaining staff for a department such as the Registrar General's, and associate myself with the remarks of the hon. Member for Mombasa that additional staff should be provided as soon as possible, because additional staff will bring in additional

[Mr. Ghesrie] revenue. I raised this issue on the budget debate last year, and I am certain that if figures were available showing the relative work compared with adjoining territories they would be amazing. Despite this extra work, the number of qualified men in Kenya is less than in Uganda or Tanganyika.

Under head 41, War Expenditure, Civil, item 1, £3,200 for internment of enemy aliens, will the hon. Financial Secretary state whether the cost of the guards is included in the military expenditure and whether that cost is to be paid by the military or this Government? Further, are Government considering repatriating these aliens, the results of which would be a considerable saving in money and man power of this Colony?

Item 11, Information Committee: I may be wrong, but I understand that the East African Standard Co. is guaranteed £1,500 per annum for the printing and publishing of the native paper *Baraza*. I would like the hon. Financial Secretary in his reply to state whether, in his opinion, the present circulation would be such that it would at least cover the guarantee? I think it should be in excess.

Item 13, Miscellaneous, £1,000: There appears to be no explanation.

On the subject of income tax, the hon. Member for Mombasa asked the question as to whether a person on active service was liable to income tax. The answer may be, perhaps, what is the definition of active service. But if they are not liable, I should like to carry the subject a step further and I propose to exaggerate my case in order to give an example. Let us presume that a civil servant earning £1,200 per annum were to join the military as a private. Would the amount payable by Government in order to augment his military pay be liable to income tax?

We also find in the Forestry Department that fuel sales will decrease by £2,600. I should like to ask the hon. Conservator of Forests whether he attributes that reduction to the reduction in the consumption of woodfuel by the Kenya and Uganda Railways and Harbours?

I think that at the last session a report on the Local Civil Service was tabled and, as no reference has been made to it in the memorandum, I presume nothing further has been done. But I would like to be assured that we are not to wait another 12 months before we hear something in regard to local civil service conditions.

In conclusion, we have had a good deal of criticism in regard to military extravagance, and whilst nobody proposes to condone extravagance, we must not be lulled into a sense of false security because the war is not taking place in Kenya. I submit that it must be realized that these particular people have their job to do, and while we must not condone extravagance we must be a little less critical. There is far too much criticism by people who are inclined to bark up the wrong tree.

MR. NORTHROP (Commissioner of Customs): Your Excellency, the noble lord the hon. Member for Rift Valley and the hon. and gallant Member for Nairobi North referred to the effect on revenue of imports control? Both expressed the opinion that we could not expect to get the anticipated additional revenue from spirits and wines. This is true to a certain extent, but most of the additional revenue will be derived from the increased rates on tobacco and cigarettes, and it is not expected that there will be any difficulty in obtaining supplies of these commodities.

The Imports Control Order has been referred to by several members. With regard to procedure, I have noted two or three points where explanation will be useful.

The first point relates to goods manufactured in non-sterling countries received from sterling countries. It has been requested that licences should be issued freely for such goods, but this is not possible as were it agreed to the object of the order could be evaded by merely diverting foreign goods to sterling countries and unnecessarily increasing their cost.

In regard to the second point, it has been suggested that non-essential articles should be listed. It is hoped that this will not be necessary, for at the moment, in

[Mr. Northrop] the interests of the local trading community and provided shipping is available, import licences are being issued to a certain extent for many items which, strictly speaking, might be considered non-essentials.

There is one further point and that relates to the issue of licences for very small amounts. I agree it has been aggravating to traders, but this position has now been corrected, and where considerable cutting down of a trader's application is necessary a licence is either issued for a normal minimum order or else refused. The procedure adopted by the Customs Department is to record in respect of each importer the normal quantities of the commodities that he ordinarily deals with and for these commodities a licence is issued. The hon. Member Mr. Isher Dass referred to certain instances to which his attention had been drawn by traders, and I would point out that it is quite possible in these cases that the particular traders had already received licences for reasonable amounts.

With reference generally to the question of revenue as it is affected by the import control order, Government is fully alive to the effect on revenue, and the hon. Financial Secretary in his budget speech made particular mention of the point. He stated that duty paid stocks in the country at the end of 1940 would be much less than in 1939.

Finally, in regard to contact between the local Nairobi traders and the Customs Department, I may mention that I have attended a meeting of the local traders' association in Nairobi and have received two deputations from local traders during this week. Arrangements are also being made for a senior officer to continue to supply them with information relative to procedure.

Council adjourned for the usual interval

On resuming:

MR. STRONACH: Your Excellency, only a few points have been raised by hon. members which call for a reply on my part, and my dissertation will not take up much of the time of Council.

The hon. Member Dr. Wilson spoke of the incredibly foolish proposal to utilize the railway line as the main trunk road from Uplands to Longinot. The proposal had the approval of the Central Roads and Traffic Board and was submitted to them with full details. Although the hon. member does not specifically say so, I presume the alternative he proposes is the Bamboo Forest road which he is accustomed to use when he travels from Kinangop to Nairobi. I can hardly conceive that he would suggest that the Kedong Valley road should be retained.

I can assure the hon. member that both roads were discussed at great length by the sub-committee of the Central Roads and Traffic Board and, as a result, after very long deliberation, the proposal to adopt the old railway alignment was suggested. It should be clearly understood, however, that the board is only an advisory body, and I propose to suggest, before the final decision is made with regard to the adoption of the railway alignment, that the hon. member be permitted to attend a meeting of the Board so that he can put forward his case. He should come armed with ammunition!

The hon. member appears to doubt whether the Central Roads and Traffic Board has got a road policy. Surely he has perused the report laid on the table of Council in connexion with road improvements? Unfortunately, there is no money to carry out those improvements, so that my department is simply tied down for the time being to carrying out what it can do from maintenance funds.

The statements of the hon. member lead me to believe that the Bamboo Forest road is the one and only road improvement in the Colony. Has he ever travelled over 2,000 miles of road in the Nyanza Province, roads which have been vastly improved in the last five years or so? It is the policy of the Public Works Department, in the absence of capital funds, to do what it can to improve roads out of maintenance funds. In the case of Limuru road, four miles of bituminous surfacing was laid down last year and two or three miles will be done this year. The new road reducing the distance from Kisumu to Nairobi is almost completed;

[Mr. Stronach]

was about £200, and I can assure the hon. Member Mr. Shamsud-Deen that when I travelled over the road it was not joy-riding!

MAJOR GROGAN: Your Excellency, in the course of this debate various references have been made to ball games. At first I had considerable difficulty in recognizing the association, until it brought back to my mind after 65 years' observation of the world since the age of 18 that I have continued to regard ball games as either the proper muscular excitations of seniles or alternately the last refuge of the cerebrally inept! Perhaps that is more or less capable of correlation with this procedure.

If this budget is to be discussed in terms of balls, I submit to my hon. friend the Member for Nairobi South, who started the ball rolling, that he was wrong in his arithmetic. The proper recognition of this debate is not to be measured in terms of one or two balls, but three balls, being the recognized symbol for a pawnshop (laughter), which is a reasonable description of this budget. This, after all, is not really a budget, it is only a sort of presentation of bill of costs of a bailiff for occupation which contains, incidentally, no gleam of any constructive or even conservancy policy on the part of Government. I do not wish, and am sure nobody else does, to impose on the already overtried indulgence of Council in pursuing the matter in great detail, because that will do in Standing Finance Committee, of which I am one of the unfortunate members.

But there are two points I want to try and make.

The first is this: That this budget, or statement of accounts, as laid before us is grossly inaccurate. It leaves with any simple citizen trying to wander through its intricacies an entirely false impression of the financial condition of the Colony. It purports to show a deficit of £53,404. It entirely ignores the whole question of sinking funds which have been contributed by this country. They do not appear on the asset side, either of the railway or Colony budget, and people, of course, have got into the state when they believe, or are led to believe, that the

Uganda Railway owns the Colony, and there is a great deal of justification for such a belief. But, in fact, in a titular sense and other effective sense, when the ultimate showdown takes place it will be found that the Colony still owns the railway.

The railway, as everybody who has anything to do with it, knows to their cost, is a more exacting taxing machine even than the State itself, and the combined effects of the railway as a taxing medium and the Colony itself with its various taxes will lead to an accumulation during the year, or an anticipated accumulation, of assets amounting to £143,098. If you will refer to pages 83 and 84 of the Railway estimates and to page 79 of the Colony's estimates, if I read them aright—I think I have, but they are difficult to understand—they show that either through the Railway or through the ordinary expenditure of Government the Colony will accumulate assets in reduction of debt which, after all, is an asset which few or us are able to attain, to the extent of some £143,000. If you take £53,000 from that, this budget is improperly presented in that there is not a deficit at all but a surplus of £86,000, say £90,000.

Nothing seems more absurd than not to show the real facts of the case, because all sorts of people are liable to come to a false conclusion as to the financial condition of the country and the enormous nature of the exactions made by these two great taxing machines.

That is the first point I want to make, and I hope the hon. Financial Secretary will apologize for having made that fruitful omission in the presentation of the balance sheet of the country.

The next point is the infantile financial methods of this class of country under the tutelage of the Colonial Office. It began, of course, in quite a reasonable way: a little bit of a tuppenny-ha'penny country in an incubating stage, and mother hen used to chuck out a few grain to carry on with from time to time. That stage is long since past, but I do submit that the governors of these colonies cannot help themselves because, as a matter of fact, they are not governors at all but call boys at the end

[Mr. Stronach] that road will reduce the distance by twenty miles.

I would suggest to the hon. member that he is somewhat ungrateful to the Central Roads and Traffic Board as, due to the recommendations of that body, the Bamboo Forest road was vastly improved last year, and I trust that funds to carry out further improvements will be available this year.

The hon. member Mr. Pandya and the hon. Member for Mombasa referred to the necessity of further funds for roads, and hoped that on account of military necessity additional funds would be forthcoming. The hon. Member for Mombasa paid tribute to the Mombasa-Malindi road, and the hon. Member Mr. Pandya to the Mombasa-Tanga road. The coast road communications total 1,127 miles of track and road, and the maintenance and provision of this is only Sh. 10 per mile per annum in certain cases, so that little can be done. The north coast road is definitely improved due to military needs. I cannot promise the hon. Member Mr. Pandya that the Mombasa-Tanga road can be improved any further until capital funds are available; what little has been done has been done out of maintenance funds.

The hon. Member for the Coast referred to the necessity of improvement of coastal communications, and the delay caused by ferries which he hoped in one case would be replaced by a bridge; he also referred to the necessity of improving the Voi river crossing. Again I cannot promise to replace the ferry until capital funds are forthcoming; I am prepared to consider a small expenditure on the improvement of Voi crossing.

The hon. Member for the Coast also suggested the employment of internees on coast roads: I presume he means the deserters now encamped at Marikani. Their employment would not be economical, as they would have to be paid local rates of pay, and their encampment is some way away from the south coast roads. I understand this matter is under consideration for employing deserters in the trades to which they are accustomed. They are definitely not suitable for employment on the roads.

The hon. Member for the Coast referred to the need for water conservation and the waste of water in furrows. As a member of the Water Board he is fully aware that the Water Board is very concerned about the waste of water in furrows and the conservation of water. Unfortunately, it is not possible to provide for additional staff in this year's estimates, but I hope later in the year to be able to detail a junior assistant engineer to assist in the hydrographic work.

The hon. member Mr. Montgomery suggested that if the Public Works Department had not the staff to operate the water boring machines contracts for boring should be let out. Actually, the department has no staff to operate the machines, and they are accustomed to let the machines out on hire to the public. The department are accustomed to let out contracts for boring, and during the past few years contracts for three bore holes were let, two of which were successful.

The hon. member Mr. Shamsud-Deen referred to an item of £31,000 for repair work, and suggested that this should not be included in the Public Works Department estimates but that more appropriately it should be shown in departmental estimates. Presumably he refers to the figure of £18,000 under public works recurrent for maintenance and minor improvements to public buildings. I cannot agree that his proposal would be workable, and this was inserted in the estimates in accordance with Colonial accountancy practice.

He also referred to the poor condition of the Thika road. In this connexion, I have to reiterate what I informed him last year, that nothing could be done to this road until capital funds were made available. Actually, a short section of the road has been improved by bituminous treatment and the cost charged to the maintenance fund.

I should also like the hon. member to be assured that we have never had a request to delay maintenance so that the railway should benefit.

The Nairobi-Mombasa direct road was opened this year to light traffic but not to heavy traffic. The cost of the work

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MAJOR GROGAN: Your Excellency, in the course of this debate various references have been made to ball games. At first I had considerable difficulty in recognizing the association, until it brought back to my mind after 65 years' observation of the world since the age of 18 that I have continued to regard ball games as either the proper, muscular excitations of seniles or alternately the last refuge of the cerebrally inept! Perhaps that is more or less capable of correlation with this procedure.

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[Major Grogan] of the telephone waiting for instructions from officials at the Colonial Office to do certain things without regard to the circumstances under which the instructions are given. The general result of the attitude of mind of the governments of the colonies is that of a schoolboy waiting for a tip from papa in the form of a loan to make up his mind how much gingerbeer and lollipops he can buy with the proceeds. That is a ridiculous method of running the finances of countries which are as self-sufficient as this country is. We are no longer a schoolboy waiting for a tip in the form of a loan, but a grown man with a banking account and credit, and his credit is good, and if only people knew the extent to which this country was tortured in order to carry out its commitments they would realize that its credit was more than good.

If we only realize that, and Government, instead of listening at the end of a telephone, can see the credit of the country and use it, there are bound to be different results and a different sort of budget in a constructive sense. I want to give a little example. We are told that we cannot possibly have a telephone extension or telegraph extension or water supply or whatever it may be because no funds are available. That only means because father's tip was not forthcoming. That is quite absurd in any ordinary financial sense to say funds are not available when surely, in fact, large sums of idle money are waiting for safe investment. After all, these matters of development and progress—in which Government is only mildly interested—such as water supplies, telephone and telegraph extensions and what not, are investments which are self-sufficient and ultimately self-effacing, and what is more simpler than to adopt the ordinary expedient of having ordinary floating debt adjustments through treasury bills, whereby they can be financed with great profit to the State and the accentuation of development?

I congratulate the hon. Financial Secretary on the introduction into this country of the first instance of its kind, in the form of a government guarantee at a rate of interest which enables the money to be found on easier terms than

the ordinary citizen or company can find, and a valuable precedent has been established in connexion with the sisal bag industry at Ruiri, where Government was properly prepared to guarantee and has recommended, and, I think, accepted, the guarantee of a relatively small sum of money required to multiply plant already proved to be a successful ingredient in the activities of the Colony.

I submit that in these troublous times that should receive the closest possible investigation, and admits of possible extension in operation. If these funny old gentlemen and dear old ladies in Downing Street interfere, tell them to go to hell, the proper place where they belong.

The only other matter I would raise is the question of income tax, because I do not like these things to go by default.

Income tax, as on many occasions in this Council I have tried to substantiate, was begotten, delivered, and nursed in an atmosphere of fraud. Strong terms, but I submit justified 100 per cent on innumerable occasions, and I am prepared to do so again if challenged. Unfortunately, these very questionable methods are still proceeding. We see income tax now introduced into Tanganyika and Uganda, for the only possible purpose of trying to justify its introduction in this Colony. Yet the Tanganyika representative from the Colonial Office told the League of Nations that he was confirmed in his belief that the tax was totally inapplicable to Tanganyika, and in Uganda it is well known that the present Governor was opposed to it as an impracticable proposition for Uganda, while the Financial Secretary of Uganda published a report, if I remember rightly, against it.

The fact that it is inapplicable to Uganda is proved by the fact that the natives are excluded from its operation, and Uganda is a country of native barons who monopolize in a large proportion the wealth of the community. Surely, without any question, the natives of Uganda are the wealthiest members of Uganda society? If you have income tax applied to a colony which excludes the wealthier members of society, quite clearly it is a fraudulent application of a thing that is not justified in principle.

[Major Grogan]

We were also told and given the most solemn assurance that the suitability of income tax as a form of taxation applicable to a country under these conditions would receive *de novo* consideration. I can only conclude from the fact that as we predicted this has been promptly increased, it is a facile method of finding the fifth teat on the old cow and, like innumerable other promises of Government, is a promise that has gone with the wind. I notice in connexion with the difficulties of applying income tax to a territory such as this with a mixed community that a certain Mr. Bird, a commissioner in India, overwhelmed with difficulties, committed suicide. I submit that that is an admirable precedent which should not be lost.

MR. WOLFE: Your Excellency, the happy intervention of my hon. friend the Provincial Commissioner for Nyanza in this debate has left me with very little to deal with, but I should like to take this opportunity of dealing with the concern expressed by the hon. Indian members on the operations of the agency under the Sale of Wheat Ordinance.

Their concern appears to be that the agency is imposing on the wheat millers the acceptance of the wheats produced in the country in certain proportions not suited for the manufacture of the quality of atta consumed by the Indian population. I have made inquiries, and the evidence is that they are wrong.

I agree in the first place that they cannot in the different wheat growing districts produce the same quality of wheat. Actually the conditions are different, and the varieties that are used are different, and the resultant qualities are different. It is necessary to ensure that no miller receives preferential treatment over any other miller in the distribution of these different qualities of wheat. Consequently a rule was enacted under the Ordinance imposing on the agency the necessity of giving equal treatment to millers.

The gist of the complaint would appear to be the inequality of treatment which the Indian millers suffer, but my inquiries have shown that though the Indian millers may suffer the consumers themselves need not suffer. Of course, it

is quite clear that all the qualities of atta required in the country can be produced in any quantity required from the wheats distributed by the agency in the proportions laid down. (Mr. Shamsud-Deen: Certainly not.) The real trouble on the part of the Indian millers is, I am afraid, that they have not got the skill and efficiency for turning out these different grades which are required in a highly technical industry of this kind. Complaint was made of the operations of the agency; that because of their associations with the European millers they are harming the Indian millers. If this . . .

MR. SHAMSUD-DEEN: On a point of explanation, I never said the Indian millers: I said all other millers.

MR. WOLFE: All other millers? Then if that is the case I am afraid it is necessary to say that the more efficient and more up-to-date mills are able to produce the article required at lower cost than the others and are receiving the bulk of the orders from consumers.

I am quite satisfied from the investigations made by my department on a previous occasion that these complaints were made, that there is no preferential treatment or privilege of any kind whatever given by the agency to any miller as a result of its association with the milling industry. The hon. Mr. Shamsud-Deen gave us an example of the unsuitability of the Sabanero wheat for the production of atta of suitable quality. Nobody would attempt to make atta for consumption in the chupattali form from Sabanero alone. All these wheats are blended for the production of different grades of flour and atta.

However, I have approached the Indian members in view of the strong concern, for which they believed they had grounds for complaint, and I have asked them to meet me with an Indian miller to be chosen by themselves and a European miller, to discuss the whole question. They have agreed to do so, and the discussion is to take place. I hope to satisfy them that there are no grounds for their complaints except economic grounds which cannot, of course, be avoided.

The hon. Member for Nairobi North made a statement which I feel I must rebut. It was true that there was a delay

[Mr. Wolfe] in the payments for the tea purchases by myself as the Tea Commissioner for the Tea Control Board in London, but that delay was merely due to the fact that the arrangements for the purchases of these various products by the Ministry of Food in Great Britain were extensive and complicated and had to be taken in hand immediately, and it was inevitable that there should be a delay before the first payment was made. I can assure the hon. member that to-day, immediately a shipment is cabled to the Ministry of Food, advance payments are remitted.

The only other question, to be dealt with is the statement by the hon. Member for the Coast that, judging from the report made by the senior agricultural officer the natives in Ukamba are very dissatisfied with the land reclamation work. Unfortunately, it has been associated in the minds of the natives with de-stocking, and that is why this was unpopular. After that disturbance had calmed down the new lines of the work have proved to be quite popular among the natives themselves, who are very pleased with the demarcation of the boundaries of holdings, except for a single small die-hard section of the tribe.

MR. MORTIMER: Your Excellency, the hon. Member Mr. Pandya expressed regret at the elimination of the post of Asian senior sub-draughtsman in the Lands and Settlement estimates. I join in that expression of regret, and I should be happy if some means might be found to restore that post.

The hon. member, and also other hon. members on the other side of Council, referred to the question of Indian land settlement. I would repeat what has been said again and again in this Council: that Government is always prepared to consider with the utmost sympathy any sound proposals put forward by the Indian community for land settlement in such areas as are open for Indian occupation. I was glad to hear the hon. Member for Nairobi North say that so far as he was concerned as the chairman of the Settlement and Production Board, he would give every possible assistance to such proposals and, as Commissioner of Lands and Settlement, I would reiterate

that statement, and I have already given proof of my sympathy towards such proposals during the discussions I had last week with one of the representatives of a leading Indian community. That particular community is considering whether the funds at its disposal will be available for some such settlement scheme at the coast.

The hon. member Dr. Wilson referred to the subject of the survey staff. I have nothing to add on that matter to the reply given by the noble earl, the hon. Member for Kiambu. Six members of the survey staff were taken for military service: two have been restored for departmental work, and efforts are being made to regain the services of a third.

The hon. member also spoke of his concern about the delay in the acceptance of the proposals for the construction of the Thika-Naivasha road. I am authorized to say that the matter will be placed on the agenda for the next meeting of the Central Roads and Traffic Board when the matter will be fully investigated.

The same hon. member, and also the hon. Member for Nairobi South, made reference to the item in the Estimates for the cost of the Settlement and Production Board, a matter of £1,800. The hon. Member for Nairobi North has explained why that appears in the Estimates as a one-line vote, and why no details are furnished. I have no doubt whatever that the Standing Finance Committee will submit that particular item and all its details to the same fierce scrutiny which will be turned upon our ordinary departmental estimates.

I should like to take this opportunity to pay a very sincere tribute to the chairman of the Settlement and Production Board, and to the very energetic and efficient secretary of the Board for the enormous amount of work done during the two-and-a-half months the Board has been in existence. The value of that work will only be realized by the Colony as a whole as time goes on. If the Board is able to achieve the results which it has set out to achieve, then it will have deserved the undying gratitude of every member of this Colony, and that result will be extremely cheap at the price of 21,000.

[Mr. Mortimer]

The hon. member Mr. Kasim referred to a subject which he has very much at heart, that of the Kibos road, or lack of road. Unfortunately, the Indian farmers of Kibos are without any proper means of bringing their products to market; they have no road whatever serving their farms. The track which they customarily use is impassable at certain times of the year. I have every sympathy with the complaint made by the hon. member, and on my request that subject will be placed before the Central Roads and Traffic Board to see if some amelioration for these unfortunate farmers can be found.

The hon. member Mr. Shamsud-Deen mentioned two subjects to which I would like to give a reply.

The first matter is that of the Nairobi shamba plots. This subject has been one of controversy during the past twenty-five years, and I am happy to be able to say that, during this year, Government has approved of proposals for granting long leases to those temporary occupation licence holders on terms which I consider are very generous and which I think the Indians concerned will regard as generous when they hear of them. The great difficulty at the moment is finance. To carry out that scheme will require the production of some £10,000 for the cost of roads and drains, a cost which will be repayable by the plot holders themselves over a term of years. That subject is now being investigated, as to the ways and means of finding the necessary funds, and I hope some solution will be found during 1940.

The other subject on which I wish to speak is the auction of plots in Ruiru township, which it has been announced is to take place in January. This is a very difficult question. Ruiru township and the buildings in it are about the most insanitary in the whole of the Colony, and that is saying a good deal. The Medical Department has condemned practically every building in the place, and it is only because I asked for restraint that definite action has not been taken some time ago to order the demolition of practically every building in the township.

The hon. member suggested that a certain amount of repair and reconstruc-

tion would adequately meet the case, but that is not so. Nothing short of complete demolition and rebuilding will be satisfactory in Ruiru. Unfortunately, the only possible sites for new plots overlap to some extent the sites of the existing buildings. Certain difficulties will, therefore, be experienced. In the sale which has been announced it is proposed that those plots which are overlapping shall be regarded as not owned by the purchasers at the auction until such time as vacant possession can be given.

I can assure the hon. member that I have taken pains to satisfy myself that no undue hardship will be created by having the sale at this time. I am satisfied that the cost of building, although it has increased, has not increased to such an extent that it will be a hardship to the plot holders in Ruiru township. I can also assure the hon. member that every endeavour will be made to avoid hardship on the individual plot holders and to carry out removals from the old plots to the new ones over a period of months in such a way as to relieve any hardship that might otherwise be caused.

I trust that the hon. member will be satisfied with that assurance and that no difficulties will arise.

DR. PATERSON: Your Excellency, the medical issues that have been raised by hon. members during the debate fall into two classes; a small group of complaints made by the hon. Mr. Shamsud-Deen (with which I can deal very quickly), and a larger group, consisting of requests for new Asian and African hospitals, with which I can also deal very quickly as their provision raises financial issues over which I have not got much control.

