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COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

OFFICIAL REPORT

Second Series — Volume IX

1940

18th March to 3rd April

1940
PRINTED BY THE GOVERNMENT PRINTER
NAIROBI

CHRONOLOGICAL INDEX

COLONY AND PROTECTORATE OF KENYA

List of Members of the Legislative Council

President:

His Excellency the Governor, Sir Henry Moore, K.C.M.G.

Ex Officio Members:

Chief Secretary (Hon. G. M. Rennie, M.C.).

Attorney General (Hon. W. Harragin, K.C.).

Financial Secretary, Acting (Hon. G. Berlsford Stooke). (1)

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).

Director of Education (Hon. A. T. Lacey, O.B.E.).

General Manager, K.U.R. & H. (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 of Lands and Settlement, Acting (Hon. G. J. Robbins). (2)

Nominated Official Members:

Hon. G. H. C. Boulderson (Prov. Commissioner, Coast).

Hon. H. M. Gardner, O.B.E. (Conservator of Forests).

Hon. S. H. La Fontaine, D.S.O., O.B.E., M.C. (Prov. Commissioner, Central Province).

Hon. S. H. Fazan, C.B.E. (Prov. Commissioner, Nyanza Province).

Hon. H. C. Willan, M.C. (Solicitor General).

Hon. R. Daubney, C.M.G., C.B.E. (Director of Veterinary Services).

Hon. G. B. Hebden (Postmaster General).

Hon. S. O. V. Hodge (Prov. Commissioner, Rift Valley Province).

Hon. H. Izard (Commissioner of Mines).

European Elected Members:

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.

Hon. G. S. Hunter (Acting), Nairobi North. (3)

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* Hon. C. R. Lockhart, C.B.E.
(2) *Vice* Hon. C. E. Mortimer, M.B.E.
(3) *Vice* Major the Hon. F. W. Cavendish-Bentinck.

ABSENTEES FROM LEGISLATIVE COUNCIL SITTINGS

18th March—
- Hon. Commissioner of Customs.
- Hon. Elected Member for Uasin Gishu.
- Hon. Elected Member for Ukamba.
- Hon. Arab Elected Member.
- Hon. Arab Nominated Member.
- Hon. Elected Member for Eastern Area (Mr. A. B. Patel).

19th March—
- Hon. General Manager, K.U.R. & H.
- Hon. Commissioner of Customs.
- Hon. Elected Member for Uasin Gishu.
- Hon. Elected Member for Eastern Area (Mr. A. B. Patel).
- Hon. Arab Elected Member.
- Hon. Arab Nominated Member.

20th March—
- Hon. General Manager, K.U.R. & H.
- Hon. Commissioner of Customs.
- Hon. S. H. Fazan, C.B.E.
- Hon. Elected Member for Uasin Gishu.
- Hon. Elected Member for Eastern Area (Mr. A. B. Patel).
- Hon. Arab Elected Member.
- Hon. Arab Nominated Member.

21st March—
- Hon. General Manager, K.U.R. & H.
- Hon. Commissioner of Customs.
- Hon. Elected Member for Uasin Gishu.
- Hon. Elected Member for Eastern Area (Mr. A. B. Patel).
- Hon. Arab Elected Member.
- Hon. Nominated Member, Native Interests (Dr. C. J. Wilson, C.M.G., M.C.).
- Hon. Arab Nominated Member.

2nd April—
- Hon. Elected Member for Kiambu.
- Hon. Elected Member for Uasin Gishu.
- Hon. Arab Elected Member.
- Hon. Arab Nominated Member.

3rd April—
- Hon. Elected Member for Kiambu.
- Hon. Elected Member for Uasin Gishu.
- Hon. Elected Member for Eastern Area (Mr. A. B. Patel).
- Hon. Arab Elected Member.
- Hon. Arab Nominated Member.

COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

FIRST SESSION, 1940

Monday, 18th March, 1940

Council assembled at 11 a.m. at the Memorial Hall, Nairobi, on Monday, 18th March, 1940, His Excellency the Governor (Sir Henry Moore, K.C.M.G.) presiding.

His Excellency opened the Council with prayer.

PROCLAMATION

The proclamation summoning the Council was read.

OATH OF ALLEGIANCE

The Oath of Allegiance was administered to:—

Ex Officio Member:

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

European Elected Member:

G. S. Hunter, Esq., Nairobi North, Acting

INVESTITURE

HIS EXCELLENCY: I will take this opportunity of saying that I have received instructions that it is His Majesty's wish that during the war there shall be no official celebration of his birthday, and a notification to that effect will appear in to-morrow's Gazette. For that reason, I am now presenting insignia which normally would be presented as usual at Government House on the occasion of the official celebration of His Majesty's birthday.

By Command of His Majesty the King, His Excellency then presented:—

The insignia of Companions of the Most Distinguished Order of Saint Michael and Saint George to the Hon. R. Daubney, O.B.E., Director of Veterinary Services, and Dr. the Hon. C. J. Wilson, M.C., Nominated Unofficial Member representing Native Interests.

The insignia of a Commander of the Most Excellent Order of the British Empire to R. C. A. Cavendish, Esq.

The insignia of an Officer of the Most Excellent Order of the British Empire to H. E. Lambert, Esq.

The insignia of Members of the Most Excellent Order of the British Empire to Captain A. G. R. Higgins and R. W. C. Baker-Beall, Esq.

COMMUNICATION FROM THE CHAIR

His Excellency made the following communication from the chair,

Honourable Members of Legislative Council,

As this is the first meeting of Legislative Council since my assumption

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COMMUNICATION FROM THE CHAIR

His Excellency made the following communication from the chair.

Honourable Members of Legislative Council,

As this is the first meeting of Legislative Council since my assumption

[H.E. the Governor]
of the Governorship of this Colony, I should like to take this opportunity of saying a few words before we proceed to the business on the order paper.

So far as this Council is concerned I feel sure that I can rely on your co-operation and constructive advice on all matters that may be laid before you. Honourable members have to my knowledge in the past shown a proper pride in maintaining the dignity of the Council and ensuring that, however keen may be the cut and thrust of debate, the privileges of free speech are not abused. I feel sure that in this regard I may also count upon your ready support.

The Acting Governor in his budget speech at the end of last year, reviewed at length the role which this Colony is called upon to play in making its contribution to the prosecution of the war, and it is unnecessary for me to go over the ground again. In the months that have elapsed there have been no changes in the general situation of a kind that would call for any departure from the policy already laid down. Briefly, our first duty is to make the maximum contribution in men and money that our resources permit to the defence of these East African territories, should they become the subject of attack; our second, to husband and develop both our man power and our natural resources along the lines that will enable us to make the maximum and most useful contribution to the mother country in the general prosecution of the war.

That is a simple and plain statement of our duty from which I cannot believe anyone in this Colony would dissent. But, as most of you know better than I, its actual fulfilment is fraught with many practical difficulties. I will not attempt to rehearse them all here. In the field of man power the natural desire to join the fighting services has to be carefully weighed against the no less essential needs of production, trade and efficient government. In the field of agricultural production the primary producer in many cases feels bewildered by uncertainty as to markets and the future trend of prices. Exporter and importer alike are further hampered by the necessary curtailment of shipping space. All this on top of one of the worst droughts Kenya has experienced for many years. Conditions such as these must necessarily create problems that are not susceptible of quick or easy solution and in some instances may even give rise to causes of individual hardship. I can only say that the Government is fully alive to the position, is keeping it under continuous review and has been and is doing all it can in present circumstances to minimize the trade dislocations inseparable from the passage from a peace to a war-time economy. But when all is said and done we are at war. Coming, as I do, straight from the restrictions which a severe winter, a nightly black-out, strict petrol rationing and crushing taxation have imposed upon the life of the ordinary citizen at home, I cannot but feel that such sacrifices as we in Kenya have been called upon to make so far are small in comparison.