To deal with the hon. Mr. Shamsud-Deen's complaints: the speaker was reported as having taken exception to the manner in which Government medical officers condemn buildings wholesale without the least regard for the rehousing of the people living in them; and then he said they did not condemn Government buildings because if they did they would lose their jobs. Dealing with his first complaint I would observe that the time has long gone past when Govern-

[Dr. Paterson]
ment officers in this Colony could condemn buildings and require that they should be vacated. That is now a matter for the court, and it is a matter for the local authority in the first instance.

With regard to his second complaint, the hon. Director of Public Works and the hon. General Manager of the Railway will, I think, bear me out that medical officers are not normally slow to condemn Government buildings. As a matter of fact, the particular building to which he referred, namely the police lines in Nairobi, was first condemned by a Government medical officer a long time ago, and he did not lose his job but since then he has been promoted! (Mr. Shamsud-Deen: The buildings are still there.) That is quite true, and without any fear of losing my job, or any hope of favour, I would say, here and now, that I find no difficulty in agreeing with the hon. member about those police lines. But the fact is, it is a question of money.

Turning now to the second class of issues: requests have been made by the noble lord, the hon. Member for the Rift Valley for the provision of money for the extension of the native hospital at Nakuru, and by the hon. Mr. Kasim for an Asian ward at Nakuru, and by the hon. Mr. Isher Dass for the completion of the grouped hospital at Nairobi.

With regard to the latter, I would say that the position with regard to the completion of the grouped hospital is that in order to erect the Asian section, which comes next in our programme, a further large sum of money will be required, and that it is Government's intention to raise a loan to provide that amount of money as soon as possible.

With regard to the provision of an Asian ward at Nakuru I would inform the hon. Mr. Kasim that that was one of the money suggestions which I put forward when I drew up my draft estimates in July, but that, with other proposals, has disappeared by now. If, however, anything can still be done I shall be only too glad.

I come now to the question of the attitude we should adopt towards the native hospital at Nakuru; and up-country hospitals generally.

Of course, I am in the completest sympathy with the noble lord in wishing for additional accommodation at Nakuru—and at Kitale and Eldoret and numerous other places—and I would also agree with the noble lord that Nakuru is the most urgent of all. It is most urgent firstly, because it is the most overcrowded, and then it is urgent in comparison with other places because there one is dealing very largely with bachelor labourers who cannot be nursed by their own womenfolk in their own homes, and they have accidents—machinery and road accidents—many serious.

In the provision and distribution of hospitals generally as between reserves and settled areas, these things have not been forgotten, because if we take the population test, the Nakuru district has 47,000, and so there is one bed for every 600 of the population; if we take the population served at Eldoret, which is about 21,000, there is one bed for every 400, and if you include the people of Elgeyo and Marakwet it is one per 800. Compare that position with the position in the North Kavirondo reserve, where there are 100 beds for a population of 355,000, which gives you something about one bed per 3,700. That is the position in not a few of the reserves.

So it is not that the hospitals in the towns have been forgotten, but that our funds have been inadequate to meet every demand. The noble lord suggested that the difficulty might be got over as regards Nakuru by taking some money from the funds available for the erection of the grouped hospital in Nairobi and using them. He mentioned a sum of £3,000; the figure I asked for in July was £6,000. But I think it would be wrong to do as he suggests. In the first place, we have not at the moment got quite enough money to finish even the African part of the grouped hospital at Nairobi in a reasonably satisfactory fashion. It would not be in the best interests of the country therefore to divert that money.

But the question of the overcrowding of hospitals is not a new one. It existed when we first considered the building of a large grouped hospital here, and it was in fact one of the reasons for building it.

[Dr. Paterson]

If we are going to improve the medical services throughout the country, we have got to have a well trained staff, and particularly a staff of African women nurses. There is no place where that can be done at the present time, but it is an extremely important thing to train African women. It will be of immense benefit to the people throughout the country, not only to the hospitals but on the farms and in their own homes. It would, of course, be wrong to be extravagant, but I do not think we are being extravagant in this building which has been described as "palatial". I think it is good, and that it will serve our purpose and will, I trust, help raise our standards, but it is no better than is absolutely essential.

I come to one last point. The noble lord suggested £3,000 for Nakuru. I doubt whether, in the present circumstances of the country, it would be correct to spend even that amount of money there. There is a very great deal to be said for what was said by the hon. Member for Nairobi North. Under the circumstances the most that you can do is to put people into places where they get shelter from the weather. I agree that we want more shelter at Nakuru but there that must suffice. But as regards Nairobi I think it is in the best interests of the country as a whole not to depart from the policy which was very carefully considered in this Council in the past; and which contains a constructive idea which it would, I think, be a very great mistake to depart from and the more especially so when we are at war.

MR. RAMMELL (Acting Conservator of Forests): Your Excellency, may I say that the answer to the question asked by the hon. Member for Usin Gishu about the fall of revenue in the Forest Department, is that the diminution by the Railway of the use of wood fuel is the reason for the diminution in revenue.

MR. WILLOUGHBY (Acting Postmaster General): Your Excellency, I have no questions to answer of a departmental nature, because it would appear from the course of the debate that the irritant of censorship has paled into insignificance the general working of the Postal Department. It would not be out

of place to remind hon. members who have criticised this expenditure that a much prized pearl is the natural result of another kind of irritant namely, that suffered by the oyster. In this regard I can assure the hon. Mr. Isher Dass that though the censorship has not been placed under the control of the C.I.D. or the Director of Intelligence, co-operation with them is constant and close in order to secure these pearls of information for which we are looking, and I may add that our finds have not been entirely negligible.

It is easy to understand the criticism of an organization which interferes with the liberty of the individual and hampers the wheels of commerce; it is perhaps more understandable that there should be some resentment at having to pay so large a sum as £10,300 in order to have the even tenor of one's ways disturbed in this manner. I should say that the work is full of difficulties, and there is no extravagance, nor are there any soft jobs. The work that has to be handled comprises all correspondence as that is subject to search. That does not mean that there is a 100 per cent search—there is a reasonable search to ensure that the Defence Regulations are not contravened, particularly with regard to the exportation of currency to foreign lands. Whether correspondence is coming in or going out it has to be censored, and the number of letters that have to be dealt with is something like 22,000 a month. All foreign parcels that arrive have to be examined, and they amount to some 560 a month; all newspaper packets call for attention for subversive literature, and one can say the volume of this amounts to 12,300 per month, already twenty-five languages have been used; all overseas telegrams have to be censored, and they have amounted to 11,200 a month by cable and 4,300 by wireless, making a total of 15,500, or about 550 a day.

Incidentally, on the subject of telegrams, it has been some considerable inconvenience to the business community that no codes are permitted, and so it is proposed to make relaxation in these restrictions and next year four codes will be permitted. That will involve the engagement of four decoding clerks in order

[Mr. Willoughby] to obtain an adequate censorship on that class of traffic.

Turning to the hours of duty, the deputies work from 7 to 9 hours a day, Sundays as well, and other censors work from 6½ to 7 hours a day.

The noble lord the hon. member for Rift Valley questioned the necessity of the censorship, and the hon. Member for the Coast contended that the expenditure was quite unnecessary and unjustified, because the enemy was so far from this country, and the noble earl, the hon. Member for Kiambu, suggested that a substantial reduction in the numbers of the censorship staff is practicable and claimed that much unnecessary work is being done.

I suggest that if fishing vessels went trawling with nets having large rents in them their business could not be a very profitable one.

Censorship in Kenya is part of an Empire-wide net designed by the Committee for Imperial Defence for certain specific purposes. The appropriate parts of this major scheme are carried by each part of the Empire, and Kenya must carry out the regulations correctly and thus do her duty by the rest of the Empire. I contend that all that is being done is essential, but even if Kenya felt this was not the case the regulations could not be relaxed without specific authority from the highest war authorities in London.

Reverting to the suggestion by the hon. Member for the Coast that the enemy is far away, it may not be inappropriate to cite a few words included in the opening remarks of a wireless address on "East Africa in wartime" by the hon. Member for Nairobi North recently. The paragraph is worth reading in that respect; it is as follows:—

"The fact that we have been spared active operations does not mean that the war does not affect us. On the contrary, war conditions are affecting Kenya very directly, and will do so to a steadily increasing extent so long as hostilities continue. The war problems with which we are confronted locally are very difficult of solution, and must be faced with a realization

that we are not an isolated entity, but a tiny component of a huge organization, i.e. the British Empire. As such, we are equally engaged in what many still do not realize is in fact a life or death struggle, and not an easy 'walk-over' which, but for old-womanly fusing, need not affect normal life in Kenya. In a small and remote colonial dependency, the tendency to be self-centred and parochial is understandable, but I am often amazed at the complete failure displayed in some quarters to comprehend the cataclysm that has occurred in the world, or to appreciate the possible consequences to each one of us."

The hon. Member for the Coast made a further criticism, that the deputy censors were not necessary. Actually, there are two assistant censors who are paid an additional emolument of £40 per annum to recompense them for undertaking the additional responsibilities of deputy censors. The posts are not sinecures, but mean hard work for the assistant censors, and we should not begrudge them recognition for their additional responsibilities. The abolition of the posts would not produce the saving to which the hon. member referred.

Another criticism made by various members was that of petty personal inconvenience suffered by virtue of the fact that some letters had been opened by the censors. This inconvenience is reduced as much as possible, but it cannot be entirely eliminated. I would appeal to hon. members and the public generally to assist the censorship by taking it as part of the means of securing public security.

MR. COOKE: On a point of explanation, I do not think the hon. member quite caught what I said. There are three deputy censors, each of whom gets £40 a month. If you multiply that, it costs something like £1,400 a year. That I thought might be saved.

MR. WILLOUGHBY: Might I say...

HIS EXCELLENCY: I cannot allow a further reply.

MR. RENNIE: Your Excellency, various questions raised by hon. members on the other side of Council have been so adequately covered by replies

[Mr. Rennie]

given from this side of Council that, with the exception of the points which the hon. Financial Secretary will cover in his reply, few remain for me to deal with. I should like, however, to take this opportunity to express my appreciation of the nature and tone of the criticism which has been levelled at the Draft Estimates and at various aspects of Government practice and policy. With the possible exception of the criticism made by the hon. Member for Ukamba—who appeared, if I may say so, to suffer from that form of mental excitement and exhilaration which is induced in some people by a surfeit of figures—the criticism was fair and well directed, and proved most useful in bringing to light certain aspects of Government practice and policy which are all the better for seeing the light of day.

From one quarter there was a heavy artillery bombardment, but that section of artillery, somewhat to my surprise entailed its own trenches to right and left, and even carried on a harassing fire on some not very clearly defined objective in its rear. Most hon. members, however, realize that there are three sides to every question: your own side—naturally that comes first—the other fellow's side, and the right side. With that realization it is not surprising that the tone of the discussion has been most reasonable.

To deal with the points raised by individual members, and turning first to the criticisms of the hon. Member for Nyanza I feel, to use a phrase that has become popular in this Council, that I should leave her to the tender mercies of my hon. friend the mover. I would merely say in passing, however, that a closer examination of the statement of assets and liabilities at the end of the Draft Estimates and a proper appreciation of the implication of that statement would have made her realize that the Government stocking to which she referred on several occasions is neither of the elastic variety nor of that elongated variety which has a particular name but is of the type called in some quarters half hose.

I was pleased to hear from the hon. Member for Mombasa that he proposed

to go into this question of freight rates to Port Said. I may inform him that representations have been made to me on several occasions concerning this matter, and I am very glad indeed that he has promised to see what can be done.

He has raised the question of enemy aliens, and made the remark that we should take particular care that in a place like Mombasa no enemy aliens who were likely to do any damage should be set free. I may assure him in this connexion that our policy as regards enemy aliens is more strict than that which is adopted in the United Kingdom, that until very recently no enemy aliens other than refugees have been released, and that within the last week or two it is only a very small number of enemy aliens who have been released: five is the figure given to me by the Commissioner of Police. As regards Mombasa, any releases which have been made there have been made only after the most careful and complete investigations have been made in each case. Not only have the police made inquiries but the naval authorities and the Provincial Commissioner have been consulted.

The hon. member Dr. Wilson raised a point for which I am grateful. It had not come to my notice before, and now that it has been brought to my notice I hope something will be done about it. That is the question of this Thika-Nalvasha road. Like so many questions in this country, the matter depends upon the provision of funds. It is unfortunate that this gap to which he referred does exist. I have made inquiries, however, since he raised the question, and it is proposed to have the matter considered by that board which, apparently, in the hon. member's opinion, is somewhat mythical, the Central Roads and Traffic Board. I am glad to be able to assure him that that board will hold one of its infrequent meetings within the next fortnight.

The hon. Member for the Coast raised the question of leave arrangements and took Government to task for not having arrived at a decision immediately after a reply to this particular question was given in Council some weeks ago. I may inform him that a decision was

[Mr. Rennie] taken within, I think, three days of the reply being given here, but it is one thing to arrive at a decision, it is another thing to put that decision, which has to cover a great many points, in the form of a letter which has to be circulated to heads of departments. I am glad to inform him, however, that the terms of the circular have now been decided upon, and it is proposed that leave should be resumed on more or less normal lines. I should like to make it clear that no officer will be compelled to go on leave. Government considers in these times, when travel on the high seas is not quite the pleasure trip it was at one time, that any officer, especially an officer who would travel with his wife and children, should not be compelled to take leave, and provision has been made for leave to be taken in other countries than the United Kingdom.

Turning now to the speech of the hon. Member for Trans Nzoia, he too raised the leave question and spoke about officials who might perhaps be surplus to establishment. I am not quite sure whether he appreciates the fact that a fairly large number of officials have joined the military forces and that, as far as the Administration is concerned, so far from officers being surplus to establishment at the present time, many necessary posts remain unfilled. I for my part am not so apprehensive about officials becoming surplus to establishment as the hon. member is, because one of my first concerns will be, when we have a few more officials of the Administration returned from leave, to see that the officers in the Secretariat carry a lighter burden than they do at the present time.

I was a little surprised by his remarks to which I have already alluded. If I understood him aright, he took some of his unofficial colleagues to task because they have chosen in a time of crisis and emergency to place their services at the disposal of the Government in order that their experience and knowledge of the country may be utilized in the solution of the various difficult problems that confront Kenya at the present time. If I understood him aright—I repeat the phrase—he would have preferred that

they should adopt the role of critical onlookers watching others struggle with problems which their knowledge and experience make them particularly qualified to deal with, watching others perhaps make mistakes which could have been prevented with their assistance. I was pleased to hear the hon. Member for Nairobi North state in his reply that he, on his part, was entirely unrepentant in this regard and he was not prepared to sit down and leave others to find the means and measures of solving our present difficulties, and I cannot but feel that the hon. Member for Trans Nzoia since he, too, is a man of action, did not express his real sentiments in this matter.

I should like to take this opportunity of expressing the appreciation of the Government of the services of those hon. members against whom this ill-conceived attack has been directed. The services rendered by these hon. members have been of the utmost assistance to Government in facilitating and expediting the carrying out of its various activities and, as has already been stated, they have been of the utmost benefit to the country. I personally should like to express my own appreciation of the assistance and sound advice which has been given me by those hon. members. Without that assistance and advice many of the tasks of the past three months would have been much more difficult.

The hon. member Mr. Shamsud-Deen raised several points. One of them has already been dealt with by the hon. Director of Medical Services, the question of the police lines in Nairobi. The hon. Director may not be aware that the hon. Director of Public Works, the hon. Financial Secretary, and myself visited the lines some ten days ago and, as a result of that visit, plans for improving the lines are being prepared. There again it is a question of finance, and whether it will be possible to provide the necessary funds.

The hon. member also referred to the delay in receiving a letter which had been sent to him by the Secretariat. He stated that the delay in that case—from Monday, the 16th October, I think it was, to the 21st—was a matter of life and death. Actually, he has exaggerated the position considerably. When that

[Mr. Rennie]

letter was sent the final decision on the case to which he has referred had been taken, and even if he had received the letter on the very day on which it was sent from the Secretariat he could have taken no possible step likely to be effective in making any difference to the issue at that time. I therefore think that his expression of dissatisfaction with the censor's department was in that respect a little extravagant. I do not deal with the question of the five days' delay but merely with the point he made, that this was a matter of life and death.

Turning now to the speech of the hon. Member for Nairobi South, not being a cricketer myself I will not attempt to carry on his metaphor dealing with the intricacies of cricket. I will deal with the two points he raised. First, the question of Europeans who are employed guarding the internees.

The hon. member made the suggestion that there would be a possible saving in European man power if that guard was reduced. I may inform him—and I think that perhaps he was aware of this already—that this particular point is one which has been receiving the consideration of Government for some time, and it has now been decided to reduce the number of Europeans on that guard.

As regards the second question he raised, the future of the Kenya Defence Force, there again he really knows more about the subject than I know, and I would merely inform him that this matter has been receiving most anxious and careful consideration by Government. It is not a matter which can be dealt with in a day, because a considerable amount of money is involved. It is hoped that a solution will be found and that in the very near future I shall be in the happy position of being able to reply to his question.

The hon. Member for Nairobi North raised the question of granting magisterial powers to labour officers. I would point out that labour officers already have third class magisterial powers throughout the Colony, but these powers have only been for the issue of a process to compel the attendance of persons before other magistrates. It is not con-

sidered desirable that these labour officers should have second class powers for the purpose of trying cases under the Employment of Servants Ordinance. The labour officers are friends both of employers and employees, and much of this friendly influence they possess at present would be lost if they were to function as magistrates in trying cases.

Finally, I would say a word, since there has been no Blue Pencil Committee this year and I have had little or nothing to do with the preparation of the Estimates, of appreciation of those who have been concerned with the Estimates. The Noble Earl, the hon. Member for Kilambu, has shown and expressed his anxiety as regards the lack of provision for a certain very necessary item of attire for the Clerk to this Council. I would draw attention in this respect to another aspect of the matter which concerns the officer referred to. I would merely invite the attention of Council to the very hard work which has been put in under the most difficult circumstances not only by the hon. Financial Secretary in the preparation of these Estimates but by his assistant, Mr. Troughton, and Mr. Deverell. I, having prepared estimates myself in another colony, know a little of the amount of work that is involved and, knowing that work, I quite frankly have sympathized with those who in the special circumstances that exist in this Colony at the present time, have had the task of preparing the Estimates. (Hear, hear.) And, not being concerned in the matter myself, I should like to express my appreciation of the good work they have done and to bring it to the notice of this Council. (Applause.)

COL. KIRKWOOD: Your Excellency, on a point of personal explanation, I did not wish to interrupt the hon. Chief Secretary while he was speaking, but in his reference to me I did not name the hon. Member for Nairobi North when I was speaking, and he has chosen to pick up the cap and wear it. I would have been surprised indeed if he or any other member on this side of Council had not done good service to Government willingly to help in these difficult times. The hon. member quite missed the point of my remarks, as also did the hon. Member for Nairobi North.

MR. SHAMSUD-DEEN: Your Excellency, on a further point of explanation, I certainly had no knowledge of any decision having been arrived at by Government three or four days previous to the despatch of that letter, and I do not think the censors had any knowledge. Therefore I do not think there was any justification for that delay.

Council adjourned till 2.15 p.m.

On resuming:

MR. LOCKHART: Your Excellency, the analogy that has been drawn between a cricket match and the proceedings in this debate is in some ways rather an apt one; and I am the only one who has a second innings, although a few other members have endeavoured to claim one. I think that it would be pardonable if spectators unversed in the intricacies of this particular game, concluded that there are some members of all the teams who might either have speeded up in the rate of scoring or declared their innings closed earlier than they did!

I think the only point raised by the noble lord, the hon. Member for Rift Valley, that has not so far been dealt with is that in regard to the question of German women and children, who we are maintaining, making some contribution towards their cost of maintenance. The position is that instructions were issued in September that wherever possible the expenses should be recovered from the Custodian of Enemy Property. Claimants on and creditors of German estates have been given until the 31st December to put in claims, and until these claims are received it is impossible to say in what estates funds are available.

The hon. member Mr. Pandya referred to the difference between the figure of £165,000, which I stated would be the yield in these Estimates of the extraordinary taxation, and the figure of £200,000, which was the figure stated in Your Excellency's address to Council. Well, as Your Excellency's address made clear, the £200,000 is for a full year, and I endeavoured to make clear, in arriving at this amount, that instead of obtaining the estimated figure of £55,000 from the surcharges on income tax, which is the

figure for a full year, the yield for 1940 will only be £20,000. That is because it only applies to one instalment and also to the present arrears of assessment.

The hon. member had queried the income tax estimate, but I have no doubt about it myself; it is a figure which is capable of very close estimation. As he will be aware, the Inland Revenue Department have a very well organized system in dealing with applications from the poorer classes of Indians, and I do not think the hon. member will claim that these applications are not very reasonably dealt with, and the same will apply under the surcharge tax.

The hon. member also asked what savings had been made in respect of Civil Servants employed on military service. I cannot give him the figure now, but a statement is being prepared which will be placed before the Standing Finance Committee showing both the savings and also the cost of reliefs, which hon. members will notice are spread throughout the Estimates.

The hon. member gave some instances from the Estimates of various cases which, he said, were evidence of differentiation against Asian Civil Servants compared with Europeans. It would probably be quite impossible, if one looks through, to pick out instances pointing the other way. But I can say, and I am sure the hon. member knows it, that these posts are considered on their merits, and there is no question whatever in the mind of any Government officer dealing with it to make any differentiation of any sort or kind.

The hon. member also referred to cases of motor lorries requisitioned at the coast that had not been paid for. There have been delays, and there are still some outstanding cases. He asked that representations might be made to the military authorities. In point of fact, the payment for lorries is in the hands of the civil authorities and there is a Valuation Board. As hon. members who have attempted to get money out of Government at any time know, it is difficult to do so unless every regulation is complied with. A good deal of correspondence is involved, but I believe that very few cases have not yet been cleared up.

[Mr. Lockhart]

The hon. Member for Nyanza made a very eloquent; but, to me, a somewhat incomprehensible attack on the budget in general. She particularly criticised the proposals for raising revenue, and then proceeded to make very extensive claims for additional expenditure. The hon. member suggested that we displayed a lack of psychological knowledge in not realizing that when taxation was put on a luxury the price went up and consumption went down. Well, in referring to these figures we explained the percentages which had been allowed for this particular reason.

The hon. member pressed for agricultural expenditure on. I gathered, the advice of local committees, and said that what was required was enterprise and courage. The fact is that it requires much less courage than the hon. member seems to think in order to be generous with other people's money, more courage is needed to refuse it. The hon. member will have seen the Bill to amend the Land and Agricultural Bank Ordinance, which has been introduced to allow temporary advances to be made. These advances will be dealt with by the Land Bank Board, and they will not deal with them with an eye to displaying courage: they will proceed on facts and calculation and not by intuition. They are a responsible body, and responsible for the expenditure of public money.

The hon. member also referred to the experimental farm at Songhor. That is a proposal under which a farm was to be commenced under the auspices of the Agricultural Department largely, I think, in order to get accurate statistics to check the figures of the Settlement Report and also to show by demonstration what can be done. What was wanted was £2,180 in 1940, apart altogether from the cost of the land. It was proposed to acquire a farm which has been in operation but which is now on the verge of being bankrupt. That matter can be brought up in Standing Finance Committee on its merits, and in relation to other requirements. But it seemed to me not qualified for inclusion in the budget.

The hon. Member for Mombasa referred to the Commission of Inquiry to

be held into the Customs irregularities, and I gathered rather that he complained that it had not so far sat. The sittings were interrupted by the outbreak of war. I may say that it was hoped to get that commission together in November but, owing to the sittings of this Council, the Legislative Council of Uganda, and of the High Court, it was not possible to get the personnel of the Commission together, but it is hoped to do so in January.

The hon. member asked whether income tax was to be charged on the salaries of members of the Services, and he said that in the last war that was not done. That information is not quite correct: income tax was paid in the last war. There was some reduction made in rates and some special exemptions were given. Here our personal rebates and the rebates allowed for our wives and families are such that Government sees no reason why persons normally resident in Kenya and serving with Colonial units should not pay income tax in the same way as if they were in civil employment. This disposes of the specific query that has been raised by the hon. Member for Uasin Gishu.

The hon. member suggested that we should have an industrial salvage organization to collect scrap metal and so forth. That is quite a new idea to me and to the Supply Board. It will be brought before them, and they will make inquiries about it. I should like, incidentally, to congratulate the hon. member on being a reader of the *Manchester Guardian*, from which he obtained his information. (Laughter.)

The hon. member Dr. Wilson raised the question of agricultural officers in the reserves which, I think, has largely been replied to. On the specific point he raised, that is item 83, that post is in abeyance, and in item 85 he will find that provision is made for a relief. He also inquired into the position with regard to the relationship between local native council finances and those of Government. As hon. members are aware, a most comprehensive report was compiled by the hon. Provincial Commissioner for Nyanza Province, and I am sure that Council will be relieved to learn that though the letter

[Mr. Lockhart] press was destroyed by fire there is one remaining copy which I gather from the hon. member is being used as parrot food, and as no one is prepared to risk an attack of psittacosis presumably he will get it re-typed and set up again. (Laughter.)

A committee was appointed to carry out the work of which the report laid the foundation, but the members of that committee have been switched off on to other things. We have had, of course, the preoccupation of other things in the last few months. I must say that, personally, although there is much to be said for uniformity, after two years' experience I cannot see much wrong with the relations as they exist to-day, and I think the local native council scheme is working very well as it is. However, the inquiry will be pursued when we have disposed of a few, as we think, more pressing matters.

The hon. member Dr. Wilson also made reference to road expenditure. That was dealt with by the hon. Director of Public Works, but I would like to say that, with regard to the reference to negligible amounts for road maintenance as compared with railway maintenance, the amount provided for road maintenance is £120,000. As to whether or not that is a negligible amount depends upon the size of one's ideas. I should imagine that to the taxpayers who have to find it, it is a substantial figure, and as the hon. member is an expert on railway finance he does not want me to inform him of the comparable figure in the Railway Estimates, which is £69,000, and which will be found on pages 18 and 19 of the Railway Estimates.

He raised again the question of African terms of service. I must confess that that inquiry has not got very far. We have had two meetings—I am speaking now from the time when the chairman of the committee was transferred somewhere else and the job devolved on me—then the war broke out, and the fire broke out which destroyed all the records which had been accumulated, and that committee has not met since. There has been a delay, and we have promised that the inquiry will be resumed. I think we

have collected most of the documents by now, or copies of them, and the inquiry will be resumed in January when work on the budget is over.

The hon. member Mr. Montgomery raised a question on hut and poll tax, which I think has been answered. (Mr. Montgomery: No.) Well, he has received the only answer he will get. (Laughter.)

The hon. member also raised the question of the labour officers. The position is that the committee on which the hon. member sat recommended the appointment of two more labour officers, and Government decided in 1939 that only one appointment could be made. The Draft Estimates for 1940 show that there are two posts in abeyance; that is, that two labour officers are on military service. We have obtained a temporary labour officer who has been provided for throughout the year. This means as the matter stands that the department is down by one; as against that the Principal Labour Officer has postponed his leave. Leave conditions in 1940 would appear to be favourable, and I understand that the effective force available is that which could normally be expected. But in view of the reference to the position in regard to labour officers made in this debate, the position will be reviewed in the Standing Finance Committee.

The only remaining point of the hon. Member for the Coast to be dealt with was the one which referred to the question of extravagance in military expenditure. I am not responsible for military expenditure, but I should like this opportunity to defend people who are not in a position here to defend themselves. With that object in view, I endeavoured to extract from the hon. member some specific example capable of proof or disproof, and he mentioned one. I then endeavoured to obtain from him the particulars necessary to allow the case to be inquired into. The hon. member declined to disclose these on the ground that it might lead to victimization. I do not know why or who by. (Mr. Cooke: You have not been so long in Government service as I have, perhaps.) (Laughter.)

I would not suggest for a moment that the hon. member's motive in withholding

[Mr. Lockhart] that information from Council is not fear of victimization, but I suggest that possibly a contributory factor to his reticence was that he had not the particulars at the time, and has not now.

MR. COOKE: The hon. gentleman will presumably apologise if the particulars are given later on?

MR. LOCKHART: I shall offer no apology. I say the hon. member had not got the particulars and has not now. I am therefore unable to deal with the particular case he raised. But I will say that I have made inquiries, and the highest sum of compensation paid by the Valuation Board to date is Sh. 325 for a car which was requisitioned and returned to the owner.

These valuations—and the complaints from other quarters of Council have been not that they have been recklessly extravagant but too low—are done by a board sitting here under the chairmanship of a judge of the High Court, and containing gentlemen such as Mr. A. C. Tannahill, Mr. H. B. Hamilton, and Mr. J. C. Mundy, the Commissioner of Income Tax, and I think the hon. members will agree that no claim submitted to these gentlemen is likely to be dealt with lightly or with disregard to public economy.

The hon. member suggested that somebody should be sent from home to supervise this expenditure. Of course someone was. There is a full colonel of the Army Pay Corps on the staff of the General Officer Commanding as financial adviser.

The hon. member also asked why this Government had not made up its mind in regard to the leave conditions of the Civil Service as rapidly as the Government of Uganda. I suppose the answer is that we have to be more careful of the expenditure of public money than in Uganda, where they have more of it.

The point raised by the hon. Member for Trans Nzoia is one that I should have liked to have gone into at length, and I have the details here, but as he has raised it before I think that perhaps a brief explanation will suffice.

He accuses Government of a breath of faith in regard to certain items. It was recommended in the report of the Standing Finance Committee on the 1938 estimates that these items should be considered—it did not say they should be done—assuming that the year 1937 showed a surplus of over £100,000. The year 1937 did show a surplus of £100,000, and a number of the items have been dealt with already—

COL. KIRKWOOD: On a point of order, what I stated was in the 1937 of the budget session held in 1937, and we were considering the budget for 1938.

MR. LOCKHART: I said that. It was the Standing Finance Committee report on the 1938 budget, but it had reference to 1937.

A particular item in that schedule in which the hon. member is interested is Kitale post office, and he told us it was reported in 1933 that a new one was essential. That merely goes to show that whoever made the report in 1933 was mistaken, because it is now 1939, and Kitale is still sending off and receiving its telegrams and mails. I sent a telegram from there myself. The office is a poor building—there are many others—but I do not think it is one that can be put very high in the order of priority to-day with the funds we have at our disposal.

Another suggestion the hon. member made was that there should be the appointment of a committee to review the steps taken in regard to price control. Well, there is a committee. It is responsible to Government, and Government is certainly not prepared to appoint another committee in order to review their work. I think there is some misconception regarding price control. There is a very large range of articles not subject to price control.

The hon. member said the present procedure is a failure. I endeavoured to show, and I repeat this, that as far as control of the prices of essential food-stuffs produced in the country, and there is quite a wide range, that procedure has functioned efficiently. The procedure regarding imported goods is very much more difficult. We are trying to fill up some of the gaps and will, as far as it

[Mr. Lockhart]

is possible to do so, produce a workable scheme and one we can make effective. But I must again repeat what I said in moving this motion, that increases in prices are inevitable and because they have occurred, and occurred to a great extent, it does not follow that they are preventable.

The hon. member asked why the Post Office Savings Bank has no investments in Kenya stocks. Well, it is not usual to invest money in your own securities, for obvious reasons, and there would be no advantage to anybody investing Post Office Savings Bank balances in Kenya stocks.

The hon. member suggested that petrol control was no longer necessary because of the stocks held in the country. There are adequate stocks, but the stock of petrol in November was reduced by 637,000 gallons in spite of control. We have been asked to economize both in the use of tankers and in the use of petrol.

The hon. member suggested that the Standing Finance Committee should cut out all increases, whatever they were, in the estimates. I rather gathered he was prepared to make some exception to the general rule in regard to Kitale school and post office!

COL. KIRKWOOD: On a point of explanation, I explained that they were not new items. I was not asking for new items to be inserted in the budget for 1940.

MR. LOCKHART: I can assure the hon. member that any expenditure on Kitale school or post office will be new items: they are not in the estimates now—

COL. KIRKWOOD: Again due to a breach of faith by Government.

HIS EXCELLENCY: Order, order.

MR. LOCKHART: And have never been in.

The hon. Member Mr. Shamsud-Deen raised the question of the Asian sub-inspectors of police. That is a long standing question, and it has recently been raised again by the Commissioner of

Police. We do not admit that they are not as well off as Asian clerks; in fact, we have tables which we think show the contrary. But the matter is under active consideration and will, I think, have to come to the Standing Finance Committee.

The hon. member for Nairobi South referred to the increase, which he worked out at a figure of £84,000, under various heads of the estimates. I do not want to go fully into that figure but, as far as recurrent expenditure other than military is concerned, the hon. member will see from the table on the first page of the memorandum that the increase is £5,366.

The hon. member raised the question of the Kenya Defence Force rates of pay. The position is that the differentiation does not apply to the rank and file but only to certain senior posts, and I still think that the basis of differentiation as given in the answer I gave to the question on the subject is a sound one. The Kenya Regiment in the main have put in—I am not reflecting on the Kenya Defence Force—but the fact is they have put in more serious periods of training before the war and were better fitted for a military role. It is a fact that because of the conditions under which they were employed the K.D.F. officers were enabled to keep in touch with their civil avocations. The hon. member said that normally there was no differentiation in the pay of infantry battalions, but I submit that the K.D.F. was in a somewhat different case. I am not at all sure in regard to the hon. member, that if he had been the commanding officer of one of the infantry battalions of the Colony we should, for instance, have had the benefit of his presence in this Council this last week or two, whereas as Commandant of the K.D.F. he is free to keep in touch with his public work and others are free to keep in touch with their civil employments. But if there are particular cases where it can be shown for some reasonable period—I do not mean for a week at the outbreak of war on guards, but some reasonable period—that the duties performed by the officers of the K.D.F. and Kenya Regiment are identical, I suggest that the hon. member should make suitable representations to the General Officer Commanding.

[Mr. Lockhart]

The hon. member Mr. Isher Dass criticized the effect of import control in the way it was working. I think these points have been dealt with by the hon. Commissioner of Customs. The hon. member suggested that a list of control prices should be put up in every shop. We did consider that, but the difficulty is that if the scheme is to be made workable there must be some flexibility and prices must be changed frequently. To get these alterations circulated to every shop, particularly in the native reserves, would not be a feasible proposition, and we concluded that on the whole it would be likely to do more harm than good. The hon. member said the present system would not be in the interests of either buyers or sellers. It seems to me it must operate in one direction or the other or else reach a stage of equilibrium.

The hon. member raised the question of compensation at Moyale. I understand that claims are in process of preparation for losses which were suffered as a result of that evacuation, and when they have been received it will be a matter for the Standing Finance Committee to examine them and decide the policy to be pursued.

He also complained of the composition of the Rent Restriction Committee, which consisted solely of members of the capitalist class, whatever that may mean. I suggest that the hon. member might await the results of the recommendations of the committee, which has now concluded its work. Whether it belonged to the capitalist class or not, that work was completed in a quarter of an hour, which is a pleasant change from the operations of more democratic bodies. (Laughter.) I think the hon. member will not find himself dissatisfied by the results.

The five police cars to which he referred are not bought for the officers themselves to use, but only for police duties.

The noble earl the hon. Member for Kiambu gave us a rather gloomy picture of the position of the coffee industry, and one must say that the present position does give grounds for apprehension.

but we have had grounds for apprehension regarding the coffee industry before which have proved to be unfounded. The worst has not happened yet. If it does, what more Government can do than either lend money or give money I do not know. We cannot command the rainfall.

The noble earl very gracefully offered to sink his principles in regard to income tax owing to the war, and he very reasonably and properly agreed, I think, that that controversy might well be allowed to lapse. I trust his example will not be lost on some other hon. members of Council. (Laughter.)

On a small point raised with regard to the man power vote, I agree that some provision is required for the expenses of Indian man power committees.

The hon. Member for Nairobi North referred in connexion with the control of prices to the question of hoarding. That is an evil unquestionably, which I think is not impossible to deal with. In fact, there is some reason to suppose that action taken in the last few days has had a decided effect: I am given to understand that piece goods are now being sold at below the control prices laid down. How long that will last I do not know. I am not hopeful that in one effort of that sort we are going to deal with the question. We shall have to try as time goes on to match our ingenuity as best we can against that of others.

Regarding the farm school, the hon. member is aware, I think, that that question is under consideration, and that there is an excellent prospect of funds being found.

The hon. member referred to the amendment of the Land Bank Ordinance and, in particular, to an article in the *East African Standard* which I have since read and which I understood the hon. member invited me to reply to. Well, leading articles in newspapers are usually forgotten by those who read them and those who write them 24 hours after publication. This came out on Wednesday last. I do not feel called on to deal with the misconceptions of leader writers in local papers as part of my job.

[Mr. Lockhart]

On the question of extra police, there is provision under war expenditure, civil, for 20 European police officers. I understand that some have been recruited. The question of transferring them later to an increased normal civil establishment is one for consideration possibly when the war is over.

The hon. member referred to what I said with regard to war expenditure when moving this motion, and asked me to explain more particularly what was meant. Well, I have read the particular paragraph over carefully, and I am not conscious of there being any obscurity in it.

The hon. Member for Uasin Gishu referred to cases in the estimates in which increased emoluments are proposed for particular persons. I think it will be found that these merely embody increases approved this year.

With regard to this point that permission should be given to shoot game on unoccupied farms, I cannot answer now, but the point will be considered in the proper quarter.

He regretted that the cadre of magistrates had been reduced by one. It is proposed to keep the post filled from the Administration, and it does not mean a reduction in the number of magistrates.

The £2,000 included in the estimates as compensation to K.U.R.H. is put in under agreement and cannot, I am afraid, be eliminated in 1940.

I have not had time to get the material to answer the hon. member's question as to when the peak period of pensions is likely to be reached. But if the hon. member will peruse a copy of the report on the finances of this Colony prepared by Sir Alan Pim, he will find a calculation in it, and I think the date was 1948, but I cannot be certain about that.

In regard to internees, as I said earlier in the debate, some repatriations have taken place, and this is a matter on which action is being taken.

The guarantee to Barotsi—it is impossible to say at this stage what the

financial results will be. So far, they have been favourable. The circulation, I understand, is round about 13,000 copies, and it may well be that our obligation, if indeed there is one, will be quite a modest sum.

The question of the report on the civil service—the reason for the delay there is that the Civil Servants' Association has asked for the opportunity to study the report before any action is taken on it. Their comments have now been received, and I think I am correct in saying that the question is on the agenda for the next Executive Council.

The hon. Member for Ukamba succeeded once again in combining great strength of language with an inaccurate foundation. He endeavoured to show, if I understood him correctly, that the budget for 1940 was not unbalanced because of the payments which had been made into the sinking fund accounts. Our statement of assets and liabilities is a cash statement, it does not profess to include all the assets of Government; it does not include the value of buildings and so on. It is a statement of the immediate cash assets and cash liabilities, and is designed to show, and does show, the balance which is at the disposal of the Legislature for expenditure. These sinking fund accounts are, and ought to be, held for specific purpose and are held by trustees: They are not at the disposal of Government for expenditure, and it would be quite improper to draw up accounts as if they were.

MAJOR GROGAN: Your Excellency, on a point of explanation, my objection is to the use of the term "deposit". If you buy £140,000 worth of bonds you do not throw these out of the window—at least I don't—you say that you have £140,000 on deposit.

MR. LOCKHART: The fact remains that if you drew £140,000 on your account to buy bonds, you would have £140,000 overdraft. The amount is not in your liquid accounts and is not available to spend, and so far as revenue and expenditure is concerned it is a deposit.

[Mr. Lockhart]

In regard to capital expenditure, the hon. member suggested that that could be financed by floating debt, by short term borrowing and Treasury bills. I do not think there is a very big market in Nairobi for Treasury bills. Our arrangements for short term borrowings if needed are on the co-operative system through a general colonial fund. The question is not that of borrowing on short term at all, the question is of adding to long term commitments by our expenditure if we borrow money, especially if we borrow money on non-revenue earning works. It is true that we can finance ourselves by temporary borrowing for a short while, but we have later to put ourselves on a long term basis with its permanent and inescapable commitments on our budget, and surely we have had enough experience to show the dangers and difficulties to which this might lead, and that is the reason for caution in borrowing long term money to-day.

In regard to income tax, and the consideration of policy which is now being given by the Governments of Tanganyika and Uganda, that is not a question which I think this Council need deal with at this moment.

That deals, as far as I know, with all the various points which have been raised. In conclusion, I would merely like to associate myself with the hon. Chief Secretary in the tribute which he paid to the constructive tone of the debate throughout.

The question was put and carried.

SEASONAL GREETINGS

HIS EXCELLENCY: As this is the last meeting we shall be having before Christmas, I take this opportunity of wishing hon. members as happy a time as possible in these anxious days.

ADJOURNMENT

Council adjourned till 10 a.m. on Thursday, 28th December, 1939.

Thursday, 28th December, 1939.

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Thursday, 28th December, 1939. His Excellency the Acting Governor (W. Harragin, Esq., K.C.) presiding.

His Excellency opened the Council with prayer.

OATH OF ALLEGIANCE

The Oath of Allegiance was administered to:—

Ex Officio Member—

The hon. D. L. Blunt, Director of Agriculture.

MINUTES

The minutes of the meeting of 15th December, 1939, were confirmed.

PAPERS LAID ON THE TABLE

Mr. Rennie laid on the table the report of the Standing Finance Committee on the Draft Estimates of Revenue and Expenditure for 1940.

ENTERTAINMENTS TAX ORDINANCE, 1931

CONTINUED IN FORCE FOR ONE YEAR
MR. LOCKHART: Your Excellency, I beg to move:—

Be it resolved, that the Entertainments Tax Ordinance, 1931, shall remain in force until 31st December, 1940.

Hon. members will be aware that this tax was imposed in 1931, and the Ordinance requires to be renewed annually by resolution. The necessity for revenue from this source is obviously as strong as ever. It has been allowed for and included in the budget placed before hon. members for 1940. I do not feel that any further explanation is necessary.

MR. WILLAN seconded.

MR. SHAMSUD-DEEN: Your Excellency, the only explanation which I think is necessary is why, for the last 10 years, it has been extended from year to year. If in the light of past experience we think it has come to stay as permanent taxation, it would be much more honest and straightforward manner of dealing with this part of the revenue if the Ordinance were made permanent instead of renewing it from year to year. I think the hon. mover should give the Council some indication as to why he considers it necessary that in the ensuing year an extension of the Ordinance is necessary. There must be some reason,

[Mr. Shamsud-Deen] otherwise let us pass an ordinance and say it is to stay for all time.

MR. LOCKHART: Your Excellency, I fail to see myself anything dishonest or not straightforward in putting this motion before Council each year. I think I can say that as far as Government is concerned we should be perfectly prepared to make it a measure which is permanent in the same way that other taxation measures are. It has always been done this way, and I suppose hon. members opposite rather welcome the opportunity of reviewing the necessity for this tax each year.

As to the explanation for its necessity, I gave one when moving the motion, which is that we have an unbalanced budget, and in this year of war, revenue from this measure is as necessary as it has been since it was introduced in 1931. I can say no more than that.

The question was put and carried.

LAND AND AGRICULTURAL BANK (AMENDMENT) BILL

FIRST READING

On the motion of Mr. Willan, the Land and Agricultural Bank (Amendment) Bill was read a first time.

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

WAR TAXATION BILL

SECOND READING

MR. LOCKHART: Your Excellency, I beg to move that the War Taxation Bill be read a second time.

Clause 2 of the Bill imposes for the limit of the period stated in clause 4 a surcharge of 40 per cent on individuals and 50 per cent on company income tax, and clause 3 imposes an addition of 50 per cent in the non-native poll tax. These increases were explained in Your Excellency's address to the Council at the opening of this session, and to refresh the memories of hon. members I do not think I can do better than to quote from your address:—

"The surcharges proposed are 40 per cent in the case of individual taxpayers and 50 per cent in the case of companies. In regard to the figure of 40 per cent, this represents approximately the average increase in income tax which is to be imposed in the

United Kingdom on taxpayers whose incomes range within scales comparable to those in Kenya. The increase of 50 per cent in the case of companies is in excess of the corresponding proportionate income tax increase in the United Kingdom, but it must be borne in mind that companies in the United Kingdom are also subject to National Defence Contribution and Excess Profits Duty. As hon. members are aware, an increase in company tax has little effect on companies operating in Kenya and registered in the United Kingdom, and that in the case of local companies, individual shareholders obtain an adjustment by reference to their individual liabilities.

It is proposed that non-native poll tax should also be subject to a surcharge which will amount in the case of non-income tax payers to £1 a year for Europeans, Sh. 15 a year for Asian non-natives and Sh. 10 a year for other non-natives. As non-native poll tax is set off against income tax, those who normally pay income tax will not be affected by the increased poll tax."

There is one other point of detail to which I would call attention. It was decided in the case of non-native poll tax that it was unnecessary to increase the present penalty for late payment, and that is done by clause 3 (2) of this Bill.

These proposals have been known to hon. members for some time, they were referred to and their results were embodied in the budget, and I think at this stage that there is little necessity for me to add anything to Your Excellency's explanation at the opening of the session.

MR. WILLAN seconded.

The question was put and carried.

SUSPENSION OF STANDING RULES AND ORDERS

MR. LOCKHART, with the permission of His Excellency, under Standing Rule and Order No. 108, moved that Standing Rules and Orders be suspended to enable the 1940 Appropriation Bill to be taken through all its stages this day.

MR. WILLAN seconded.

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

1940 APPROPRIATION BILL

FIRST READING

On motion of Mr. Lockhart the 1940 Appropriation Bill was read a first time.

SECOND READING

MR. LOCKHART: Your Excellency, I beg to move that the Bill be read a second time.

As hon. members are aware, it is essential to obtain the approval of this Council by means of an ordinance in order to incur public expenditure, and it is necessary to put this Bill through now in order that we may have authority as from the 1st January, 1940. The figures in the schedule are based on the estimates as amended by the recommendations in the report of the Standing Finance Committee, but Government undertakes if, as a result of the discussion of that report, any amendments or alterations are agreed to by Council, to introduce the necessary amending ordinance.

MR. WILLAN seconded.

The question was put and carried.

BILLS

IN COMMITTEE

MR. WILLAN moved that Council resolve itself into committee of the whole Council to consider, clause by clause, the 1940 Appropriation Bill and the War Taxation Bill.

MR. DENNISON seconded.

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

His Excellency moved into the chair.

The Bills were considered clause by clause.

MR. WILLAN moved that the Bills be reported without amendment.

The question was put and carried.

Council resumed its sitting.

His Excellency reported the Bills without amendment.

THIRD READING

MR. WILLAN moved that the Bills be read the third time and passed.

MR. DENNISON seconded.

The question was put and carried.

The Bills were each read the third time and passed.

ADJOURNMENT

Council adjourned till 10 a.m. on Wednesday, 3rd January, 1940.

Wednesday, 3rd January, 1940

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, 3rd January, 1940, His Excellency the Acting Governor (W. Harragin, Esq., K.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of 28th December, 1939, were confirmed.

ORAL ANSWERS TO QUESTIONS

No. 66—**STOCK THEFTS IN UASIN GISHU**
MR. GHERSIE asked: Will Government state—

(a) The number of stock thefts that have taken place on the Uasin Gishu from the 1st January, 1939, to date?

(b) How this figure compares with other districts?

(c) What were the number of convictions in the Uasin Gishu during the last two months?

(d) What cause does Government attribute to the recent convictions?

MR. RENNIE:—

(a) From the 1st January to the 13th December 77 thefts of cattle and 32 thefts of sheep were reported to the police in the Eldoret District.

(b) The total, 109, compares with the following totals in respect of districts in which stock thefts are ordinarily prevalent:—
Nakuru 97, Naivasha 76, Lumbwa 64, Nyeri 54, Kisumu 49 and Kitale 31.

(c) During the last two months convictions were obtained in 34 cases of cattle theft and five cases of theft of sheep.

(d) Owing to the exceptional conditions arising from the temporary suspension of Police in a position to post additional European police officers to the area for the special purpose of investigating stock thefts.

MR. GHERSIE: Arising out of that answer, Your Excellency, will Government give an assurance that there will be no immediate reduction in the police personnel in the Uasin Gishu?

MR. RENNIE: I am afraid it is quite impossible for me to give such an assurance at the present time without looking into the staff conditions in the police force existing at present.

TRADES DISPUTES (ARBITRATION AND INQUIRY) BILL

SECOND READING (Contd.)

The debate on the second reading of the Trades Disputes (Arbitration and Inquiry) Bill was continued from the 7th June, 1939.

MR. WILLAN: Your Excellency, before the debate on the Bill proceeds, I would explain, as I did not do so on the 7th June, that it is Government's intention that this Bill should go to a select committee.

MR. ISHER DASS: Your Excellency, I am glad that the hon. Acting Attorney General has stated that the Bill is to be submitted to a select committee for consideration.

There are one or two points in connexion with the Bill which I feel I must raise.

On the 11th June, 1939, the Labour Trade Union of East Africa submitted a memorandum to Your Excellency for consideration. It is not very lengthy, and I will read one or two portions:—

"The conditions of workers in Kenya Colony are really miserable. Low wages, long working hours, bad sanitation and insufficient and dirty housing are on the order of the day. Absence of any proper factory legislation and of Workmen's Compensation Ordinance has further increased the difficulties and miseries of the workers.

Such miserable conditions and unsympathetic attitude of the Government towards these conditions have compelled workers in the Colony to organize themselves in trade unions and, in cases of dire necessity, to resort to strike actions.