It is not, I know, that the spirit of service and sacrifice is lacking, but rather that the present course of the war and our comparative immunity here makes it particularly difficult for many to decide in what direction their duty lies.

So far as our local man power situation is concerned, close co-operation between the military and civil authorities continues to be maintained. You will no doubt have noticed that a communique has recently appeared in the Press to the effect that owing to changed circumstances the military authorities have decided that a further number of recruits can be absorbed in the Kenya Regiment. Although Government is anxious to disturb the essential agricultural and industrial pursuits of the Colony as little as possible, the man power records indicate that there is still a number of young men in this Colony who are available for military service, and the Government hopes that they will take advantage of this opportunity of serving their country in a military capacity.

It is proposed to carry out in the near future a further survey of the European

[H.E. the Governor]
man power in the country in order that the exact position in each district may be ascertained. I should, however, like to make it clear that men holding key posts in essential industries (including agriculture) cannot be regarded at present as available for military service. Whatever their personal predilections may be, they are performing a no less important task than if they had actually been enrolled in one of the fighting forces, and it is to the advantage of the country at present if men in this category, who have been exempted by the Exemption Tribunal from their obligations under the Kenya Defence Force Ordinance, remain at their posts instead of volunteering for military service.

But apart from such personal service there are other directions in which we can make our contribution, however modest, to the general war effort, and I suggest that more serious thought should be given by all who are in a position to do so for the need of saving. The exercise of economy, both public and private, in war time means a reduction in our demands on the productive capacity of the Empire or on its foreign exchange resources, and so frees goods, shipping and purchasing power to be used for purposes vital to the war effort. Apart from this, the building up of such personal savings will be of value not only to the State but on the long view to the individual himself.

In this country at the present time there are, I believe, a certain number of individuals, particularly among the younger folk, with no family commitments or liabilities, to whom the war has brought salaried occupation of a kind that will necessarily be terminated abruptly at the cessation of hostilities. Their reabsorption into civil life will necessarily present great difficulties, difficulties that are likely to be accentuated the longer the war lasts. In the meantime the war has to be paid for. It is calculated that the total disbursements of His Majesty's Exchequer in the next year will be over two thousand five hundred millions, some put it as high as three thousand two hundred millions. Against this, the yield in a full year of the present rates of tax at home is only about one thousand two hundred and fifty millions. That gap has got to be bridged somehow. Why should we not help to bridge it by the purchase of War Savings Certificates or Defence Bonds, and by so doing help yourself at the same time?

On investigation it has not proved possible to make arrangements for the sale within the Colony of the new issue of Savings Certificates which have been created in the United Kingdom for the purpose of financing the war, but anyone in Kenya who wishes to buy them can do so by making personal arrangements through their own bankers. In the case of Defence Bonds, which are issued in units of five pounds, the possibility of arranging for their sale within the Colony is still under investigation, and I hope it will be possible to make a further announcement on this subject in the near future.

The other matter to which I would like specially to refer is the recent publication by His Majesty's Government of a White Paper containing a Statement of Policy on Colonial Development and Welfare. That statement has already received so cordial a reception both in the East African and the home Press that it is unnecessary for me to commend it to your approval. It is stated in the White Paper itself that "conclusions in principle on the further development of Colonial policy were reached some time ago", and as I personally took part in many of those preliminary deliberations during the time that I was in the Colonial Office I should like to emphasize the following points:—

(1) The statement is a clear recognition on the part of His Majesty's Government that its position as trustees for the well being of the peoples of the Colonial Empire carries with it the responsibility of providing funds for the improvement of the standard of living of its wards, in cases where such improvement is beyond the resources of the local Government.

(2) That such assistance may be of a recurrent as well as of a capital nature.