The Government should have considered this new step of the workers as a hint that it was necessary to introduce some legislation to ameliorate their conditions. But, instead it imposed strict restrictions upon their movement by enacting the Trade Unions Ordinance, 1937, providing for compulsory registration of trade unions and for declaring illegal all unregistered trade unions.

Even after the passing of this Ordinance it was still the duty of the Government to do something for the benefit of the workers, but, unfortunately, it paid not the least attention to the demands of this trade union and of the workers towards this end.

The establishment of an arbitration tribunal is not desirable in this country, as the employers and employees have not equal opportunities in social economic and political fields, as the means of propaganda—Press, platform and radio—are concentrated in the hands of either the employers or the Government, and as the attitude of Government is not sympathetic towards the interests of workers.

The Government as constituted at present is not in a position to remain impartial in trade disputes. Its policy of delaying the introduction of Workmen's Compensation Ordinance for nearly five years, its refusal to enact legislation for the regulation of working hours, and its promptness to enact legislation against the interests of workers clearly prove that the real sympathies of the Government are with the employers and not with the workers and employees, for example, Trade Unions Ordinance, 1937, and this Ordinance.

The union, therefore, urges upon Your Excellency that all sections in the Ordinance relating to the establishment of the arbitration tribunal should be deleted.

In conclusion, we hope that the Government will see into the justification and necessity of the above-mentioned suggestions, and therefore amend the Ordinance as desired."

[Mr. Isher Dass]

In this memorandum the Labour Trade Union have requested Your Excellency to delete from the Bill the word "tribunal." They sincerely believe the board of inquiry, if it consists of equal numbers of representatives of employers and of trade unions, will go a long way to serve the purpose. But in this Bill as it is drafted, by a strange coincidence Government have thought fit to take the same powers into their own hands when both parties ask Government to intervene in any trade dispute. I refer to clause 3 (2). This provides:—

(2) Where a trade dispute exists or is apprehended, the Governor may, subject as hereinafter provided, if he thinks fit and if both parties consent, refer the matter for settlement to an Arbitration Tribunal constituted of either—

- (a) a sole arbitrator appointed by the Governor; or
- (b) an arbitrator appointed by the Governor, assisted by one or more assessors nominated by or on behalf of the employers concerned and an equal number of assessors nominated by or on behalf of the workmen concerned, all of whom shall be appointed by the Governor.

Provided that the award shall be made and issued by the arbitrator only; or

- (c) one or more arbitrators nominated by or on behalf of the employers concerned and an equal number of arbitrators nominated by or on behalf of the workmen concerned, and an independent chairman, all of whom shall be appointed by the Governor;

Provided that where all the members of the tribunal are unable to agree as to their award, the matter shall be decided by the chairman as sole arbitrator.

If the board of inquiry consists of representatives of all parties or assessors nominated by the Governor subject to the parties consent, to assist the sole arbitrator, then it is all right, but this

arbitrary power is given to one man, that he shall give the award. This is not understood by many people, and it seems a rather one-sided show.

In clause 8 (1) it is provided:—

8. (1) Where any trade dispute exists or is apprehended the Governor may, whether or not the dispute is reported to him under this Ordinance, inquire into the causes and circumstances of the dispute, and, if he thinks fit, refer any matters appearing to him to be connected with or relevant to the dispute to a board of inquiry (hereinafter referred to as the Board) appointed by him for the purpose of such reference, and the Board shall inquire into the matters referred to it and report thereon to the Governor.

I am of the opinion, and so is the Labour Trade Union of East Africa, that unless Government is approached by both parties they should not interfere, because the reason is that in some cases if the workers in a factory or any commercial enterprise ask for an increase in wages or an amelioration of their conditions and the employers do not agree, the employees would have to organize themselves or resort to action like a strike, but they fear that if they made any request to Government in the event of the employers refusing to accede to the demands of the workers, Government would probably not interfere, saying that they saw no reason to. If in the event of the employees having organized themselves in a strike, the employers, if they approached Government, would find Government as sympathetic as they usually are to employers, and the latter have more facilities on account of their social and economic conditions and are in the good books of Government, and Government will immediately interfere on their behalf. We fear that Government is not likely to be impartial, but partial, to one class only. Therefore, in any event, until Government are approached by both parties they should not interfere in the matter at all.

The working classes in Kenya have no objection to Government if the question of a board of inquiry only has to inquire and report. If a board is appointed and its report is submitted to Your Excellency for consideration and final de-

(Mr. Isher Dass) cision, that is a different matter, but they strongly object to tribunals, because without equal representation they will have full power to make their report as it is binding.

In clause 9 there is a minor matter in the proviso which we feel should not be left there:—

"Provided that there shall not be included in any report or publication made or authorized by the Board or the Governor any information obtained by the Board in the course of the inquiry as to any trade union or as to any individual business (whether carried on by a person, firm or company)."

This means that secrecy has to be observed, and whether the parties concerned want secrecy or not they do want the proceedings to be open, and whatever evidence is given made public by the Press. This clause should be amended to provide that the Press shall be permitted into such inquiries so that the evidence given should be made public and the public know exactly the real situation and the reasons.

In clause 12 (2) there is a proviso imposing a punishment if any comments on the report are made until the report has been submitted to Your Excellency:

"Provided, however, that until the award or the result of the inquiry has been published by order of the Governor no comment shall be published in respect of the proceedings or the evidence. Any person guilty of a contravention of this provision shall be liable on summary conviction to a penalty not exceeding one hundred pounds."

Actually it means that if in the course of evidence some kind of oppression is brought against individuals giving evidence or intimidation exercised, the Press is not allowed to pass any comment on any part of the proceedings. This is not fair. I say that the inquiry should be entirely opened to the public and all criticism, even the composition of the committee, should be subject to Press comments. In some cases you find

committees appointed by Government which mostly consist of men representing one interest and not the other. Therefore the Press should not be strangled in this matter and prevented from giving all sorts of fair comments in the case of an inquiry or proceedings or as to the result of the inquiry.

Those are all the points that the Labour Trade Union of East Africa and the public are very anxious about, and while Government is anxious to pass this Bill they think that the question of the board of inquiry and undue interference by Government should be seriously considered by the select committee.

MR. NICOL: Your Excellency, the second paragraph in clause 2 (1), the interpretation clause, is very wide indeed, and it would appear that any clerk or workman who felt he was an injured party could make application under this Bill to have an inquiry.

In clause 3 (1) it would appear that the Governor is limited to order an inquiry only providing that both parties agree, and I should like to suggest that there is a danger of frivolous use being possibly made of the Bill unless it is made quite clear that the Bill is limited to major disputes. Otherwise, possibly there is a danger of some petty grievance being turned into a mountain.

My next criticism is concerned with clause 3 (2), where three alternatives are provided for appointing an arbitrator or arbitrators. It is suggested that some provision should be made to allow the parties concerned to have some say in the appointment of arbitrators.

Clause 6, in regard to the publication of the award: it is suggested here that this should only take place providing the parties concerned agree. I should like to suggest that it be re-worded as follows:—

"Any award of an arbitration tribunal shall be submitted to the Governor, who shall, as soon as possible thereafter, notify the parties. The publication of the details of such award will only be made with the consent of both parties."

Subject to these few amendments, we in my part of the world support the Bill.

MR. WILLAN: Your Excellency, with regard to the remarks made by the hon. member Mr. Isher Dass, it may interest him to know that last week I wrote to the secretary of the Labour Trade Union of East Africa and invited him or his representative to appear before the select committee in order that he or his representative may advance the arguments set forth in the memorandum which was sent to Government.

The hon. member seems to be under a very grave misapprehension regarding the objects and reasons for this Bill. As I understood him, he seems to imagine that the Bill was introduced solely for the Labour Trade Union of East Africa. That is not so. It has been put up for the benefit of employees and employers.

The hon. member went on to complain that Government would not be impartial when acting under the provisions of the Bill and would invariably take the side of the employer. I take this opportunity of refuting that accusation against Government.

The hon. member went on to deal with clause 3 (2), which empowers the Governor to appoint a sole arbitrator or appoint an arbitrator assisted by one or more assessors nominated both by employers and employees. The third method is that one or more arbitrators can be appointed, and they will be nominated in equal numbers by employers and employees. Therefore I do submit that under this clause nothing could be fairer than the way in which it is drafted at the present time.

The hon. member went on to deal with clause 9 and complained about the proviso, which reads:—

"Provided that there shall not be included in any report or publication made or authorized by the Board or the Governor any information obtained by the Board in the course of the inquiry as to any trade union or as to any individual business (whether carried on by a person, firm or company) which is not available otherwise than through evidence given at the inquiry."

He forgot to read that part where it is provided that information may be dis-

closed only "with the consent of the secretary of the trade union or of the person, firm or company in question."

The hon. member complained about the proviso to clause 12 (2):—

"Provided, however, that until the award or result of the inquiry has been published by order of the Governor no comment shall be published in respect of the proceedings or the evidence."

That merely follows the usual law with regard to proceedings in court. Here we say that a fair and accurate report or summary of the proceedings may be published in the Press, but debar any comment until the proceedings have reached finality, and then comments can be made. That follows the ordinary law regarding proceedings in any court here and at home.

With regard to the remarks of the hon. Member for Mombasa, I think he is under a misapprehension as to clause 3, because that does not deal with inquiries. As I stressed in moving the second reading of the Bill, clause 8 deals with inquiries, but clause 3 with arbitration. In other words, clause 3 is the method by which a solution can be brought about by arbitration, and clause 8 provides the inquiry into any dispute which has either taken place or is about to take place.

Regarding his remarks about the definition of "trade dispute", he suggested that this Bill should be confined to major disputes. Perhaps the hon. member would like to appear before the select committee and suggest a definition for major trade disputes, because I cannot think of one at the present moment.

He went on to deal with clause 3 (2), in which he suggested that the parties concerned should have some say in the appointment of arbitrators. In paragraph (c) of that sub-clause, the parties concerned—the employers and employees—have some say in the appointment of arbitrators, because that paragraph reads:—

"One or more arbitrators nominated by or on behalf of the employers concerned and an equal number of arbitrators nominated by or on behalf of the workmen concerned."

MR. NICOL: On a point of explanation, I was really referring to paragraph (a), "a sole arbitrator appointed by the Governor."

MR. WILLAN: I pointed out just now that there are three alternatives in this clause: one sole arbitrator appointed by the Governor; another, an arbitrator assisted by assessors; the third, arbitrators appointed by both workmen and employers in equal number, so that provides for three possible contingencies.

The hon. member went on to deal with clause 6, which is a matter of detail which can be dealt with in select committee.

The question was put and carried.

MR. WILLAN moved that the Bill be referred to a select committee consisting of:—

The hon. Acting Attorney General (Chairman),

The hon. Chief Native Commissioner,

The hon. T. A. Dennison,

The hon. Elected Member for Coast,

The hon. Elected Member for Trans Nzoia,

The hon. H. R. Montgomery, C.M.G.

The hon. Isher Dass.

MR. DENNISON seconded.

The question was put and carried.

LAND AND AGRICULTURAL BANK (AMENDMENT) BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the Land and Agricultural Bank (Amendment) Bill be read a second time.

The provisions of this Bill are somewhat unusual, but we are now living in unusual times and have to legislate accordingly.

This Bill, when it becomes law, will enable the Land Bank to make advances of money secured on the crops or other chattels. That is, as all hon. members know, an innovation, because at the present time the Land Bank cannot advance money, except in a few excep-

tional cases, except on the security of the first mortgage on the land. It is the policy of Government to assist to a limited extent farmers during this difficult period, so that the production of essential crops and live stock may be increased.

Turning to the clauses in the Bill, I will first of all deal with clause 2. This clause enables the bank to make advances either by way of lump sums or by payment at regular intervals, and these advances can be made for three purposes: first, in sub-clause (1) (a), for meeting current expenses normally incurred in the production of annual crops, for instance, maize, wheat, etc.; in (b), for meeting current expenses in cultivating, fertilizing, etc., perennial crops, such as coffee, sisal, etc.; and in (c), "capital expenditure not exceeding £100, in the case of any one farmer, for the purchasing live stock or for any other purpose approved by the bank." For instance, one can imagine an advance being made for the purpose of purchasing a plough.

Those are the three provisions setting out for what purposes advances can be made under the Bill.

In sub-clause (3) of the same clause, these advances can be made in respect of land already under cultivation, for replanting land which has been cultivated, or for cultivating new acreages of land owned or occupied by a farmer not hitherto cultivated by him owing to lack of money.

By sub-clause (4) the rates of interest on advances are fixed from time to time by the Governor in Council, and in no case can an advance exceeding £300 be made to any one farmer except with the consent of the Governor in Council.

Clauses 3 and 4 do not call for any explanation.

Now I come to the important provisions of the Bill, which are contained in clauses 5 and 6, because they set out what has to be the security for these advances and how that security stands in relation to security which has been obtained by people who have made prior advances. In the reception which this Bill got from the Press, there appears to have been some misunderstanding as to

(Mr. Willan) the provisions of the Bill. I am now going to read an extract from the leading article in the *East African Standard* on Thursday, 14th December, 1939:—

"Thus the Land Bank is departing from its former principle of lending money on the security of the land or for specific capital purposes such as the erection of a dip or a fence, and is entering the field of financing against the security of crops."

(That is perfectly true).

"But in doing so it is being empowered by the Government of the Colony to cut across the interests of all those firms which have already advanced money against similar security, and if they object all the courts of the Colony are closed to them."

In drafting this Bill it was certainly not the intention to cut across the interests of all those firms which have already advanced money against similar security, nor does this Bill go so far as that, as I will proceed to show.

In the first place, hon. members must note the opening words of clause 5 (1): "Subject to the provisions of section 6 of this Ordinance." That shows that both clauses 5 and 6 are linked together, and only by reading them together can one discover what is the priority given under this Bill with regard to any advance made by the Land Bank under its provisions. Clause 5 provides that the security for the advance first of all, in paragraph (a), shall "be a charge upon the crops growing or to be grown by the farmer, upon all farm live stock, including the natural increase thereof, and the produce therefrom"; in (b), the security is to "be a charge upon the land in respect of which the advance has been made but subject to any prior encumbrances."

All we have now to consider is what is the question of priority. With regard to the security given upon the crops, we have ruled out the land, because it says that any prior encumbrance on the land shall retain its priority. So far as prior encumbrances are concerned on the crops and live stock and the natural increase of that live stock or produce derived from that live stock, we must

now go straightway to the proviso to sub-clause (2) of clause 6:—

"Provided that the priority conferred by this section shall lie in respect only: (a) of the crops and the produce thereof actually growing and to be grown and harvested, the expense of producing which has been met from the advance made under the provisions of this Ordinance."

Hon. members already know that under the Chattels Transfer Ordinance, 1931, a person lending money can get security over the crops growing and to be grown on the land of the farmer who is borrowing the money. If, therefore, that farmer borrows money under the provisions of this Bill in respect of the same land, then the Land Bank will obtain under paragraph (a) of that proviso priority over the crops growing or to be grown on that land over the person who has already lent money. That is one case in which we are cutting across the interests of prior encumbrances.

We come to (b) of the same proviso, which provides that the security shall be on the live stock which have been bought out of advances made under the provisions of this Bill. That does not cut across the interests of anybody, because this live stock did not become the property of the farmer until he has obtained the advance under the provisions of the Bill and until he has bought the live stock which he is enabled to buy by means of the advance made under the Bill.

Then we come to paragraph (c) of the same proviso. In that paragraph we provide that the crops and the live stock and the natural increase thereof which are unencumbered at the date the advance was made, shall form the security for that advance. There again we are not cutting across the interests of any prior encumbrance, because all these crops and live stock are unencumbered at the date the advance was made. Only when we come to the last three lines of (c) do we come to the second case where we are cutting across the interests of prior encumbrances, that is the produce derived from any live stock of the farmer irrespective of whether such produce is subject to an encumbrance or not. Again, under the Chattels Transfer Ordinance, a charge

[Mr. Willan] might have been created on the produce of the live stock. For instance, wool clip. If an advance is made to some farmer under the provisions of the Bill, the Land Bank will have priority over that prior encumbrance.

Those are the only two cases where we are cutting across the interests of other persons.

Referring to clause 6, sub-clause (1) provides that where the Bank proposes to make an advance to any farmer under the provisions of the Bill, the Bank shall inform prior encumbrancers so that they may have an opportunity of coming in and being heard and, if they wish, object to the advance being made.

Under (2) of the same clause, only when the Land Bank is satisfied that to make the advance is in the interests of the Colony, the farmer, and prior encumbrancers, all three parties, can it make the advance.

I can now proceed to the other clauses of the Bill.

Clause 7 is purely formal, and provides that the Land Bank shall notify the Registrar General and Registrar of Titles when any advance is made under the Bill. Clause 8 deals with priority of advances, 9 the misapplication of advances, 10 the wrongful disposal of live stock, 11 power to enter premises, and 12 obstruction. All are taken from the Agricultural Advances Ordinance, No. 3 of 1931.

MR. DENNISON seconded.

EARL OF ERROLL: Your Excellency, I rise to support the Bill in general principles, because I feel we should welcome any measure devised to help the farmers in these difficult times. But there are two points I should like to make, and I understand the Bill is going to select committee where consideration can be given to them.

The first point is regarding clause 2 of the Bill. In this clause, (1) (b), with which I have no quarrel, allows for an advance to be made to meet "current expenses in cultivating, fertilizing, bringing to maturity and harvesting perennial crops"—that refers to crops such as coffee and sisal—provided that the

maximum advance that may be made to any one farmer in any one year for this purpose shall not exceed 30 per centum of the estimated sale value of the crop." It goes on to explain that the estimated sale value shall be assessed by the Land Bank. I have no quarrel with that at all, but it is brought to nought by sub-clause (5) wherein it provides that no advance "exceeding £300 shall be made to any one farmer, except with the consent of the Governor in Council."

This has specific reference to expensive crops such as coffee and sisal, and £300 advance against a crop for a coffee grower is completely useless. The average coffee plantation in the country can be said to be about 200 acres, and on 100 acres the estimated 30 per cent sale value can be put at about £400, therefore on 200 acres it is £800. Coffee planters in this country are anxious to see that this maximum is either expunged when it refers to them or increased. I have at different times stressed the difficulties through which coffee planters are passing at the present moment, and I hope every consideration may be given to their point of view.

The only other point I have is with regard to clause 6. Some of my objections have been removed by the hon. Acting Attorney General in his explanation, but I still think we should give very careful consideration before the Bill becomes law to the effect that this clause may have. I am rather afraid it may have the effect of drying up the ordinary commercial finances on which the coffee planter is at the moment dependent. It may be it will not have that effect, but I know a certain number of people are anxious about it, and I hope when the Bill goes to the select committees that careful consideration will be given to that effect.

MR. KASIM: Your Excellency, I rise to oppose this Bill on the following grounds.

Let us look for a moment at the history of agricultural finances of this Colony for the past ten years. It began with the advance to cereal farmers from the surplus balances to stave off the first shock of the world depression. Those advances of about £110,000 have never yet been

[Mr. Kasim] repaid. Then the Advances Board system was instituted, and spent about £100,000 to give temporary assistance to farmers. Further, the Land Bank has distributed in loans to European agriculture nearly £750,000. These are large sums, but beside all this consumers of wheat are subsidising the farmers to the extent of millions of shillings annually. (A member: How?) In spite of all this—

LORD FRANCIS SCOTT: The hon. member made a statement, he must corroborate it.

MR. KASIM: I know the difficulties of farmers, but there must be something wrong somewhere—(Members: There is.) (Laughter.)—either the farmers are not efficient or they are spending beyond their means.

The noble earl, during the budget debate, said that the wealth of Kenya comes from the soil (Members: Hear, hear). It is still true, but while provision for land has been made for European and Africans, the Indian community have been debarred from acquiring any more land, and Government have no scheme for Indian settlement. I submit that in order to increase food production it is the normal duty of Government to encourage development of the Colony by seeing that it is shared by every section of His Majesty's subjects.

LADY SIDNEY FARRAR: Your Excellency, I rise to support the Bill now before Council, and for once I should like to express my very deep appreciation of Government's attitude in bringing it forward, as for once it appears to be a very honest attempt at getting rid of red tape. Particularly I think all members on this side of Council must appreciate also the hon. and learned mover's reference to the present policy of Government in supporting the agricultural producer, and I do feel this Bill will go far towards, if nothing else, giving a feeling of confidence to those farmers who are struggling against very real difficulties at the present time.

I also have only one or two small points. One point I should like to feel was going to be considered by the select

committee which I understand will be appointed to consider the Bill. That is, whether it could be made clear that the land of the farmer who is applying for assistance will include not only the actual farm he owns, his own land, but also leasehold land.—At the present moment it is rather difficult to be perfectly certain whether this is the case or not, although clause 2 (3) may be read to include this.

One other point I should like to make is that there does appear to be a tendency at the present time to put certain types of work in the hands of certain groups of people possibly to too great an extent. The Land Bank Board has worked very well indeed and is representative of a very conservative and reliable part of the community, but I suggest that we should not close the door to making use of the advice of other bodies, and that while it is not necessarily included in the provisions of this Bill it should be understood that the Board should apply to district associations, which are very representative bodies, in the various areas for advice concerning the farmers who are to receive the advances which this Bill provides for.

MAJOR GROGAN: Your Excellency, I propose to support this Bill, not exactly in the same terms as the noble earl, the hon. Member for Kiambu, who said he proposed to support it on general principles. I cannot support it on that basis, because I cannot see any general principles in the Bill at all. But I propose to support it on account of grounds of general purpose, quite a different thing. The hon. and learned Attorney General said the purpose of it was to assist to a limited extent. It is a very limited extent.

However, there is one little technical difficulty I see, subject to correction, in clause 2 (5), which limits the advance to a farmer, the absence of any definition of what is meant by a farmer. Does that mean that if four gentlemen are in partnership willing to subscribe themselves as farmers, that their particular farm can be advanced up to £1,200? That is a technical matter which no doubt my hon. friend will overcome in due course.

[Major Grogan]

The serious objection to my mind to the Bill is that it is part and parcel of the confused medley that has arisen, and has especially led to the confusion in the public mind as to the proper function of the Land Bank. Everybody knows what the proper function of a land bank is: to advance small sums of money on adequate security to small people trying to establish their homes in the country; generally speaking, to provide political support for the government in power. That is the original purpose of a land bank in New Zealand and other places, and I have an idea that part of its genesis was derived from that in this country. It is not unlike a workhouse, which is an eleemosynary institution that dribbles out inadequate and often ill-applied amounts to members of the community.

I have consistently maintained here and elsewhere that this problem of agrarian indebtedness should be dealt with as a major problem of the country. That issue has been consistently shirked from A to Z. The ordinary normal remedy was to deal with the distortion of the money unit by its re-distortion back to what it was, otherwise by devaluation. In the absence of that and other alternative measures such as conciliation boards, the utilization of Government credit, etc., it will have the effect of further stultifying the problem of the conversion of agrarian debt.

Owing to Government having consistently shirked that issue, we are now being invaded with a continual splutter of totally inadequate little dribbles, but insofar as it goes I suppose it is better to stick a little plaster on one of the tertiary symptoms than do nothing at all. That can only be dealt with by basic measures.

I trust that in due course that will be recognized by Government. In the interim, I am quite prepared to support this Bill as a small relief, an anodyne in respect of one of the minor exceptions arising from the basic wrong.

MR. LOCKHART: Your Excellency, the hon. member Mr. Kasim spoke, as I gathered, against the Bill, but he did not appear to me to deal with either the

purposes of the Bill or anything in it. The implication of his speech presumably was that as advances had been made by Government in the past they had been made already to a sufficient extent. This Bill is designed to deal with a particular situation, and we on this side have no doubt as to its necessity.

The hon. Member for Nyanza, in referring to the operations of the Land Bank Board and the duties assumed by them under this Bill, suggested they should take advantage of the advice of the district associations. Well, I think the members of the Board are quite prepared to learn from anybody, but they have an organization which, in my view as chairman of the Board, functions efficiently, and I think we should require to have better reasons than the hon. member has advanced before departing from our usual practice.

The hon. Member for Ukamba has entertained us with a typical speech. He spoke about the functions and operations of the Land Bank of the Colony in terms which have no relationship whatever to the facts; there is nothing recognizable about them. He then implied that some alteration in the monetary factor or monetary unit would solve all our difficulties. I am quite unable to see myself that the necessity for agricultural credit will be eliminated whatever the relationship of the monetary unit in East Africa is to that outside. However, as one would suppose, while condemning the Bill the hon. member is in fact in support of it, so, it seems to me it is unnecessary to say anything more.

MR. WRIGHT: Your Excellency, I rise to support the Bill. My one fear and apprehension was dealt with by the noble earl, the Member for Kiambu, who referred to the priority given the Land Bank in clause 6 and the fear that the application of the measure might dry up the usual founts of wealth.

My chief reason for supporting the Bill is because these normal founts of supply are drying up, and I understand the general policy of the commercial and merchant bankers is to refuse to grant these anticipatory crop advances as has been their habit in the past. On

[Mr. Wright]

that ground alone it would seem sound to support a Bill of this nature.

I agree with the general feeling that it is a small help, but every little helps. I think it more of a palliative than a cure for the disease agriculture is suffering from to-day, when every agricultural country of the world has adopted some method of helping agriculture. The hon. Member for Ukamba touched on one which, on the face of it, from the Kenya point of view seemed more practical, in spite of the remarks of the hon. financial secretary, than any other, because Kenya is not in a position to subsidize agriculture as far as I know in the same sense as is applicable in South Africa or the home country.

Hon. members ought to be aware of the nature of the direct subsidies given in the United Kingdom. They are generous, in some cases almost lavish. All are aware that approved grass lands which have been under grass for seven years, if taken up and prepared for cereal crops, enjoy a subsidy of £2 per acre. That does not apply only to the person who asks for it, but is generally applied throughout agriculture, whereas under this Bill the poor farmer must go knocking at the door of the bank. I am told that every farmer in the United Kingdom gets it as a right, and that, therefore, even His Majesty the King, who set a splendid example in dealing with his own grass lands for the national good, should automatically enjoy the same rights as the poorest tenant farmer. Not only is that applicable, but there are cereal grants. Actually, the latest figures—I have not got the allowances for wheat—of subsidy for barley is £2-13-4 per acre; oats, up to £2-6-8 an acre; and it is practically certain that wheat should be in the neighbourhood of £2 or over for 1939 crops. In these remarks about cereals, I should like to say that barley, heavily subsidized as it is, is not in the control list at home, and barley, selling at Sh. 38 per quarter last year, is now enjoying Sh. 70 per quarter plus subsidy.

That is what is happening to agriculture at home, and it goes much further, because purchasers of certain fertilizers, notably lime, pay only half

the landed retail costs, and in the case of basic slag, one quarter of the total charge to the farmer is subsidized by Government. Stock similarly is subsidized in generous fashion, and the following prices are paid:—Sh. 7/6 per live cwt. for super quality homebred, Sh. 5 ordinary quality, and Sh. 5 for super quality imported beef, and Sh. 2/6 ordinary imported. Continually there are grants given to stimulate production in every form in the animal husbandry world, the figures of which I have not got, but premia are paid to owners of approved sires, including bulls, rams and boars.

A determined effort is being made in the United Kingdom by direct subsidies, and in other countries by devaluation or discounting local currency in regard to sterling, for the farmer has to be helped, it is utterly fatuous for this Government to expect production to be maintained, let alone increased in Kenya unless more substantial help, far greater than this Bill connotes, is given as soon as possible.

It is fair in this regard, although not strictly applicable to the Bill, to remark that this country is probably in a much more desperate state than people realize. The spectre of famine appears in the native reserves, and I trust the hon. Chief Native Commissioner is aware of its extent. In the agricultural districts, from end to end of the country, the position has become more and more grim than I have ever known it to be in my 28 years experience. But it might be fair to remark that that cannot be legislated for in that that is chiefly attributable to the prolonged drought, succeeding frightful locust infestations, and no amount of finance will help that issue, and only the arrival of bountiful rains will save the farmers in the forthcoming year.

But the farmer is an inveterate gambler. He gambles with the elements, and very often loses, but above all things the instinct of the gambler is such that if he has hope he will gamble again. I put it to you, Sir, and this Council that the farmer to-day is faced with a hopeless position in this country. No prices are assured which work to stimulate production, and the prevailing

[Mr. Wright] prices are such that even in normal seasons they prove completely unremunerative. But to the farmer the hope of life is greater than life itself, and the man who loves the land and has his roots in the land should get that direct inducement from Government, whatever form it takes, whereby when the country calls for production he will do his best to ensure it.

MR. WILLAN: Your Excellency, there are various points of detail discussed by the noble earl, the hon. Member for Kiambu, which will be raised in select committee and considered there.

There is only one legal point raised by the hon. Member for Ukamba, who complained of the absence of a definition of "farmer" in the Bill and said that no doubt in due course I would rectify that omission. I am afraid the hon. member has not read the Bill very closely, because if he refers to clause 1 he will see it says: "This Ordinance may be cited as the Land and Agricultural Bank (Amendment) Ordinance, 1939, and shall be read as one with the Land and Agricultural Bank Ordinance, 1931, hereinafter referred to as the principal ordinance." If the hon. member had referred to that principal ordinance to which attention is drawn in clause 1 he would have found that in section 2 a farmer is defined as meaning "a person who devotes his attention to farming in the Colony, either exclusively or together with some profession, business, or other occupation." Therefore there is no omission from the Bill.

The question was put and carried.

MR. WILLAN moved that the Bill be referred to a select committee consisting of:—

The hon. Acting Attorney General (Chairman),

The hon. Financial Secretary,

The hon. Elected Member for Nairobi North,

The hon. Elected Member for Kiambu,

The hon. Elected Member for Trans Nzoia,

The hon. A. B. Patel.

MR. DENNISON seconded.

The question was put and carried.

Council adjourned for the usual interval

On resuming:

TRADE UNIONS (AMENDMENT) BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the Trade Unions (Amendment) Bill be read a second time.

This is a short Bill and, as stated in the "Objects and Reasons", one of the two reasons for it is contained in the new section 3A in clause 2 of the Bill: to provide for peaceful picketing in the same way that it has been provided for in the United Kingdom Trade Unions Act, 1927. Whatever views one may hold on the subject of trade unions—and registered trade unions in this Colony are now legal—a strike can be conducted up to a certain point with perfect legality. Workmen are allowed to combine in order to get better conditions under which they work. The only question is how far they can go to achieve these better conditions.

Everyone knows—masters, workmen, everybody who had anything to do with trade unions—that the difficulty arises as to how far a workman can go when a strike occurs. That difficulty was appreciated in England some years ago, quite a number of years ago, and it was appreciated there that workmen, when they go on strike, may be defeated by masters taking in other employees at terms which the workmen think are unjust, and so, unless the workmen can attempt to stop that, their efforts are of course in vain. Then comes the struggle.

In order to define how far workmen can legally go during such a struggle, as far back as 1875 there was enacted at home the Conspiracy and Protection of Public Property Act which, in its provisions forbade the use of violence, the persistent following of workmen, forbade the hiding of tools, clothes, and other property owned by workmen, and

[Mr. Willan] working or besetting of workmen's houses. It did not forbid attending at or near workmen's houses for the purpose of obtaining or communicating information. This was the first time in England when it was laid down how far workmen, or employers for that matter, could go during a strike.

In 1906, the Trades Disputes Act was passed, and this excepted attending at or near a house for the purpose of peacefully persuading any person to work or to abstain from work. Finally, came the Trade Unions Act, 1927, which incorporated those two provisions of 1875 and 1906 Acts, that is, attending for the purpose of peacefully obtaining or communicating information or peacefully persuading any person to work or to abstain from working, but with the restriction that there had to be a trade dispute in contemplation or in furtherance of one that had arisen.

We, in sub-section (1) of new 3A, incorporate the latest provision of the 1927 United Kingdom Act, and say in that new sub-section that peaceful picketing is allowed if it is in contemplation or furtherance of a trade dispute and if it is merely attendance for the purpose of peacefully obtaining or communicating information or persuading any person to work or abstain from working, and with the further restriction contained in the proviso to that new sub-section which states that attendance will be unlawful if it is in such numbers as will cause intimidation or in such a manner that the person at whose residence the attendance is made will consider he is being intimidated. The question of what numbers will cause intimidation is purely a question of fact, and on the question as to the manner in which intimidation is caused one can think of people attending with sticks or adopting a violent attitude.

As to what is intimidation is defined in sub-section (2) of section 3A: to intimidate means "to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family" or "of violence or damage to any person or property," and in the same sub-section injury is also defined.

That defines what peaceful picketing is, and when these provisions become law they should go far to strengthen the hands of the police if unhappily any strike did arise.

I now come to sub-section (3) of section 3A, still clause 2 of this Bill. This deals with watching or besetting a house, and the question as to whether people are lawfully attending a house under sub-section (1) or unlawfully watching or besetting a house under sub-section (3) must, of course, depend on the particular facts of each individual case. But of this there can be no doubt: mere attendance is of a much more temporary nature than watching or besetting a house. For instance, if persons attend in relays of one or two each, that would turn attendance into watching or besetting. Again, if a single person attended at the house of a workman for the purpose of communicating information or obtaining it, and the workman came back home and the person who was attending did not communicate or obtained information but stayed on there, then that would turn attendance into watching that particular house.

I do not think we need be alarmed if this provision does seem somewhat complicated, because I have no doubt that if and when an individual case arises there will be no difficulty in deciding whether there has been an attendance or whether there has been watching or besetting a house or place.

The definition of trade dispute contained in new section 3A is exactly the same definition contained in the Trade Disputes Bill referred to select committee this morning.

The final section, 3c, states how the trustees of a trade union may be sued or may sue. They may be sued in their own names, and if a trustee dies the new one comes into the suit and it carries on in the name of the successor to the deceased trustee. In the final three lines of the section it states that a summons can be served on trustees by leaving the summons at the registered office of the trade union.

MR. DENNISON seconded.

The question was put and carried.

KENYA NAVAL VOLUNTEER BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the Kenya Naval Volunteer Bill be read a second time.

The power of the Legislature of any colony to legislate with regard to the raising of naval forces in the colony is governed by the Colonial Naval Defence Act, 1931. Briefly, that Act states that where the legislature of any colony has made provision for raising a force for the naval defence of the colony, that same Legislature may, with the prior approval of His Majesty in Council—and that is the important point—further provide that all or any of the officers and men of the force raised shall be subject to all the enactments and regulations for the enforcement of discipline in the Royal Navy; shall be liable to service and training in any ship, establishment or other place without the limits of the colony, whether belonging to the colony or not; and shall, in the case of officers or men entered on the express terms of accepting service in the Royal Navy in an emergency, form part of the Royal Naval Volunteer Reserve.

In 1930 this Council enacted the Kenya Royal Naval Volunteer Reserve Ordinance which not only established a force for the naval defence of the Colony but also purported to provide—and this is the important point—without the authority of an Order in Council, for the other three matters I have just mentioned. The result is that without that Order in Council certain sections of our 1931 Ordinance (3, 6, 12 (1), and 13) are *ultra vires* as being enacted without the prior approval of His Majesty in Council. We have to legalize matters and pass two Ordinances. This Bill provides for the raising of a force for the naval defence of the Colony, and when it becomes law we then go to His Majesty for an Order in Council; when that has been promulgated we shall pass the second Bill which provides for the three matters mentioned in paragraphs (a), (b), and (c) of paragraph 1 of the "Objects and Reasons" to this Bill.

This Bill follows very closely the 1931 Ordinance, except of course the *ultra vires* provisions have been omitted. At the

same time, opportunity has been taken to include certain suggestions which have been made by the Lords Commissioners of the Admiralty. They are very few, and I will call attention to them.

The first is in the proviso to clause 5, which provides that when any member of this naval force is in actual service his right to claim his discharge will be suspended until the cessation of such service. When the force is on active service, no man can obtain his discharge. The next one is in the proviso to clause 9, which defines the annual maximum period of training: "Provided that no member of the force shall under this Ordinance be required to attend instruction, training and exercise more than twenty-eight days in any one year". The other two are in (d) of clause 10, which mentions warrant rank, and (e), which provides for the advancement and reversion of naval ratings.

Clause 17 provides for the continuity of the Kenya Royal Naval Volunteer Reserve Ordinance, so that there will be no hiatus at all. As soon as this Bill has been enacted His Majesty in Council will promulgate the Order in Council, which is already drafted, and after that we shall proceed to the second Bill providing for matters mentioned in (a), (b) and (c) of the "Objects and Reasons", and that Bill has also been drafted.

MR. DENNISON seconded.

The question was put and carried.

SISAL INDUSTRY (AMENDMENT) BILL

SECOND READING

MR. BLUNT (DIRECTOR OF AGRICULTURE): Your Excellency, I beg to move that the Sisal Industry (Amendment) Bill be read a second time.

This Bill, as its title implies, is an amending Bill to that recently passed, and provides for the removal of certain difficulties experienced in working the original Ordinance and simplifies the procedure. Clauses 2 and 3 of the Bill deal with these things, and also specify on what sisal exports the sisal levy may be charged. It is now arranged that normally raw sisal shall pay the levy, as well as such manufactured articles made from sisal as shall be approved from time to time.

[Mr. Blunt]

Clause 4 is designed to enable the rate of the levy to be altered from time to time as necessity arises not, as in the original Ordinance, at the beginning of the year.

The other main clause is to provide for additional rules to be made, and to call for any statistics such as are not already specified, which may be required in connexion with the sisal industry.

I understand that the provisions of the Bill have been approved by the board representing the industry.

MR. WILLAN seconded.

The question was put and carried.

BILLS

IN COMMITTEE

MR. WILLAN moved that Council resolve itself into committee of the whole Council to consider, clause by clause, the Trade Unions (Amendment) Bill, the Kenya Naval Volunteer Bill, and the Sisal Industry (Amendment) Bill.

Mr. DENNISON seconded.

The question was put and carried.

Council went into committee.

His Excellency moved into the chair.

The Trade Unions (Amendment) Bill was considered clause by clause.

Clause 1.

MR. WILLAN moved that the figures "1940" be substituted for the figures "1939" in line 2 thereof.

The question was put and carried.

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

The Kenya Naval Volunteer Bill was considered clause by clause.

Clause 1.

MR. WILLAN moved that the figures "1940" be substituted for the figures "1939" in line 2 thereof.

The question was put and carried.

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

The Sisal Industry (Amendment) Bill was considered clause by clause.

Clause 1.

MR. WILLAN moved that the figures "1940" be substituted for the figures "1939" in line 2 thereof.

The question was put and carried.

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

MR. WILLAN moved that the Bills be reported to Council with amendment.

The question was put and carried.

Council resumed its sitting.

His Excellency reported the Bills with amendment.

THIRD READINGS

MR. WILLAN moved that the Bills be each read the third time and passed.

MR. DENNISON seconded.

The question was put and carried.

The Bills were read the third time and passed.

LOAN EXPENDITURE, 1940

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

"Be it resolved that this Council hereby approves the expenditure during the year 1940 of a sum of £90,106 upon the purposes specified in the Schedule hereto as a charge against loan accounts.

SCHEDULE

Details	Amount £
£3,500,000 (1924) Loan— Kenya and Uganda Railway, Capital Improvements ..	490
£3,500,000 (1928) Loan— Railways and Harbour De- velopment, General Improve- ments on Main Line and Additional Equipment ..	15,474
£3,400,000 (1930) Loan— Kenya and Uganda Railways and Harbours: Harbour Development: (b) Rolling Stock ..	24,937
Harbour Development: (b) Port Improvements ..	6,726
Colonial Development: Public Buildings ..	36,010

[Mr. Lockhart]	
£305,600 (1933) Loan—	
Colonial Development:	
Loans to Local Authorities	4,323
Public Buildings	946
£375,000 (1936) Loan—	
Colonial Development:	
Public Buildings	1,200

£90,106."

This is a formal motion in order to give approval to the expenditure during 1940 of sums in regard to loan expenditure which have been approved by Council.

The first four items are Railway items. They represent expenditure provided for in the Railway Estimates against the Railway section of the Kenya loans. The item £36,010 represents the balance expected to be spent in 1940 on the African and Asian blocks of the group hospital, Nairobi. The loan to local authorities of £4,323 is the balance of the town planning loan for development at Mombasa; it is not certain that it will all be spent this year, but it is advisable that we should vote it. The sum of £946 is the expenditure this year in completing the Indian elementary school in Nairobi. The £1,200 represents the balance of expenditure on the barracks at Nanyuki expected to be incurred this year, in part in rebuilding the officers mess which was unfortunately burned down.

MR. RENNIE seconded.

The question was put and carried.

DRAFT ESTIMATES: STANDING FINANCE COMMITTEE REPORT

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

"That the Report of the Standing Finance Committee on the Provisional Draft Estimates of Revenue and Expenditure for 1940 be adopted."

Hon. members will have observed from their perusal of this report, that the committee has not found it necessary to recommend any drastic alterations in the Draft Estimates. As a result of the committee's examination, as explained in paragraph 3 of the report, it is recommended

that the Revenue Estimates be increased by £6,253 and the Expenditure Estimates be increased by £4,708. These recommendations if adopted would result in the deficit of £53,404 being reduced to a figure of £51,859.

The chief increase recommended in the Revenue Estimates is that shown under Head 2, licences, duties, taxes, etc., in respect of item 15, estate duty, in which the committee recommends an increase of £8,000, raising the figure shown in the Draft Estimates from £12,000 to the figure of £20,000. That recommendation was made after the committee had gone into the question very carefully with the Registrar General, and he represented that since he had submitted his original estimate of £12,000 certain events had happened which had given him cause to think that that £12,000 would be increased very considerably. The only other large increase recommended is that under Head 10, interest and redemption, item 4, Surplus and Loan Balances, in which the committee has recommended that the figure of £3,000 shown in the Draft Estimates be increased to £8,000. This increase was recommended by the committee after considerable discussion and after it had formed the opinion that the depletion in the Colony's surplus balances that had been anticipated in 1940 might not be so great as had been originally expected.

As regards the decreases in the Revenue Estimates, we find a decrease of £3,000 under Head 2, Licences, Duties, Taxes, etc., in respect of item 4, Game Licences. After hearing the Game Warden on the probabilities of revenue this year, the committee decided that it would be prudent to reduce that particular item from £8,000 to £5,000.

Under Head 3 a number of decreases are shown. These are connected with the proposal which is explained in paragraph 92 of the report to inaugurate a township account in respect of Kisumu. The adjustments necessary in the Draft Estimates are shown in that paragraph 92, and I need not give further details about that particular proposal. If any hon. member wishes to obtain further information on any point not clear to him, I am sure my colleague, the hon. Financial Secretary,

[Mr. Rennie] will be happy to supply him with that information.

The only other decreases of any importance are those under Head 11, Reimbursements, and Head 13, Colonial Development Fund, free grants, both in respect of the malaria control scheme within the limits of Mombasa municipality. The hon. Director of Medical Services represented to the committee that it was not proposed to proceed with the second part of that control scheme. The second part, he explained, of that scheme would involve an engineering survey which could be carried out only by an officer with special training and experience in that particular type of work. Such an officer cannot be obtained in Kenya at the present time, and it would probably be difficult to obtain him even from a place like Malaya where engineering work of this type is carried out to a considerable extent. The second point is that even if we could obtain an officer able to carry out that survey, his recommendation would probably result in a considerable increase in expenditure which the country could not afford at the present time.

I should like to make it clear, however, that although it is not proposed to proceed with the second part of the scheme for the reasons I have mentioned, there will be no slackening in the malaria control measures which are being carried out within the limits of Mombasa municipality at present.

Turning now to the Expenditure Estimates, I may say that I do not propose to touch on very many points. I will deal with the chief increases shown.

Apart from the increases under Heads 19, 20, 25, 27 and 38, there are no individual increases which exceed £1,000. Of the larger increases under the heads which I have mentioned, those under Head 19 are connected with the proposal to establish a township account for Kisumu to which I have already referred. Those under Head 25 involve additional expenditure to the extent of £120 only, since they are set off by connected decreases under the same head. That leaves the increases under Heads 20, 27 and 38 to be dealt with.

The increase shown under Head 20 is in respect of item 117, Purchase of Quinine for Retail, in which it is proposed that additional provision to the extent of £4,500 be made. The committee went into this matter very carefully, and in view of the probability of a considerable increase in the cost of quinine in 1940 and in view of the necessity for the maintenance of a sufficient reserve of the drug at the present time it considered that a larger sum of money should be spent for this particular purpose. We may, therefore, I think, regard this particular item of expenditure as a very prudent investment.

Turning to the increase recommended under Head 27, item 37, Printing Paper and Sundries, the Government Printer represented that a considerable increase had occurred in the price of paper and that, in view of that increase, and of the increased commitments of the Press because of military work, it was necessary to provide more than the sum of £7,000 which is shown in the Draft Estimates. The increase of £3,000 in that sum is therefore recommended by the Standing Finance Committee.

The next large increase is that under Head 38, Public Works Extraordinary, in respect of a much needed extension to Nakuru native hospital. The necessity for that extension has been already explained at considerable length by the Noble Lord, the hon. member for Rift Valley, and I need not dwell on that particular item further.

Those increases to which I have referred come for the most part under "Other Charges", but there are one or two points which I want to refer to under "Personal Emoluments".

Hon. members will have observed from paragraph 37 of the report that the committee has recommended that provision be inserted for two posts of senior sub-draftsmen, Asian. Provision was made in the 1939 Estimates for one such post, but when the Commissioner for Lands and Settlement gave consideration to the question of filling that post he came to the conclusion that, since the work of the Asian sub-draftsmen was really divided into two sections, it would not be appropriate to create prospects of promotion for one section only, and to give both

[Mr. Rennie]

sections a fair chance of promotion it was necessary to create two such posts. He made provision accordingly in his draft estimates which he submitted to the Secretariat, but the view taken there was that the present is hardly an appropriate time for increasing establishment, and the Commissioner was told that no increase on the one post provided for in 1939 could be made. In view of the Commissioner's investigation into the matter, however, he represented that it would cause less dissatisfaction in his department if no posts of that sort were provided for at present, and in view of his representations the provision for the one post shown in 1939 was cut out. When the question was raised in the Standing Finance Committee, however, the facts and requirements of the case were given very full consideration, and it was decided that it would be equitable and proper to provide for two posts of senior sub-draughtsmen, Asian, to afford fair prospects of promotion to the junior sub-draughtsmen.

As regards paragraph 51 of the report, which deals with items 14 and 15 under Head 25, Police, hon. members will no doubt recollect that the hon. member Mr. Shamsud-Deen dealt at some length with the conditions of service of the Asian sub-inspectors. They will be happy, I am sure, to note that the committee found itself able to do something to improve the lot of these particular sub-inspectors about whom we have heard a considerable amount. The recommendation of the committee is a simple one. It is merely that the two scales of Asian sub-inspectors shown under items 14 and 15 shall be amalgamated. The result of the amalgamation will be that the officers in item 15 will no longer have to remain so long at the top of their scale before they will have an opportunity of rising to a higher scale and a higher post.

The only other item of "Personal Emoluments" to which I will refer is that mentioned in paragraph 70 of the report, Head 32, Registrar General's Department. Hon. members will remember that considerable stress was laid by certain speakers in the debate on the Draft Estimates on the need for speeding up the work in that department in respect of bankruptcy.

The Standing Finance Committee gave careful consideration to the question when the Registrar General's estimates came before it, and it considered that the two measures indicated in paragraph 70 would go part of the way to speeding up the work of the department in respect of bankruptcy.

The first measure recommended is that connected with the post of examiner of accounts. The committee considered it advisable to recommend that a new post of examiner of accounts on £300 by £18 to £372 should be provided. This post is meant to provide more suitably for a qualified accountant who is at present provided for as a clerk under item 4 and is engaged chiefly on bankruptcy work. In view of the importance of the work on which he is engaged and of the danger which was represented to the committee that the department might lose his services—and those services are those of an expert in this particular type of work—in view of that danger, the committee agreed with the Registrar General's recommendation that a special post should be provided and the salary which this officer draws at present should be increased to the extent shown in paragraph 70. The other recommendation is that a vacancy which at the present time occurs under item 4 should be filled, not as is usual in such cases by the appointment of a man on the bottom of the salary scale but in the first grade of Asian clerks. That means that the Registrar General will look around for a man who is suitably qualified for this particular type of work and will be able to offer him a salary likely to induce him to accept such an appointment.

So far, I have dealt with increases recommended in the Expenditure Estimates. I will now turn to the chief decreases recommended.

Apart from those recommended under Head 3A, Administration, which are connected with the proposal to inaugurate a township account for Kisumu; those under Head 20A, Medical Extraordinary, Malaria Control Measures at Mombasa; and those under Head 25, Police, to all of which I have referred, the main decreases are those under Head 41, War Expenditure, Civil, where a decrease of £2,530 is recommended under item 3,

[Mr. Rennie]

Supplementary Police Force, and a decrease of £700 in respect of the Information Committee, item 11.

The reason for the recommendation in respect of the supplementary police force is that the original estimate of £28,500 was based on the assumption that the full force which had been originally approved would be employed during the year 1940. As a matter of fact, as the Commissioner of Police explained to the Standing Finance Committee, he has not found it necessary to recruit all the Africans who were approved nor found it necessary to recruit all the Europeans. The result is that at any rate in the early months of 1940 the full approved force for which provision is shown as £28,500 will not be employed, and the committee thought it safe to recommend a decrease of £2,530 might be made.