[H.E. the Governor]

(3) That the first emphasis will be on the improvement of the economic position of the Colonies concerned, since in this way alone can any permanent improvement in the general standard of living be maintained.

(4) That assistance from United Kingdom funds should be effectively related to what the Colonies can do for themselves.

(5) That the new policy of development will involve no derogation from the rights and privileges of local legislatures, nor will the fact that a Colony receives assistance entail upon it the system of financial control which is now associated with the receipt of grants-in-aid.

I am sure that honourable members will agree that this statement represents a notable advance in Colonial policy, not only in terms of financial aid but still more because of the new angle of approach to our Colonial problems that it reveals. For this we have to thank the vision and untiring assiduity of the present Secretary of State, Mr. MacDonald.

Under war conditions I suggest that this policy has a special significance. We are fighting a totalitarian war, and in such a war it is becoming increasingly evident that the economic front is of as great, if not greater importance, than the war front. In the British Commonwealth we have immense resources of man power and natural wealth. Their proper utilization calls for long-term planning. How far developments in the general strategic situation may interfere with the prosecution of such plans it is impossible to forecast. But already the war itself has profoundly influenced the normal course of Empire trade, with consequences which may prove of lasting significance to the economic structure of the British Commonwealth.

In the case of Kenya this announcement is particularly opportune, for it comes at a time when the necessity for taking urgent and, if necessary, drastic steps for the preservation of the land and water resources of the Colony is generally recognized, and you are being invited to pass special legislation on this subject at this session. Many of the purposes for which rule-making powers are taken under the Land and Water Preservation Bill are necessarily restrictive in character, but others are of a kind which may involve expenditure. I hope that side by side with the drawing up of the regulations a long-term plan may be prepared for the general rehabilitation and conservation of the land in the widest sense, including reafforestation, control of soil erosion and the provision of improved water supplies, in particular dams, to be financed from the new vote referred to in the White Paper. I know that much time and thought have been given to this subject already and many memoranda have been written on it. I trust, therefore, that there may be no undue delay in the preparation of the necessary plans. To my mind, particularly in view of what I have seen in the short time since my return to this Colony, this is the most serious question with which we are at present faced, and action rather than further deliberation is urgently called for.

Intimately, not to say directly, connected with this problem so far as it applies to land in the native reserves is the question of native land tenure. We all know that among the majority of African tribes the land is regarded as belonging to the community, and while individual occupation and use of the land is general, such occupation or use in no sense denotes an individual freehold title in the commonly accepted sense of the term. But it is, I believe, a mistake to conceive of native law and custom as entirely rigid. In some respects at any rate it is fluid and not unready to adapt itself to the changes and developments which are taking place owing to economic or other causes. Nothing has struck me more during my recent tour in the Kamba Reserve and in the South Nyeri Native Reserve than to note the development in the physical demarcation—in many cases the actual fencing—of individual holdings. This no doubt is of value to the individual native in assisting him to relate the type of his cultivation to the size of his holding and to the economic needs of his family, and in particular to bring home to him the danger of keeping more stock than his holding can carry. On the other hand, so

[H.E. the Governor]

rapid a drift towards individual ownership carries with it its own dangers for the sons and grandsons of the present occupiers, since the size of many of the holdings does not admit of unlimited subdivision in the future. Such individual ownership also introduces the temptation in hard times to alienate or mortgage the land in a manner quite foreign to original native custom. I believe a proper understanding of the changes and developments which are now taking place in native custom with regard to, among other matters, the occupation, use, holding, transfer and inheritance of land is vital if in our general long-term planning for the improvement of the use and development of Kenya as a whole we are to plan wisely for the future.

It is, I think, clear that if steady and continuous progress is to be maintained, it will be necessary to appoint an officer whose whole time duty it will be to supervise the formulation of the necessary plans and co-ordinate the activities of the different departments and of the various advisory boards, committees and unofficial bodies that have given serious consideration to these questions in the past. This matter is receiving the serious consideration of Government.