As regards the decrease of £700 recommended in respect of the Information Committee, the Standing Finance Committee went into this question very fully indeed, but it found itself faced with the fact that without an inside and intimate knowledge of the work carried out in the Information Office it was not possible, without acting in an arbitrary fashion, to reduce the establishment of the office or to reduce the provision shown against this particular item. It therefore came to the conclusion that it would be advisable to have the work and the duties of the Information Office investigated by a small committee and, in the hope that that committee would be able to recommend a reduction in the provision made for the work of the Information Committee, it recommends a reduction in the original amount of £3,700 by £700 to the sum of £3,000.

I should like to make it clear, however, that until any recommendation for a reduction in the provision that may be made by that committee is accepted by Government, the Information Committee will continue to function according to the present reconstituted establishment which was recently approved by Executive Council on the basis of an expenditure of £3,700 per annum.

One further item to which I would refer under War Expenditure, Civil, is the

Censorship. The committee's decision is given in paragraph 54 of the report, and I may say that decision was arrived at again after very full and careful consideration of the matter. I do not think there is anything else I can properly add at the present time to the record given in paragraph 54.

After the committee had completed its examination of the Draft Estimates of Revenue and Expenditure, it next gave consideration to the question whether an attempt should be made to wipe off the deficit of approximately £52,000 and balance the budget by means of additional taxation or further cuts in the Expenditure Estimates. The committee decided, however, that in view of the uncertainties and difficulties which confront agriculture and trade at the present time, it was not desirable to suggest the imposition of further taxation. Similarly, the committee decided that further pruning of the Expenditure Estimates would result in a reduction of services which Government departments render to the public that could not be justified in the present circumstances. It therefore decided that the deficit of approximately £52,000 should remain—to be met, if it eventuates, from surplus balances.

I think I have dealt with the main features of the report and, in conclusion, I should like to pay tribute to the work of the Government Printer and his staff for the expeditious and efficient work they have done in turning out the Provisional Draft Estimates of Revenue and Expenditure and this particular report at such short notice.

MR. COOKE: Your Excellency, I have not much to say, but there are one or two points which I should like to put forward in criticism.

The first is the question of passages, and I am sorry the hon. Chief Secretary did not refer to this matter, because I feel as an ex-officer of Government that the abandonment of leave will have a very deterrent effect on the capacity of officers in this country, more especially on administrative officers who have very arduous times in the out-stations, and I feel a very difficult position will be reached. Not only will you have possibly

[Mr. Cooke]

jaded and irritable people who have to deal with natives, and a good deal of harm will be done. I know that the medical authorities have power to force an officer to go on leave, but it must be a very difficult and invidious task to say whether an officer is really medically fit or not.

There is also this point, that it will be rather unfair on energetic and enthusiastic junior officers who have to serve in rather subordinate positions because some senior officers are not proceeding on leave. I do not think it would really do any harm to a man, especially a bachelor, to proceed to South Africa or any other dominion on leave at the present moment.

On the question of labour, I regret that no provision has been made for an extra labour officer, but it is gratifying to note that the status of the Labour Department is going to be considered. In this respect I might refer to a speech by the Under Secretary of State for the Colonies the other day, in which he said that during war time the study of labour conditions was even much more important than it is during peace time.

In regard to the bursaries at Makerere, no one can accuse me of being unsympathetic with a university scheme, but £100 for each pupil seems unreasonably high. I should like the hon. Director of Education to tell us for what purpose it is proposed to expend this extra money if it is finally sanctioned. I think I am right in saying that the endowment fund amounts to £500,000, the interest from which should be very considerable and that ought to cover the cost of the teaching staff and other matters. I think we must avoid at the present moment making a university education too easy for natives. A native, as a European, appreciates what he has to pay for, and we should therefore endeavour in some way to encourage the natives to pay part of their own education.

I should like to refer to the fact that the Assembly of Makerere College, of which I am a member, has not yet assembled. The present Governor of Uganda is a very determined gentleman, and I am rather suspicious that he is determined to dictate the policy of the

university himself. It would be a great pity if the Assembly is not given an opportunity in the early days of the university to have a say in that policy. Perhaps the hon. Director of Education can enlighten me on that point, as to whether the Assembly will be called in the near future or not.

Just one point, the censorship. I know the difficulty under which my hon. friend who is responsible for the censorship department labours, and if anything goes wrong he will be the first man to be hanged. But I venture to differ from him as to the necessity of certain of the staff employed. I am informed—and I emphasize "I am informed" because I am terrified of my hon. friend the Financial Secretary—I do not know whether it is a fact or not—that in Mombasa they have increased the telegraph censor staff by four ladies to do the decoding. When I discussed the matter with my hon. friend, he said full-time employment of these telegraph censors was necessary to have efficiency and therefore they should be whole time, and he emphasized that later they would have to do decoding.

That was a very strong argument, difficult to meet, but I understand that these four extra ladies are being employed merely to do decoding. As we know, the merchant houses which mainly use these codes, are expected to send an English translation, which will greatly facilitate the work of the censors.

There is another point. I do not think there is any need for a deputy censor to have a stenographer. That does not seem to me to be necessary and, in fact, I think it is a monstrous waste of public funds to provide any such person. I do not know whether the stenographer is full-time or not, but perhaps my hon. friend will tell me.

Those are the only criticisms I have to make.

MR. KASIM: Your Excellency, on page 5 of the report is item 83, Grants in Aid to Indian Schools. I thank Government for granting aid to the Kibos and Kapsabet schools. There are a few more private schools in my constituency, at Bugoma and Kimilit, which are on the

[Mr. Kasim] waiting list, and I hope Government will grant them similar aid during 1941.

On page 8 is item 51, recommending £120 for the promotion of Asian sub-inspectors to the second grade. I have to thank Government for providing this. It always pays Government if its police force is contented and adequately paid.

Item 78 on page 10, under Public Works Extraordinary, provides £1,250 for an extension to Nakuru native hospital. I hope the extension of the Indian ward will be carried out as early as possible. £1,500 is for the native ward, and £500 for the Indian ward, but £750 is the estimate for the native ward, and £750 will be contributed by the Native Trust Fund, so that the provision of £1,250 includes £500 for the Indian ward.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I have one or two very short comments to make on this report.

I would like to stress what has been said by the hon. Member for the Coast with regard to the Labour Department. I see in the report it is stated: "The committee stressed the desirability of keeping the department at full strength during the war". During the budget debate I also stressed that, and I hope we shall have an assurance that the committee's recommendation in this regard will be complied with.

The next head to which I just want to refer is Head 10, Education. I am sure I am voicing the opinion of every elected member on this side of Council when I endorse the opinion expressed that £100 is a fantastically high fee to charge for a student at Makerere, and I am sure we are all bitterly opposed to the imposition of such a fee. I should also like to draw attention to Head 10A, where a grant of £100 a year presumably only for the next year, to Mr. Eliud Mathu, has been inserted to enable him to complete a course at Oxford University. I always understood that this vast expenditure at Makerere was to obviate the necessity of such persons going to Oxford University. Furthermore, it seems to me that £100 a year for one bursary is rather a high figure, a higher figure than has ever been given at any rate to Europeans. No doubt we shall receive some explanation and, I

trust, an assurance that this grant will not reappear in budgets in years to come.

Head 37A contains an item of £850 in order to give the beef measles unit an extended trial during 1940. Naturally I am in favour of that, but I am going to take the opportunity to again stress that it looks as though we shall very shortly have to have a pig measles unit as well, thanks to the extraordinary measures or lack of control which was exercised in native reserves in regard to starting pigs in certain areas. I am again going to ask whether we can be given some assurance that that area will be delimited, and that no one will be allowed to keep pigs outside a demarcated area until we have got the pig industry in this country on a proper footing. It is a most important matter, and we have not yet been given that assurance to which I think we are entitled.

My last point is under Head 41, page 11, where reference is made—and also by the hon. Chief Secretary in his speech this morning, to the additional police officers. I note that no European officers have yet been appointed. I personally believe, and I said so in my remarks on the budget, that we badly need an increase in European police officers. I do not advocate this as a war measure, but as a part of the permanent police force of the country, and I trust we shall be given an assurance that steps will be taken forthwith to appoint the fifteen extra officers which the Standing Finance Committee has agreed to.

In conclusion, I see that the committee gave consideration to the question as to whether there should be any attempt to balance the budget by the imposition of extra taxation, and the hon. Chief Secretary pointed out that the committee came to the conclusion that that would be unwise. I am very glad that conclusion was come to, because if ever there was a provisional budget, this is, and there is no purpose in trying to upset existing arrangements in order to balance a small deficit which, after all, may never arise.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 10 a.m. on Thursday, 4th January, 1940.

Thursday, 4th January, 1940
Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Thursday, 4th January, 1940. His Excellency the Acting Governor (W. Harragin, Esq., K.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of 3rd January, 1940, were confirmed.

PAPERS LAID ON THE TABLE

The following papers were laid on the table:—

By MR. WILLAN:

Select Committee Report on the Land and Agricultural Bank (Amendment) Bill.

By MR. DAUBNEY:

Veterinary Department Annual Report, 1938.

ORAL ANSWERS TO QUESTIONS

No. 63.—SETTLEMENT OF EX-HOLDERS OF RIGHTS

MAJOR CAVENDISH-BENTINCK asked:—

1. Can Government inform Council what the present position is in regard to the proposal to excise land from forest reserves at Uplands and Mau in order to make provision for alleged right-holders and/or resident native labourers for whom the provision of land may be necessary?

2. Will Government undertake to ensure that occupation of any such land will only be permitted under strict and specific regulations as to the working of the land, thereby ensuring the proper protection of the land?

3. Will Government inform Council what regulations having force of law at present exist and are enforced in other reserves in regard to land conservation?

MR. HOSKING: Two areas, commonly known as the Lari and Kerita areas near Uplands, have been selected for excision from the Kikuyu Escarpment Forest Reserve for addition to the Kikuyu Native Land Unit for the express

purpose of the settlement of ex-holders of rights on certain farms in the Limuru area. The removal of these natives to the selected areas is proceeding. The areas selected for addition to the Kikuyu Native Land Unit have been selected with the approval of the Native Lands Trust Board, the Highlands Board, the Governor in Council and the Secretary of State for the Colonies. The necessary legal procedure, under the proviso to sub-section (5) of section 7 of the Native Lands Trust Ordinance of 1938, is being followed.

An area of approximately 33,500 acres in the Masai Native Land Unit has been selected mainly for the settlement of some of the natives who are at present resident labourers on European farms and who may be required to leave those farms after the coming into operation of the Resident Labourers Ordinance of 1937 and may be unable to find accommodation within Native Land Units. This area has first to be surveyed, as mentioned in the reply to a question asked by the hon. member in this Council on the 11th December. The area is being exchanged by the Masai tribe for an area of some 1,664.5 acres to be excised from the Eastern Mau Forest Reserve and £6,000 in cash. The proposal has received the approval of the natives concerned, the Local Land Board, the Local Native Council, the Native Lands Trust Board, the Highlands Board, the Governor in Council, and the Secretary of State for the Colonies. The necessary legal procedure under the proviso to sub-section (5) of section 7 of the Native Lands Trust Ordinance of 1938 is being followed.

A further area of approximately 20,000 acres, to be excised from the Southern Mau Forest Reserve, has been selected for the same purpose. This proposal has similarly had the approval of the Highlands Board and the Governor in Council, subject to the proviso that an equal area should be excised from the same or other forest reserves for subdivision into farms for settlement in accordance with the recommendations of the Settlement Committee. This latter proposal is at present the subject of correspondence with the Secretary of State for the Colonies.

[Mr. Hosking]

With regard to the Mau area, the answer is in the affirmative. As regards the Uplands area, an assurance cannot be given at present that specific regulations as to the working of the land will be passed, since that area will be an extension of the Kikuyu Land Unit, but the Government will take all possible steps to ensure the proper protection of the land.

The control of soil erosion in native reserves has been the subject of Local Native Council resolutions passed by 16 out of the 22 Councils. The resolutions, which are of a standard form, empower landmen, after consultation with the agricultural officer and Local Native Council, to close areas suffering from erosion to cultivation or to the depasturing of stock, and compel the owner of sloping land to terrace, bank or contour plough his land in addition to planting wash-stops thereon, and to refrain from cultivating near streams and rivers.

MAJOR CAVENDISH-BENTINCK: Your Excellency, arising out of that answer, may I ask whether something can be done about Uplands, to which the hon. member referred, because there will be no land left within three months?

MR. HOSKING: I quite agree with the hon. member's statement.

MR. COOKE: Has any effort been made to divide one or two derelict farms rather than sacrifice valuable forest?

MR. HOSKING: There are insufficient derelict farms for the purpose.

COL. KIRKWOOD: May I ask what steps Government have taken or are taking to ensure more or less the demarcation of the land at Uplands?

MR. HOSKING: Active steps are being taken. A surveyor has been working there for some time and areas are being demarcated.

MAJOR GROGAN: Arising out of this, are we to understand it is the policy of Government or recognized principle by Government that any native who sacrifices his land rights by leaving his tribe retains a perpetual option on land elsewhere?

MR. HOSKING: The answer is in the negative.

DRAFT ESTIMATES: STANDING FINANCE COMMITTEE REPORT

The debate was resumed.

MR. GHERSIE: Your Excellency, I rise to support the recommendations made by the Standing Finance Committee in general, but I have a few observations to make of a rather critical nature.

In the first place, Head 41, item 3, Supplementary Police Force. For some considerable time hon. members on this side of Council have urged the necessity of increasing the police personnel. Ten per cent of the European male population are now with the Forces, and it must be quite obvious that in the districts denuded of their manpower the necessity for additional police personnel is more than ever necessary. For months before the declaration of war there was a general outcry in regard to the increase in stock thefts, thefts of maize, and grass fires, and Government did agree that an increase in the personnel of the police was necessary. I think it is now more than ever necessary. Due to the posting of additional police officers in the Usini Gishu, the campaign against stock thefts has met with very considerable success. I suggest the effort will be abortive if there is any reduction in the personnel of the police in that district. It may be, of course, that Government, realizing the mistake they made in making the amendment to the Criminal Procedure Code, are now aware that most of the prisons will be filled with remand cases, and, in fact, there will be no accommodation for convicted prisoners, and that probably it will be less expensive if they curtail the activities of the police rather than make provision for the necessary additional finance for the construction of larger gaols.

I entirely endorse the remarks of various hon. members in criticism of the educational item, 121, and I am very glad to see that the majority of the Standing Finance Committee are of opinion that £100 per annum is a fantastically high fee for a student at Makerere.

I was hoping that some reference would be made to telephones in rural areas, but apparently this matter escaped

[Mr. Gherie]

the attention of the Standing Finance Committee.

I had also hoped there would be some recommendation with regard to the rigid control of the consumption of petrol, which I maintain is depriving the country of considerable revenue, directly and indirectly. I hope the hon. Financial Secretary will give an assurance that Government do not intend to unduly inconvenience the public in this connexion, because I can assure him that in the deplorable state of our roads the question of joy-riding will never arise.

The hon. Chief Secretary, in introducing the report, made a reference to the department of the Registrar General and also to the observations made by certain elected members on the subject of speeding up bankruptcy procedure. I understand him to say, and I stand to be corrected, that the provision now made was sufficient to remedy the matter.

MR. RENNIE: On a point of explanation, I made no such statement.

MR. GHERSIE: Then I withdraw that. I personally fail to see how an increase of £18 to one individual and an increase of a first-grade Asian clerk to a scale of £300 will remedy the position. What is required is a qualified individual to undertake bankruptcy proceedings up-country and in Mombasa, and so serve a double important purpose: this would leave the staff at Nairobi intact, and would avoid the expense and time entailed by debtors and creditors travelling to Nairobi to attend bankruptcy proceedings.

MR. LACEY: Your Excellency, I rise to answer one or two specific points raised in debate yesterday and to-day.

The hon. Members for the Coast, Nairobi North, and Usin Gishu all referred to the high rate of fees at Makerere. As I stated earlier in the session, Makerere is now aiming at a university standard, and there is no college or university in the world which, with the endowment at the disposal of Makerere Council, could afford much lower fees. At the last meeting of Makerere Council in November, 1939, the estimates of revenue and expenditure

were considered very closely. The total expenditure originally estimated totalled approximately £34,000, and savings of some £2,000 were made during the discussion of the Council. The total revenue from the £500,000 endowment fund approximated £17,000. In other words, half the expenditure had got to be found in fees.

I want to make it quite clear that I have raised an objection in select committee to the £100 fee suggested for students attending from Kenya, not because the fee is fantastic but because in the report of the De La Warr Commission, at the inter-territorial conference at Makerere in 1938, and at the first meeting of the College Council in 1939, the principle was accepted that the income from the endowment fund should be devoted solely to reducing fees of students in post-secondary courses. That principle was accepted by Council at its first meeting, and it was found that if this was done the fees of students from Kenya—all of whom are post-secondary—would amount to only £62 a year, which I think was reasonable. But at the last Council meeting they reversed the principle, and suggested that the income from the endowment fund should be spread over all fees; that is, fees of students doing the secondary as well as post-secondary courses. I objected at the time and, since the Council met, as nominees of the East African Governors' Conference I have made representations to the Conference and to you, Sir, that the Council was acting *ultra vires*, and I hope that fees for post-secondary students will be reduced to £62.

I express that hope because I realize that at the start, where numbers are limited, expenses have got to be high and this endowment fund must be used to make post-secondary courses, such as medical, agriculture, veterinary, etc., of the greatest value to East Africa generally. If the fees of the courses are as high as £90, obviously, for example, an Asiatic student would prefer to go to Bombay. But I would stress the point that in a university or college of university standard, with no endowment apart from that £500,000, these fees are not excessive, and I can assure this Council—and hon. members who are also mem-

[Mr. Lacey]

bers of the Makerere Council would uphold me when I say so—that these estimates are considered extremely carefully and every effort is made to secure economy compatible with efficiency.

The hon. Member for the Coast suggested that in future Kenya students at Makerere should pay part of the fees. While the fees were £10 a year that was not an important matter, but since Makerere has become independent that question has been raised, and at the last meeting of the Advisory Council on African Education a recommendation was made that in future as the scale of education got higher so far as possible the scale of fees charged to students should be raised, and when new students go to Makerere they will be expected to pay part of the fees.

The hon. Member for the Coast also referred to the fact that the Assembly had not yet been summoned. I am glad to assure him that some members of the Council are fully alive to the dangers of delay in not summoning the Assembly. He will, I hope, be interested to hear that at the last meeting of the Council a motion put up by me and seconded by the hon. Director of Medical Services was passed to the effect that the Assembly should meet within three months of the date of the Council meeting.

The hon. Member for Nairobi North drew attention to the fact that a bursary of £100 had been budgeted for in the Estimates for Mathiu, and also expressed surprise that such a proposal should be made when Makerere was in existence. He also stated quite categorically that the sum of £100 was never given to Europeans. I will explain the situation. Mathiu is a teacher at the Alliance High School who, nearly two years ago, was given a bursary to go to England to study for a year in order to be fully efficient to take the place of a European at the Alliance High School. Some of the authorities at home, including Professor Coupland, recommended that he should be given a further year to go to Oxford. A grant was made from charitable funds towards part of the expenses, and the bursary given originally for one year was extended to two years.

I would point out that it makes no difference to the university authorities at home whether a man is an African, an Indian, or a European; the basic expenses are exactly the same.

If, as I believe the hon. member said, the sum of £100 was never given here in bursaries before, he is entirely mistaken. There are precedents: one bursary of £150, and eight of £100 have been awarded to European students, and five of £100 each have already been awarded to Asiatic students.

MR. HEBDEN: Your Excellency, the hon. Member for the Coast has again tried to find a flaw in the censorship organization by suggesting that the engagement of four decoding clerks and one part-time typist is entirely unnecessary at Mombasa for 1940. Hon. members are aware that four approved codes have been sanctioned for cablegrams as from the 1st January this year, and that is why decoding clerks had to be engaged. The regulations make it perfectly clear that all messages in code sent and received overseas must be decoded and censored. The actual extract from the censorship regulations reads as follows:

"All telegrams in authorized codes must be carefully decoded, for which purpose clerks will be required, and if the translation does not make sense or refers to impossible or improbable commercial transactions, the message should be stopped and referred for investigation and report."

These authorized codes are the ones we have now introduced into Kenya. All cablegrams containing words or phrases which are apparently superfluous should be regarded with suspicion. These regulations, which are of some 300 pages, apply to the whole of the British Empire, and are imposed by the Committee of Imperial Defence through the Secretary of State.

I should like to make it perfectly clear that, as Chief Censor, I have no power whatever to relax the existing procedure and regulations unless I receive instructions to do so. I am of opinion that any such instructions to relax these regulations must come from the Imperial Government.

(Mr. Hebden)

Turning to the specific questions raised by the hon. member, in 1939 I had six telegraph censors at Mombasa, each doing four-hour shifts and paid by the hour, so there was only one on duty at any one time. The four engaged on day duty are fully occupied on censorship duties as distinct from the decoding. The average number of telegrams received and transmitted from Mombasa is approximately 11,000 a month, or 370 a day, or 46 per working hour. It is true that all these telegrams are not in code, but if we assume that only one-third are in code it means that approximately 18 will have to be decoded every hour of the day, or one every three minutes. It is fantastic for the hon. member to suggest that one female assistant censor who is fully occupied on censorship duties can undertake this additional work single-handed.

MR. COOKE: On a point of explanation, that was not in my mind. The hon. member assured me that if these telegraph censors were full time they could decode as well. I think the hon. member has changed his mind.

MR. HEBDEN: I have no recollection of that. If it is found from experience that four decoding clerks are too many, the staff can be adjusted later. I personally am satisfied that four is the minimum staff required if the work is to be carried out effectively.

As regards the part-time typist to which the hon. member took exception, I can only say that I am again satisfied, from the amount of correspondence the deputy censor has to deal with, that a typist is essential for the proper performance of his duties if censorship is to be carried out on a sound and economical basis. I am personally satisfied therefore that the staff employed on censorship at Mombasa is the minimum required for effective censorship if the regulations are to be complied with.

In conclusion, I should like to take this opportunity of appealing to hon. members and the public in general to lessen and help the work of censorship by accepting it as a necessary wartime organization in the interests of national defence.

LADY SIDNEY FARRAR: Your Excellency, I have only one point that I wish to raise on the Report of the Standing Finance Committee. That is under Head 41, War Expenditure, Civil, item 9.

I should like to ask the hon. Financial Secretary in his reply to this debate whether he can inform this Council whether the statement in item 9—which says: "Supply Board.—The Financial Secretary stated that further provision would be required for additional price inspection"—will include provision for assistance to the hon. Commissioner of Customs in the very arduous duties he is being called on to perform at the present time as controller under the import licensing restrictions?

There is no doubt at all that at the present moment the country is very highly nervous on the subject of these import restrictions; although they acknowledge the need for some kind of organization to meet shipping difficulties, they have no opportunity of being convinced, or satisfied as to the method in which these restrictions are imposed and arranged. A great deal is misunderstood, and a great many rumours, probably unfounded, are circulating, and I would suggest that it is very necessary for the authorities concerned to do something to satisfy the country on this subject.

One question which is causing particular nervousness at the present time is the question of spares for agricultural machinery, whether they will be allowed to be imported freely from countries outside the sterling group. That is a very necessary matter, I think. There is a feeling that it is impossible for any one man to handle this very big subject, particularly in this case where the Commissioner of Customs is already on a full-time job, probably more than a full-time job. I would like an assurance that some measures are being taken to increase the personnel, and also to perhaps make the increased personnel rather more available to the public.

At the present time there is one office and one controller in Mombasa, and there is a feeling abroad that there is no right of appeal from that one person in Mombasa. I feel therefore that the hon.

(Lady Sidney Farrar)

Financial Secretary will give us an assurance which will assist us in this matter to do away with some of the nervousness being felt in the country, and I hope it will be possible to increase the personnel responsible for these very arduous and delicate duties.

COL. MODERA: Your Excellency, in his speech on the budget the hon. Chief Secretary stated that he hoped shortly to be able to give a reply in regard to the question addressed to Council by myself as to the future of the Kenya Defence Force.

I would ask the hon. Chief Secretary, in his reply to this motion, to enlighten us whether he is now able to give us that statement.

MR. DAUBNEY: Your Excellency, the hon. Member for Nairobi North has again referred to the question affecting the incidence of pig measles in the Nyeri Reserve. I should like to state that, under the Native Authority Ordinance, compulsory registration of pig-owners in this reserve has already been effected, and no movement of pigs is permitted at all except under a veterinary permit. I have stationed a veterinary officer there, and an effort is made—successfully, I may say, so far—to trace back to their original all cases of pig measles that are detected when pigs are slaughtered. I hear also that the hon. Director of Medical Services is considering the possibility of stationing a senior medical officer at Nyeri to deal with these and many other matters affecting the nutrition of the native. I think there is every reason to suppose that we shall be able to control the spread of measles in these native pigs.

COL. KIRKWOOD: Your Excellency, I cannot wholeheartedly support the Standing Finance Committee's Report on the budget, and there are one or two items I should like to refer to.

We have heard the hon. Director of Education concerning Makerere College. Personally, that is one item I endorse word for word that I find in this report, and I hope Government will stand fast and not commit this Colony to an expenditure we never agreed to.

The last paragraph of this report, page 13, reads:—

"When the Committee had completed its examination of the Draft Estimates of Revenue and Expenditure it noted that the deficit on the budget would be approximately £52,000, if its recommendations received approval. The Committee then gave consideration to the question whether an attempt should be made to balance the budget by the imposition of additional taxation, and/or further cuts in the Expenditure Estimates, but decided that it was not desirable to have recourse to either expedient, and that the deficit mentioned above should remain."

I consider that paragraph most important, but it is a definite admission that the Standing Finance Committee have not done the work for which they were appointed. They definitely admit they have made no attempt or considered it advisable to make any attempt to either balance the budget by cutting expenditure or by increasing taxation. Increased taxation, I maintain, was out of the question, but decreased expenditure was largely in the picture and should have been investigated. We are facing a major war, and the implications on this Colony only at the moment are financial more than anything else, and that financial responsibility should have been faced. It will have to be faced during this year, and the sooner it is realized the better. We cannot go on and survive unless we balance the budget, for obviously that cannot be left unbalanced year after year if the war keeps on, and in previous years a balanced budget was found to be a necessity. Then they did form a committee which went into the question and tackled it and considerably cut down expenditure. On that occasion it was left to a rather late date.

I maintain that we should be governed by the experience of the past, which is very valuable experience, and not by theoretical consideration, and a committee should be appointed or other means taken to ascertain whether any expenditure can be saved during the coming year. I hope Government will seriously consider that, and in no great length of time get to work and ascertain

[Col. Kirkwood]
whether we can cut down expenditure in this Colony.

LORD FRANCIS SCOTT: Sir, taking it by and large, our report seems to have been well received in this Council, with the possible exception of the criticism of my hon. friend who has just spoken. If you really analyse the whole of this report, there is only one item which is in fact of major importance, and that is on the first page dealing with the revenue from Customs and Excise.

In a year like this, it is impossible to estimate what revenue we are going to get from Customs. If we are allowed to carry on our business here in a normal way I have not the slightest doubt that these Estimates will be very much below what we shall actually get, but the great difficulty to-day is that, owing to the system of controls which has been imposed during the war, we are very adversely affected. First of all, by the control in Great Britain of the prices of primary products our exports are definitely handicapped. Then on top of that we have this control of imports, which may throw out of gear our general business of dealing with our exports, because if we wish to export our products to dollar countries such as the United States and Canada and we are not allowed to import anything from those countries in return, it may have a very detrimental effect; in fact, it may result in ships at present plying between here and the United States being taken off, because, obviously, people are not going to continue with empty ships merely to take away our products from this country to the United States.

This, to my mind, is the big question facing us to-day—everything else is of minor importance. My hon. friend the Member for Ukamba has very strong views on this subject, and he has pointed out how this question might be solved. First of all, there is the question of consumption of goods, which has to be controlled up to a point, but really it is an exchange question and could be solved in that way. I am not so well versed in these matters as my hon. friend is, and cannot expatiate on that point, but it is one of great importance which should be

thoroughly considered. I consider it is the duty of Government here to put up the case of the difficulties and handicaps which face us to-day to the authorities in Great Britain so that we have more helpful assistance from them at home to enable us to carry on and do our part in the British Empire towards helping win the war we are engaged in to-day, because we can be of no use to the rest of the Empire if we go bankrupt and cannot get on with our business.

The criticism of the hon. Member for Trans Nzoia is really entirely wrapped up with this same question. We cannot tell to-day whether these Estimates are going to be conservative or the opposite. We on the committee did investigate very carefully the question as to whether we should try and reduce expenditure or not, and we came to the conclusion that it would be unwise at the present time, when the results of the finances of the Colony during this year were so entirely uncertain, to upset services established here which might in the end prove to have been unnecessarily upset. That is really the answer to the hon. member's criticism.

There is one other point I should like to raise under the same head, and that is the question of coffee. I am informed to-day that the contraband control service of the Royal Navy have captured a great many thousands of tons of coffee, and I am told that that coffee, after it has been dealt with by a prize court and so on, will then be put on the open market and sold in direct competition against coffee produced by various parts of the British Empire. Of course, as far as Kenya is concerned, we are one of the biggest Empire producers of coffee, and therefore liable to be adversely affected by these sales. I do trust that Government will put this case forward to the Secretary of State very forcibly, so that he may bring his influence to bear at home to protect the interests of coffee producers in this country and other parts of the British Empire.

On page 2, under the heading "Estate Duty", you will see that the Committee agreed to the amount being raised, but recommended by a majority that Government should consider the abolition of this tax. I am one of those old-fashioned

[Lord Francis Scott]

people who consider that a capital tax of this sort is a wrong form of taxation. In the old days we were informed that as we had no direct taxation to speak of in this country, Government could not consider taking it off. Since we have got direct taxation in the form of income tax, which falls very heavily on the non-native part of the population, I do consider that the question should be further considered of removing this tax. I have always felt that, and feel it more strongly than ever to-day. I quite realize that we did not feel justified in taking it off this year, but it is a matter which does deserve very serious consideration.

In the same way, some of us felt that the tax on the export of cotton was not the right sort of tax. Personally, I dislike all export taxes, and if possible they should be avoided, and it is a little hard on one section of the native community to have to pay this tax which nobody else does.

Regarding mining royalties, I understand that negotiations are going on between Government and the representatives of the mining industry as to the form which any increase of taxation is to take. I hope in due course we may be informed what has happened in that respect.

That is all I have to say on the revenue side.

Coming to the expenditure side, my first point is the one raised by the hon. Member for the Coast with regard to passages. This is, I know, a somewhat difficult question, but I do think there is a tremendous lot in what the hon. member said, that it is very unfair if certain officers prefer not to take their leave now that they should be allowed to delay their leave and take it afterwards, to the detriment of other officers who, in the ordinary course, would be entitled to leave by that time. I think Government should give a little further consideration to it, and not leave it entirely voluntarily to officers. There is no reason why leave should not be taken either locally in the country or other parts of the British Empire: they can go to India, Australia, South Africa, and other places. I do consider that any officers who refuse to take

their leave now should be put at the bottom of the roster for leave in the future, so that they should not affect adversely the leave interests of other members of the Service. I also trust that Government will consider the recommendation that anyhow some part of the cost of passages should be granted to officers who like to take their leave locally.

The question of the labour officers was also raised by my hon. friend. If you look in the Estimates you will see there is no actual reduction; in fact, there is one extra officer there, but at the moment they are short because two officers are serving with the military forces. I think everyone agrees that the establishment of labour officers must be kept up to strength during the war, as it is very important.

Then comes the larger question as to whether this should be made a department instead of being a section of a rather nebulous department presided over by the Chief Native Commissioner, or whether this and the registration section should not be put together under one officer. That, I understand, Government are going to consider when considering the report of the committee on the riots at Mombasa.

Reference was also made to the Registration of Domestic Servants Ordinance. I should like to take this opportunity to say that I am satisfied there is a very general demand among the ladies of this Colony that this registration of domestic servants should be extended all over the country.

Turning to paragraph 83, Grants-in-aid to Indian Schools, it will be noted that I am specifically mentioned there as having called attention to last year's Standing Finance Committee Report. This particular question has been raised for several years running, and each year Government have given an undertaking that they are going thoroughly to investigate it, and each year when the Estimates come up no investigation has taken place. I do wish now that Government would fulfil what they have promised before. I have no wish to handicap the education of Indian children, but an attempt should be made to get these grants on a proper basis so that we know exactly to what

[Lord Francis Scott] we are committed and what is Government's policy to be carried out in this respect.

I have not very much to say after so much else has been said about scholarships at Makerere. I was glad to hear the hon. Director of Education say it was the intention that a pupil who wanted to get this university education should contribute something towards the cost of it. I do not think that anywhere in the world is it considered that university education should be on a free basis as a State charge. It is the case that certain people get scholarships and so on to help them with their education, but I do think there is very great danger of this Makerere stunt getting out of proportion, and I do hope our Kenya representatives will keep a very close watch on it, especially from the financial point of view.

The hon. Member for Nairobi North also raised the question of a scholarship of £100 at Oxford, and the hon. Director of Education stated there were many cases of bursaries of £100 and so on. I think it is a fact, and he will agree with me, that in this present year in which we are living that there is no bursary of £100; the highest is £75.

Turning for a moment to the Judicial vote, it may interest this Council to know that we had a very urgent plea put up to us by the representative of the Judicial Department to have three more gentlemen added to his staff because of the enormously increased work necessitated by the alteration in the Criminal Procedure Code. (Laughter.) We did not grant his application, but I thought it would interest hon. members to know that that is the opinion of the Judicial Department.

I am very glad that Government are prepared to consider giving some small grant to the native welfare clinic at Nakuru. It does not run into much money, and I hope also that the hon. General Manager of the Railways will co-operate in this matter, because it does affect his staff very much too.

While on that, I cannot say how pleased I am that it has been agreed to spend money on an extension of Nakuru native hospital. It was a very urgent matter, and I am delighted that money is

now forthcoming. I hope it will be realized that members on this side of Council do sometimes think of the interests of the natives as well as of their own constituents.

With regard to the remarks of the hon. Director of Veterinary Services, I am very glad to hear he is taking such trouble to guard against these pig measles, because it is a very serious matter. We at this moment are trying to build up a pig industry, and it is very important that industry should be kept free from disease, and that it should be built up on sound lines of quality. I think it very unfortunate that this question should already have reached such large proportions, and I do trust that the officers in charge of that part of the world will take every precaution to see that the trouble does not spread.

I think my hon. friend the Member for Uasin Gishu raised the question of telephones. We did go into that very carefully, and the conclusion we came to was that it was a rather hopeless position to have a thousand pounds or so put under the Post Office Extraordinary vote each year, which everybody scrambled for to get a few more telephones here and there. We came to the conclusion that the only way to deal with the question satisfactorily was to get a reasonably large sum of money out of loan so that the question of rural telephones and telephone exchanges, and even the question of post offices and so on, can be dealt with on a proper basis and not from hand to mouth, as has been the case in the past. The matter was considered very seriously.

I was a little surprised that the hon. Member for Nyanza did not express her appreciation of the money bestowed on the farm scheme in the area of Songhor. I do think it a wise thing to do, and it is better we should subsidize a reputable farmer who is running his farm well with a certain amount of money under Government supervision, rather than start a farm run by Government as a new venture. I think it is a wise thing to do, and trust the farmers in that part of the world will appreciate what is being done.

I have no more to say on this report, but do trust that this question of control

[Lord Francis Scott] of imports and exports will be kept right in the forefront of the thoughts of those responsible in Government circles.

MR. PATEL: Your Excellency, I had no intention of speaking on this motion, but as the noble lord the hon. Member for Rift Valley made certain remarks about the grants-in-aid to Indian education, I rise to speak because I feel that there is a lot of misunderstanding in this Council in regard to these grants, and I think the whole question has been considered from a wrong angle.

The question is, not what amount should be given as grants to private Indian schools, but what is the responsibility of Government in giving primary education to Indian children in this country? We are not asking at present that there should be compulsory primary education, but when voluntarily Indian children attend schools we think they should be afforded every opportunity. It has been suggested several times in this Council and admitted by the Education Department that the Indian effort for private schools has in the past meant a great deal to the Indian community, and still they are making great efforts, thus saving Government a great deal of money in providing primary education for Indian children.

It has been admitted by the Education Department in the past that, owing to financial stringency, it has not been possible to provide Government schools in several centres and also to provide enough accommodation in the Government schools to admit all the children seeking admission. For that reason the Indian community have been obliged in the small centres to run private schools, and also in those centres where Government schools are run because the accommodation in the latter has not been sufficient. What is sought is to have certain aid to allow the private schools to run efficiently. Therefore the question is not what amount should be granted every year to these private schools but whether the private schools shall be allowed grants to enable them to run in order to provide education for children who are seeking voluntary admission into schools.

I think it is the responsibility of Government that primary education should be afforded to all children, if not compulsory at least in those cases where children seek voluntary admission to schools. So the question should be considered carefully whether the Government are going to accept the responsibility for affording education to Indian children in this country, and whether Government are going to provide Government schools or aided private schools run by the efforts of the Indian community. From that point of view we welcome consideration by Government as to whether they accept that responsibility or not.

While I am on my feet, I have one observation to make in regard to the Registrar General's Department, which is mentioned on page 9 of the report: The hon. Member for Mombasa has expressed the view that an Assistant Registrar General should be appointed in order that that department should work efficiently. If I may put the case for Mombasa, the greater need is to appoint a very efficient senior clerk in Mombasa so that the work there of that department may be more efficient and speedy. To-day the work done in Mombasa is most inefficient and delayed beyond all reasonableness. A junior clerk is placed there who is supposed to look after all branches of that department—companies, bankruptcy, trustee's work, and so on, and the District Registrar is acting as Deputy Official Receiver, Public Trustee and in every other capacity for the department. But we have found by experience that in Mombasa for several months we have no District Registrar, and therefore no official who can look after the Registrar General's Department, so that the junior clerk, who hardly knows his work or what to do, has to refer matters often to Nairobi, and the work is not only delayed but is done in a very inefficient manner.

The need is to put a senior clerk through the different branches of work in Nairobi—company work, trustee and bankruptcy work, etc.—give him experience for about a year, and then place him at Mombasa, so that the work there can be carried on more efficiently.

[Mr. Patel]

The last remark I have to make is in regard to items 83 and 84, page 11. I regret very much that the Standing Finance Committee has not seen its way to investigate this expenditure contained in both those items and make some recommendation for reductions.

Council adjourned for the usual interval.

On resuming:

MR. WILLAN: Your Excellency, the only reason for my intervention in this debate is in reference to the remarks made by the noble lord the hon. Member for Rift Valley with regard to item 36 on page 5 of the Standing Finance Committee Report.

I feel the only reason the noble lord made these remarks was that I should take them to heart! The hon. member, by what I would term a clever form of general pleading, rather gave hon. members of this Council reason to believe that His Honour the Chief Justice, through his Registrar, had made application for three more gentlemen to be added to the staff of the Judicial Department. Hon. members might get the impression that the application was to fill three very important posts in that Department—I mean, the noble lord did not say whether they were to be three more Judges or three more magistrates or registrars or deputy registrars. But, in fact, the application was for three more native typists. (Laughter.)

MAJOR GROGAN: Your Excellency, in the main debate on the budget the hon. Chief Secretary paid me the exceptional compliment of differentiating me from other members who participated in the debate, on the unpardonable ground that I had the temerity to criticize the absence of a policy and—

MR. RENNIE: On a point of explanation, I gave no grounds whatsoever for my statement. (Laughter.)

MAJOR GROGAN: I do not think that is quite correct, because that was in fact the only possible ground of differentiation. (Laughter.) I did, in fact, depart from the usual procedure and criticize the budget in respect of its lack of prin-

ciples. The hon. member's actual words were that I appeared to be suffering as the effect of the budget "from that form of mental excitement and exhilaration induced in some people by a surfeit of figures." I plead not guilty to the charge of exhilaration, but very guilty to the charge of mental excitement, and I think mental excitement is a very natural reaction to a study of the figures of the budget. I feel it is incumbent upon me to return the compliment by making a few inoffensive personal observations in respect of the hon. gentleman concerned.

I had recently the opportunity, when I sat on the Standing Finance Committee, of studying the hon. gentleman, and I appreciated the efficiency of his chairmanship. But it led me to realize that the hon. member was not only not exhilarated or excited by the mass of figures but actually narcotized by them. This is not unusual among folk concerned with the expenditure of and participation in other people's property, but it can be carried to extremes, and one particular item in the budget figures which required careful investigation or, if the hon. Financial Secretary will permit me to say, required a considerable amount of patience, to extract the essential facts, was a little item of the trivial figure of £500,000 or thereabouts; in fact, the entire cash reserve of the Colony, with which my friend the Chief Secretary appeared to be quite completely unconversant or even interested in the fact that this amount had been purloined by the Imperial Government and dispersed, possibly on quite proper purposes, but unconstitutionally done without any authority whatsoever from this Council.

If the hon. gentleman was in a blissful trance or appeared not to be interested or conversant with that little item of £500,000, I must emphasize that by saying that no credit was taken whatsoever on the revenue side of the budget for any interest on it. I am not objecting to the fact that the Imperial Government took any floating moneys lying about; it was the proper procedure. But it was an entirely improper procedure for the Government of this country or their agents in London not to show that we are at least credited with the same rate

[Major Grogan]

of interest the Imperial Government has to pay on its imperial borrowings, and I think that it is quite reasonably a ground of complaint on my part. That contrast in the effect of the figures upon myself, making me mentally excited, and upon the hon. gentleman, who I claim was in a narcotic trance, is due to the fact that I am one of the major payers whereas he is one of the major payees.

But I am satisfied with the skill with which he has taken up the reins of the administration of the country, and there is not the slightest doubt in my mind that when he has recovered from what I call the satrap complex, so easily acquired in many parts of the Colonial Empire, and adjusted himself to the circumstances of a British colony, and come in contact with many citizens of wider experience of business and ~~commerce~~ affairs than he is likely to acquire in that world of files, timid hesitations and skillful evasions where the hon. member moves and has his being, I have no doubt whatsoever that he will develop into a useful member of the Civil Service.

Passing from that to the budget itself, and our report on the budget, some of you may be surprised to find that I signed the report. (Laughter.) I did sign the report, but I signed it relying on the sting in its tail, which is contained in paragraph 95. It was impossible for me to write a minority report on the budget, because it would have required a three-volume novel, and nobody would ever have read it! In effect, of course, I did object to the budget. I am sorry that I failed to please the hon. gentleman by doing so in the general sense, but to all intents and purposes it is what real people would describe as a goose club account, and we are merely called together as contributors to the fund without any right of participation in the share-out of the geese, while the rest of the budget is nothing in the world but a farrago of wild guesses.

As the noble lord the hon. member for Rift Valley has pointed out, whether or not these revenues are going to have any sort of approximation to the figures indicated depends largely on the policy to be adopted and is being adopted to-

day. I agree with the noble lord that if the real needs of the country were studied by Government and the necessary steps taken to prevent what is obviously a determined attempt on the part of the Imperial Government to profiteer at the expense of the colonies in every sense; if an adequate attempt were made to protect these territories from such profiteering and enabled us to survive and pay a due proportionate part of the war, I believe these figures are grossly underestimated. But if the present policy of the Imperial Government is pursued, I have every reason to believe this country is faced with a first-class generalized catastrophe, not only for the landed industry but for the general commercial activities of the territory. I do not think there is any question about that, because it is utterly impossible for a handful of gentlemen, entirely unconvertant with the complex structure of business, shipping and finance, to sit down in an office and arbitrarily put a red pencil across indents for goods without any idea of the reaction that is going to result, without bringing the whole structure of the commerce of the country to a hopeless mess.

I say that deliberately, that there appears no question whatever about it. It may not be the deliberate intention, but it certainly is the inevitable effect. The Imperial Government's policy, at any rate, up to date, is one only to be described as profiteering at the expense of the Empire. You will have noticed that the Chancellor of the Exchequer, in the first speech he made after the beginning of the war, said their first principle that they must insist on was to maintain the value of money. Maintaining the value of money is 100 per cent Londonese for keeping down commodity prices. It is quite obvious from the intimations we have had that the intention is to try as far as possible to ensure supplies for England and France of the things these countries produce at what are to all intents and purposes prices at slump level, and they have made special provision in their own legislation to charge any jolly price they can exact from people to whom they sell.

We have been told there is to be a limitation of markets to which we can send our produce. That was due to the

[Major Grogan]

fact that we have no proper representative in London. Nobody pays any attention to the Colonial Office, which is recognized as a sort of administrative midden where any dud citizen who cannot find a job is put. It is the laughing-stock of London, and unfortunately its shortcomings all over the world of inefficiency are such that it has become an object of contempt, and it is utterly impossible for anyone, even if a genius, to go and adequately represent the proper interests in the stress of wartime of forty-six dependencies without active assistance. All the Dominions have their own live representatives, and make contacts with the Imperial Government for safeguarding the interests of their citizens, but this country has nothing of the kind.

Therefore it seems to me very essential that when we have got this goose club business out of the way, Government should turn round to the more serious consideration of the construction and maintenance of a policy. There is not one single feature in the whole of the budget which indicates any constructive sense or any intention of Government to adapt themselves to the fearful circumstances in which we happen to live, except the one pointed out, of a grant of £250 to a gentleman to buy half a dozen cows to show people in a dairy area how to milk cows.

If I have an assurance that Government will really get down to business, that it does realize the desperate state of local agriculture, that it will make some positive attempt to deal with agrarian indebtedness and take real steps, instead of blah-blahing, to ensure the maintenance of production apart from increased production, and believe that their proper part as Government is to represent first of all our interests and to protect us from external exploitation by the Imperial Government. I won't be as angry as I am to-day.

MR. NICOL: Your Excellency, in regard to the revenue estimates, I agree with what the noble lord said. Trade is most difficult to-day, and it is absolutely impossible to predict or forecast what will or will not be accomplished during the current year.

In regard to the estate duty estimate, I entirely support the contention that this duty should be removed from this Colony. It is nothing more or less than a capital levy, and for a young colony is bound to lead to disaster in the end. Another objection I have to using this capital, which is nothing more or less than capital, is that it is taken into revenue and used as revenue, which is entirely wrong in principle.

In regard to expenditure, I entirely agree with what was said about the necessity of officers taking their leave, and it is absolutely essential that they should take their leave as and when their time of service for leave becomes due. It is also fair on the junior officers that they should be given their chance, but I am a strong advocate of the case that in wartime a person should not be compelled to take his leave overseas. I think it would be very beneficial to individuals and to Government if it were possible to get long leave taken in this Colony, or in East African territories, and, as some inducement, recommendation (a) on page 3 of the Standing Finance Committee Report should be accepted by Government.

In regard to the question of bursaries at Makerere, I must say I do feel somewhat aggrieved at the very high fees, because when we originally reluctantly agreed to the grant of £50,000 I, personally, was under the impression it was on the distinct understanding that the interest was going to finance the education of our natives sent to Makerere. Well, the hon. Director of Education has explained that that was apparently found impossible, but I am very glad he is taking active steps and endeavouring to take a strong line to keep the fees to a minimum. In passing, however, I should like to say that the opinion I have formed is that the original estimates must have been very badly conceived.

Turning to the Judicial vote, and the reply given by the hon. and learned Attorney General, he pointed out that the three additional staff asked for were three native typists. I was discussing this question with the Registrar of the High Court, and he told me there was going to be an enormous amount of work thrown

[Mr. Nicol] on to the High Court, particularly in view of the fact that the writing of magistrates was so frightfully bad, and the impression I got was that only native clerks were able to decipher that writing.

On page 7, Medical Department, the hon. Chief Secretary drew attention to paragraph 47, item 117, the purchase of quinine for re-sale, and quite rightly said it was in the nature of an investment. I would commend the advisability to Government of going into the question of departmental stores and, if necessary, ordering now their anticipated requirements for possibly a year or even eighteen months, because all costs are rising, and it will be an investment. I do think very careful consideration should be given to this question of departmental stores.

Coming to the Registrar General's Department, I entirely agree with the remarks of the hon. Member for Usin Gishu and the hon. member Mr. Patel. In my opinion, that department is hopelessly understaffed, and I still feel that an assistant Registrar is essential. He should travel between Kisumu and Mombasa, so that the staff at Nairobi can be left intact. There should be a senior clerk at the office in Mombasa, because at present the position is really chaotic, and that is not an exaggeration. The man there now is not experienced. It is not his fault; he has not time to be trained. I do urge on Government the necessity of doing something, and ask that the trial suggested should be one of six months or until the time of framing the next year's estimates, when I suggest a committee might be appointed to investigate the work of the department. At the present moment it means that money is held up in bankruptcy funds, and I understand that payments of dividends from bankruptcy are to take place only twice a year. I suggest that that is not the correct procedure, that when dividends are available they should be disbursed, and I ask Government to kindly look into that particular question.

In regard to war expenditure, civil, in paragraph 83 it is suggested that a small committee should be appointed to investigate the organization of the Information

Committee. I should like to suggest that, after the advice of the Secretary of State in regard to the censorship had been obtained, perhaps it would be advisable to have a small committee to investigate the expenditure on account of the censorship, which I believe is £10,300—a lot of money—and it would satisfy the public if it were investigated. If it is necessary, well and good; if not, we may be able to save some money.

In regard to the public debt, the point I wanted to make there is that in this report is the fact that, though our public debt is shown as 17 millions, only approximately 4½ millions are on account of the Colony, the balance being on account of the Railway. I think the way the country has gone ahead on so small a public debt is a real credit to the natural resources of the Colony and a very good advertisement for Kenya. At the same time, it does strike me as being ridiculous that a Colony of this size, and importance too, should have been virtually starved for loan moneys for developmental purposes. It may be difficult to persuade the Treasury at home to let us have another loan for development at this stage on a large scale, but unless we get it we shall not be able to increase production which is very necessary, not only as a war effort but to increase our revenue and help in future years to balance our budget.

The hon. Member for Trans Nzola criticized paragraph 94 of the report. He said we have not done our job. With all due deference to the hon. member, I disagree with him. I think the committee worked hard and did their job. I personally do not consider I should anyway be included in his remarks: I do not know what other members of the committee feel, they must speak for themselves.

In this paragraph 94 it was suggested that a means of possibly balancing the budget or to make the deficit considerably less, would be to put to loan account or to anticipated loan account expenditure of a capital nature. I did raise this particular point in the budget debate last year, and the hon. Financial Secretary quite rightly drew attention to the fact that it was not unusual to finance capital works out of revenue. That was all right

[Mr. Nicol] with a balanced budget I agree. With the small deficit we have before us I still agree with what has been done, but I think the principle should be borne in mind that it would be perfectly correct to make provision for capital expenditure out of anticipated loans to be raised in the future.

Referring to what the hon. Member for Trans Nzoia said, he has obviously forgotten, in my view, what the hon. Financial Secretary said in his budget speech, that it was a provisional budget. We have all realized that and it is practically impossible to forecast under existing conditions to-day, but the hon. Financial Secretary did stress in his speech that it was not the intention of Government to take any retrograde step and abandon social services already embarked on, and we have not done that.

Finally, I should like to associate myself with the tribute paid by the hon. Chief Secretary to the Printing Department, and at the same time to pay a tribute to the secretary of the Finance Committee in the preparation of this report and the work he did during our deliberations.

DR. WILSON: Considering that practically every hon. member who has spoken has mentioned Makerere adversely, with the exception of my hon. friend the Director of Education, it would be rather unfair that the matter should be left there. If I might add to the very admirable—I must not say apology, but explanation—of the position made by the hon. Director of Education, perhaps I can make clear one or two points which possibly hon. members do not appreciate.

The last speaker said the estimates must have been very carelessly drawn up. That, as a member of Makerere Council, I cannot admit. It has got to be remembered that the Council was taking over an existing institution. It was quite impossible to destroy that institution and set up a perfectly new institution in one act. There had to be a process of adaptation of the old Makerere school into what is hoped eventually may be a university.

The other point is that whether the students, or undergraduates, as we hope

they may eventually be, are white or black, the cost of education is practically the same. We are aiming at a high standard of education, and it is perfectly absurd to think it can be done cheaply. We have taken every care to keep the estimates as low as possible, but for those two reasons—in the first place because we are taking over an existing institution, and in the second place because the cost of university education must be expensive—it has not yet been found possible to reduce the estimates beyond the figure mentioned, £34,000, and the endowment fund will only produce about £17,000 for annual running expenses.

At the present moment there are very few students at Makerere. Some of the courses of instruction such as veterinary, have only three to five students. It costs almost as much to teach four of five as it does twenty or thirty. As the standard of education rises in the East African dependencies, so the number of students at Makerere will increase and the cost per head will drop.

That is all I have to say in excuse or explanation of Makerere, and I hope that as members of this Council get a wider knowledge of what is being attempted there they will come to the conclusion that this money we are now being asked to spend is a very wise expenditure and amply returned in the improved education of the natives of this Colony.

MR. COOKE: On a point of explanation, I personally said nothing adverse about Makerere.

MR. LOCKHART: Your Excellency, the hon. Member for Usasin Gishu raised once again the question of petrol rationing and asked that the inconvenience to the public should be diminished by, I gathered, the abolition of the system. I can hold out no hope of that. The necessity for it has been explained in this Council on more than one occasion, but, in fact, the system has been modified, and it is fair to say there is very little real inconvenience imposed on anybody. We undertook before the outbreak of war to reduce petrol consumption in these territories by 40 per cent. Owing to the fact that conditions have not developed here on the lines we had some reason to

[Mr. Lockhart] fear before the outbreak of war, the system has been very much modified, and the present reduction is round about 25 per cent. We are satisfied from inquiries that the regulations are reasonably applied, and I can hold out no hope of amending them.

The hon. Member for Nyanza raised the question of import control, I should like to make it clear once more that if applications for licences are reduced or refused, it means that the applicants are not allowed to place their orders where they would for the purpose of their business and in their own interests they wish to place them. That necessarily means not only inconvenience but, in some cases, real hardship. That is appreciated, and if that were not so there would be no point in having import control at all. We do in the administration of these regulations what we can that is compatible with very essential objects to minimize that inconvenience and hardship.

On the particular item the hon. member mentioned, agricultural implements or spares, licences have in fact been granted freely within reason, and it is certainly not the intention to immobilize agricultural machinery through lack of spares.

The hon. member raised the question of appeal from decisions by the licensing board. So far as the Defence Regulations are concerned, there is no provision for appeal. We must have finality somewhere, and it is placed in the hands of the Commissioner of Customs and his department. I may say that the whole duty does not fall on him, although he carries the responsibility: he has a staff for the purpose, and there is financial provision in the Estimates for it. In practice, an appeal can be made to the department, and if satisfaction cannot be obtained and the position is sufficiently serious, to the Supply Board, who are responsible for the general instructions under which the Commissioner works. For that purpose, as has been announced, it is proposed to strengthen the staff of the branch office in Nairobi in order that a responsible officer shall be more accessible to the up-country merchants.

The noble lord, the hon. Member for Rift Valley, referred to this question. As he rightly said, the most important thing facing the country to-day from an economic point of view is the general question of economic controls. It is the most important thing facing all countries to-day; we are not the only country subject to it. In fact, not only in the British Empire but it will be found certainly in all belligerent countries and most of the neutral countries too.

The noble lord referred to another important phase of import control, and that is the effect on our export trade. I think there is something of a tendency rather to talk at large on this question, and view it as one of academic political economy rather than apply oneself to local conditions as they obtain. So far as the balance of trade is concerned, the individual merchant is not concerned with it. If a firm in Nairobi get an order to buy coffee for America, they do not look at the Customs returns and interest themselves with the balance of trade. There are, of course, in peace time quite startling discrepancies in the balance of trade as between one country and another. In the sterling group they are all adjusted by settlement through London.

From a national point of view it is true that governments have to watch the balance of trade, but surely everyone must realize that the purpose of this import control is not to diminish foreign purchases by the British Empire. On the contrary, the object is to apply the total available exchange which makes these purchases possible in the method which best suits the object which the Empire has in view, that is, the successful prosecution of the war. There is another feature referred to on which the balance of trade may have some bearing, and that is the shipping. That again is merely an academic statement. In fact, we have no evidence not only that it has applied but that it is likely to apply. In point of fact, as America was referred to, I understand that the main difficulty of the shipping line serving America with East Africa is to get exports, not imports. I have discussed it with the agents concerned, and I see no reason at present to fear that that service is likely to be reduced on that ground. In fact, I understand that if

[Mr. Lockhart]
exports are available the service will be increased irrespective of the import position.

As I say, these are questions which have to be dealt with as they arise. They are being watched carefully. It is very difficult to anticipate in advance, and I do suggest to the hon. Member for Ukamba that he makes far too sweeping and generalized a statement on these matters on a very inadequate basis of actual established and ascertained fact. The fact that the hon. member failed to hear my last remarks is not a matter of much importance, because he would have paid no attention to them anyway. (Laughter.)

The hon. Member for Mombasa referred to the question of estate duty, and he criticised our financial system in that these, he said, were capital amounts and were taken into revenue. That seems scarcely compatible with the other criticism he made, which is that we meet capital expenditure from revenue. I should have thought that those two criticisms were effectively cancelled out.

The only other note I have was in regard to the public debt. As the hon. member very rightly said, the proportion of the total debt attributable to Kenya Colony as distinct from the Railway is very small, and the hon. member said the fact that the country has progressed so far while accumulating so modest a burden of public debt was a credit to the resources of the Colony. It did not apparently occur to the hon. member that it might also be a credit to the prudence with which the finances of the Colony have been managed. (Laughter.)

MR. GHERSIE: On a point of explanation, I did not advocate nor do I the abolition of the restrictions on petrol, but Government could give an undertaking that the public would not be unduly inconvenienced.

MR. LOCKHART: I thought that undertaking was given in my reply.

MR. RENNIE: Your Excellency, as the noble lord the hon. Member for Rift Valley has stated, the opinion of this

Council appears to be in favour of the report of the Standing Finance Committee. The criticisms which have been made, apart from one or two sweeping generalizations, are on point of detail only. With some of them now I propose to deal.

The hon. Member for the Coast and other hon. members referred to the question of passages, and stated that it was not advisable that officers should be allowed to pile up their leave and to continue to work for too long a period. I may assure hon. members that the disadvantages of the recent decision in respect of leave have not been overlooked by Government, and Government has already decided that the present arrangement should continue for a matter of six months or so and then be reviewed. It is quite impossible at the present time to state how many officers will actually defer their leave, but the situation will be carefully watched and those points which hon. members have referred to will be kept carefully in mind.

Reference was made by an hon. member to the question of the labour department and the necessity for seeing that this is kept up to full strength. The noble lord the hon. Member for Rift Valley explained the position there so far as the two officers who have joined military forces are concerned. As a matter of fact, I looked into the question of those two officers only a few days ago, with a view to applying for their release if the Principal Labour Officer considered it necessary to do so. That question will be dealt with in the near future, and the remarks of several hon. members about the necessity for seeing that this department is adequately staffed at the present time will be kept in mind.

The hon. Member for Nairobi North referred to the necessity for additional police officers, and he asked for an assurance that steps will be taken forthwith to appoint the fifteen officers to whom the Standing Finance Committee has referred in its report. Well, the position at the present time, I am informed, is that the Commissioner of Police has applied to the Deputy Director of Man Power for ten suitable people to be his additional officers. The Commissioner proposes to

[Mr. Rennie]
recruit ten officers at present, and if he finds after a trial that that number is not sufficient he will naturally come along and ask for more.

The hon. Member for Uasin Gishu referred to the question of stock thefts, and I have been able to make inquiries about the position there since I gave the reply to the question the hon. member raised the other day. The position is that the Commissioner of Police is so well satisfied with the results of the special arrangement that he made to deal with stock thefts in that district that he proposes to take away the additional staff which he moved to the district and use them for other very necessary purposes elsewhere. He has assured me, however, that the position in that particular district as regards stock thefts will be watched by him, and should circumstances necessitate additional staff he will do his utmost to see that suitable arrangements are made.

The same hon. member referred to the question of additional provision for new telephones, and made the remark that this particular matter had escaped the notice of the Standing Finance Committee. The fact that it did not escape the notice of the committee has apparently escaped the hon. member's own notice, because he has apparently not taken the implication of paragraph 90 sufficiently into consideration before he raised the point.

He also mentioned the necessity for having qualified persons at Kisumu and Mombasa to deal with bankruptcy procedure. I am informed by the Registrar General that, as regards Mombasa, most of the bankruptcy work there is done by private trustees who have been appointed by the creditors themselves, and that only one estate is being administered by the Registrar General's department. As regards Kisumu, the Registrar General has under consideration at the present time the appointment of an advocate to help the District Commissioner to speed up the work there. If I may mention at the same time the point made by the hon. member Mr. Patel, that a senior clerk was necessary in Mombasa to speed up the work, I can say that the Registrar General intends to inspect the work there

in the near future and will investigate the point made by the hon. member.

The hon. Member for Nairobi South returned to the attack in his usual gallant style regarding the question of the role and duties of the Kenya Defence Force. I regret to say that in this matter I must still retreat: I am not yet in a position to give a definite reply to the question. As the hon. member is probably aware, the matter has recently been referred to the General Officer Commanding, who has expressed his views, and the next step will be a discussion with the General Officer Commanding to clear up certain points that have emerged from his report on the subject.

As regards the remarks of the hon. Member for Trans Nzoia, I think that perhaps paragraph 94 of the Report might have been differently worded. It may have been unfortunate that the impression was given that it was only after the committee had concluded most of its consideration of the budget that it gave attention to the question of trying to balance the budget. As the noble lord made it clear, the committee right throughout its consideration and its examination of the Draft Estimates kept in mind the need for all possible cutting down of unnecessary expenditure, so that to that extent there was a continuous attempt to balance the budget, and that original deficit of £53,000 was kept in mind right throughout the proceedings.

The noble lord mentioned that Government had in the past given undertaking after undertaking in respect of the question of investigating expenditure on education. I may mention here that Government has under consideration at the present time a proposal that a memorandum should be issued giving the decision of Government or giving a note on the action taken by Government in respect of every undertaking or promise given on behalf of each individual department in the course of the debate on the budget and in the course of the consideration of the Draft Estimates by the Standing Finance Committee. If such a proposal were actually put into force, it would be possible for hon. members to see by reference to that particular mem-

[Mr. Rennie] orandum what action Government had taken in respect of every undertaking given during the course of debate or in the course of the examination of the Draft Estimates by the Standing Finance Committee. That matter is under consideration at the present time.

The hon. member Mr. Patel referred to the question of education for Indian children in Kenya, and asked if Government was prepared to accept the responsibility of providing education to those children. I think the answer to his question lies in that paragraph of the Standing Finance Committee report which deals with the grant-in-aid to Indian schools, paragraph 32:—

"After discussion, the committee recommended that item 83 should be increased to £10,000, on the understanding that consideration should be given by Government to the appointment of a committee to inquire into the whole basis of expenditure on education."

No doubt the point raised by the hon. member Mr. Patel will be considered by that particular committee if and when it is appointed.

I have already dealt with his point regarding the necessity of having a senior efficient clerk at Mombasa for bank-rupcy work.

As regards the remarks of the hon. Member for Ukamba, I may mention that I had some warning of what was going to happen this morning and of the bouquets that were going to be thrown at me, because in the few moments in Standing Finance Committee when he was not engaged in discussing matters I noticed that he had his eye on a copy of the *East African Standard* which contained a reference to those words "mental excitement" and "catharsis", and I realized he had then under contemplation an attack, if we may call it so—it was a somewhat mixed one I admit—of the type he delivered this morning. He made reference to the fact that an unfortunate individual like myself, who has no opportunity of living in the world of realism which he inhabits, and has to spend his time bawling among Government files

and dealing with papers rather than with men—men being a generic term in this case—has not the same advantages that he himself must possess. (Laughter.) I take heart, however, at his expression of hope, that after a sufficiently long stay in that world of realism in which he resides I may become a more useful member of society than I am at the present time. I may perhaps in return be allowed to express the hope that my sojourn in that particular world will not bring upon me the ills which appear to result from too long a stay in that world! (Laughter.)

The hon. member referred to the proceedings of the Standing Finance Committee in a way which I thought was hardly fair on some members. If we were to retalliate in kind it would be rather unfortunate, I think. He referred to me personally as being in a state of narcotic trance. He was probably quite correct in that statement, but I do not think he was correct in the reasons he gave for my being in that particular condition! (Laughter.) I think he overlooked the narcotic effect of a steady volume of music produced by an unending stream of words delivered at a distance of about one yard. The hon. member, I might explain, was sitting immediately on my right.

That music reminded me at times, when I was able to come out of the trance sufficiently, of the words of Wordsworth's poem in the Highland lass:—

"As though her song would have no ending." (Laughter.)

Apart from the few remarks the hon. member made about myself, I gathered that, subject to a few provisos, the budget met generally with his acceptance. That being the case, I do not think there is any particular point to which I should refer at this time. The only one point I should make, perhaps, "for his future information and reference" is that in that part of the Empire from which I came before coming to the east coast of Africa, that is to say, the part still further east, they used to refer to us as "prancing pro consuls". (Laughter.) Perhaps he might store up those two words for use on a future occasion. (Laughter.)

The question was put and carried.

DEVALUATION OF EAST AFRICAN CURRENCY

MOTION WITHDRAWN

The Order standing in the name of Major Grogan:—

"Be it resolved that in order to restore some measure of equity between primary producers and other members of the East African community and to enable the East African territories to compete on more equal terms with comparable countries the East African pound should be substantially devalued relatively to the London pound".

Having been called from the Chair,

MR. RENNIE: Your Excellency, perhaps it would save the time of this Council and be appropriate for various reasons if I explained at this stage Government's attitude towards this motion.

The question of the sterling value of the East African shilling has been examined in the past, and the decision was reached that any alteration in the parity of twenty shillings to the pound sterling fixed by Order in Council in 1921 would be neither practicable nor expedient. Government sees no reason at present to vary that decision but, in view of representations which have been made to it, it is prepared to appoint a small committee in a purely fact-finding capacity in order that the examination of this question may be brought up to date.

I should like to make it clear, however, that this question is one which concerns not only Kenya but also neighbouring territories and the Imperial Government, and that whatever may emerge from the committee's examination of the question the decision in the matter does not lie with this Government alone.

MAJOR GROGAN: In view of that assurance, Your Excellency, I beg leave to withdraw my motion.

With the leave of Council the motion was withdrawn.

ADJOURNMENT

Council adjourned till 10 a.m. on Friday, 5th January, 1940.

Friday, 5th January, 1940

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Friday, 5th January, 1940, His Excellency the Acting Governor (W. Harragin, Esq., K.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of 4th January, 1940, were confirmed.

PAPERS LAID

The following paper was laid on the table:—

By MR. WILLAN:

Select Committee Report on the Trades Disputes (Arbitration and Inquiry) Bill.

ORAL ANSWERS TO QUESTIONS
No. 69—FAMINE CONDITIONS IN NATIVE RESERVES

EARL OF ERROLL asked:—
In view of the imminent danger of famine conditions in the native reserves, will Government state what steps it is taking or intends to take to meet the situation?

MR. HOSKING: Government is aware that there is a serious food shortage in certain native areas owing to the drought. Steps have already been taken to ascertain what surplus of grain is available in certain native areas and what shortage is estimated in others, and maize has been provided for sale in areas where it is needed.

Measures are now under consideration for the general co-ordination of famine relief operations.

It is believed that the supplies of food-stuffs now available in the Colony are likely to be sufficient to meet all requirements until the next harvest may ordinarily be expected in the native areas affected by the shortage.

MAJOR GROGAN: Your Excellency, can we be informed whether the probable requirements of squatters' families have been taken into consideration in these calculations, because a very large number of people with squatters on their land are not in a financial position to form a plan of relief on their own account without assistance?

MR. HOSKING: The question will be met when definite facts are available as to the requirements of these squatters.

[Mr. Hosking]
Provision will be made for certain squatters in forest areas.

LAND AND AGRICULTURAL BANK (AMENDMENT) BILL

SELECT COMMITTEE REPORT

MR. WILLAN: Your Excellency, I beg to move that the report of the select committee on the Land and Agricultural Bank (Amendment) Bill be adopted.

As hon. members will see, it is a very short report consisting of three paragraphs. The amendments recommended in paragraphs 1 and 3 are purely formal and call for no explanation.

The amendment recommended in paragraph 2 is the deletion of sub-clause (5) of clause 2 of the Bill, that is, dealing with the maximum advance of £300. Hon. members will remember that representations were made by the noble earl the hon. Member for Kiambu on the second reading of the bill that the maximum of £300 was of little assistance to the coffee industry. The select committee recommend that with regard to perennial crops mentioned in clause 2 (1) (b) that the maximum advance should not be restricted to £300 but should be allowed up to 30 per cent of the estimated sale value of the crop, and the maximum of £300 should apply to an advance under paragraph (a) of the same clause, that is, an advance made in connexion with annual crops.

MR. LOCKHART: Your Excellency, I beg to second.

Arising from the explanation which has been given by the hon. and learned Attorney General, I should like to make clear that this Bill will not in itself provide a complete solution to the special difficulties which concern the greater part of the coffee industry to-day owing to drought conditions. The board will be limited to 30 per cent of the estimated value of the prospective crop, and they will have no option but to interpret this proviso strictly and with ordinary business caution.

EARL OF ERROLL: Your Excellency, I should like to express my appreciation of the select committee's agreement to the suggestion which I made. I quite realize also from the words of the hon. Financial Secretary that this cannot possibly be expected to remedy the very

real distress of the coffee industry at the moment, and it is only right to warn Government and the country as a whole that probably some greatly increased measure of assistance will be necessary, and in a very short time.

MAJOR GROGAN: Your Excellency, I only want to take a moment's time of Council to emphasize and support the remarks just made by the noble earl. The position, of which I think there is increasing recognition, of the coffee industry is rapidly becoming a desperate one not only on account of the price level but because of the unfortunate climatic circumstances to-day, and this measure we are now discussing is admittedly nothing but a palliative and really the substitution of Government finance for ordinary mercantile assistance.

We do sincerely trust that this is the prelude to some measure very much more fundamental in its intentions, calculated to deal with the essential problem, which is one of agrarian indebtedness rather than temporary assistance. The problem to-day is that a large number of coffee planters have no crop in prospect. They are applying for financial assistance to the Land Bank, when asked what are their prospects they say "Nil", and are told they can have no assistance. But these are the people who require assistance if we are to maintain the foundations of the country intact.

The question was put and carried.

STANDING RULES AND ORDERS SUSPENDED

MR. DENNISON moved that Standing Rules and Orders be suspended in order that the motion for the adoption of the Select Committee Report on the Trades Disputes (Arbitration and Inquiry) Bill be considered this day without giving one day's notice.

MR. DENNISON seconded.

The question was put and carried.

Standing Rules and Orders were suspended.

TRADES DISPUTES (ARBITRATION AND INQUIRY) BILL

SELECT COMMITTEE REPORT

MR. WILLAN: Your Excellency, I beg to move that the report of the select committee on the Trades Disputes (Arbitration and Inquiry) Bill be adopted.

[Mr. Willan]

Hon. members will see that the only amendment recommended by the select committee is purely formal, but I must inform Council that two witnesses appeared before the select committee—one the acting secretary of the Labour Trade Union of East Africa, and accompanying him was a member of the executive committee of the same trade union. Apparently the secretary went to India on the 28th of last month.

The acting secretary made representations that clause 8 of the bill, which deals with the inquiry board, should be amended so that in sub-clause (3) of that clause the Governor should be bound to appoint on any board of inquiry at least one person representing the workmen and at least one person representing the employers. In other words, that the Governor's discretion should be rather fettered. The acting secretary suggested this on the lines of the South African Act, 1937, a copy of which was produced to the committee. An examination of the Act showed that the provision to which he referred related to the appointment of a conciliation board and not to a board of inquiry, and I pointed out to him that we already had a similar provision in clause 3 of our bill, in the appointment of an arbitration tribunal. In spite of the explanation by me, the acting secretary pressed that the clause should be amended, and I believe that although the hon. member Mr. Isher Dass has signed the report he agrees with that representation, that provision should be made in clause 8 that on every board of inquiry should be one representative of the workmen and one representative of the employers. The remaining members of the select committee did not agree with that contention.

MR. DENNISON seconded.

MR. ISHER DASS: Your Excellency, it would appear from the report that I have signed it, but when I did so I made it absolutely clear that the hon. and learned mover should make it plain in the report that I did not agree with the recommendations in clause 8 of the bill as they stand to-day, that I insisted on an amendment to the clause to include one representative of the workmen and one of the employers. I am very sorry that that has not appeared in the com-

mittee's report, and that is why I am now speaking.

There is the argument that the discretion of the Governor should not be fettered by any such amendment. I am sorry that I do not agree because, after all, the board of inquiry could not do better than to seek the co-operation of the parties concerned and in whose interests the inquiry is held. Otherwise the consequences of an inquiry are usually boycotted by the parties concerned. There has been experience of that in different parts of the world, that when such committees have been appointed without the slightest co-operation of the parties concerned the result has been a boycott.

I have nothing more to add to what I have said on the second reading of the bill, and I would only point out that time alone will show who is right or who is wrong when a dispute actually takes place.

MAJOR GROGAN: Your Excellency, in his reply will the hon. and learned Attorney General inform us whether or no one gentleman cited as having returned to India was imprisoned for subversive activities, and whether or no the procedure of this country can be brought into line with the very proper procedure now being adopted in India?

MR. WILLAN: With regard to the remarks of the hon. member Mr. Isher Dass, of course it is a question of opinion, and he knows he was the only person on that select committee who advocated this amendment to clause 8.

Regarding the remarks of the hon. Member for Ukamba, I have not the slightest intention of replying. (Laughter.)

MAJOR GROGAN: Why not?
The question was put and carried.

BILLS

THIRD READINGS

MR. WILLAN moved that the Land and Agricultural Bank (Amendment) Bill and the Trades Disputes (Arbitration and Inquiry) Bill be read the third time and passed.

MR. DENNISON seconded.

The question was put and carried.
The Bills were read the third time and passed.

ADJOURNMENT

Council adjourned *sine die*.

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