Another question which I suggest demands close and early attention is the provision of better native housing in Mombasa and Nairobi. In the case of Mombasa this question has been brought prominently to notice by the recently published Report of the Commission of Enquiry to examine labour conditions in Mombasa. It is a matter of general knowledge that one of the difficulties that has arisen in dealing with this problem is that in the majority of cases the urban native is not able to pay a rent that represents an economic return on the capital required to provide a suitable type of native housing. This seems to me a matter in which the local authorities concerned might reasonably look for assistance from the new vote referred to in the White Paper for the provision of the whole or part of the capital expenditure involved, and I hope that this question may be further explored on these lines.

Another urgent question, which I know has already been receiving much local consideration, is the improvement of our roads, and I hope in this respect too that progress may be made.

In the foregoing remarks I have done no more than direct attention to what appear to me to be the more urgent problems for the solution of which financial assistance beyond the local resources of this Colony is required, but I have no doubt that there are many other projects which will suggest themselves to honourable members on further consideration. It should, however, not be overlooked that the policy outlined in the White Paper has still to be endorsed by Parliament and the necessary vote taken. In the meantime the existing Colonial Development Fund machinery remains in operation. While, therefore, I hope there will be no delay in the formulation of our plans, it is equally important that there should be no hasty improvisation in their preparation.

I will now turn for a moment to the more immediate problems that concern us and the general financial position of the Colony at the present time.

It is not yet possible to indicate the final results of the year 1939. Up to the end of August, revenue had exceeded expenditure by a sum of £124,627, which indicates that but for the outbreak of war, the final surplus for the year would have been satisfactory. The accounts for the remainder of the year are not yet complete and certain outstanding questions in regard to the incidence of naval and air expenditure are still the subject of negotiation. The outlook, therefore, is too uncertain to venture any prediction as to the outcome of the present year, but revenue returns, I am glad to say, to date can be regarded as satisfactory.

Honourable members will also be interested to hear that the value of our domestic exports for the year 1939 constitutes a record in the history of the Colony. The total value was £4,176,476. This represents an increase of £340,792 over the 1938 figure, an increase of nine per cent. Similarly, the value of imports retained in Kenya during 1939 increased by £183,789 or four per cent as compared with 1938.

[H.E. the Governor]

Refined gold produced during the year amounted to over 77,000 ounces, valued at approximately £608,000, as compared with 69,000 ounces valued at £500,000 during 1938. Thus, once again, the mining industry has shown considerable progress and gold has retained its place as second highest in the value of the Colony's exports.

The report of Mr. Daubney and Colonel Griffiths on their visit to the Near East will be laid on the table, and you will find appended to the report a supplement containing information as to certain trade developments that have arisen out of these investigations. I feel that we are all indebted to Mr. Daubney and Colonel Griffiths for the prospects that the report opens up of finding new markets for our agricultural industries.

I have no doubt that similarly useful results will flow from the visit of Major the Honourable F. W. Cavendish-Bentinck and Colonel Griffiths to London. I should like to remove any misapprehensions that may have arisen in certain quarters that the object of the mission was to haggle with the home authorities in time of war with a view to obtaining specially favourable prices for such of our primary products as are required by the Ministries of Food or Supply. Nothing of the kind was ever in the minds of the Settlement and Production Board when recommending such a visit, nor in the minds of members of the Executive Council or myself in accepting that recommendation. But equally I suggest it is not unreasonable that if growers are encouraged to enter into special commitments for the disposal of their crop for war purposes reasonable precautions should be taken to ensure that they are not to be called upon to produce at a loss. I have already referred to the special difficulties and problems which the system of control necessitated by the war has imposed upon our primary producers, and I hope that the deputation, by personal contacts, will be able to clear up many points in a manner that would be quite impossible by correspondence. You will have already seen from notices in the public Press the cordial reception which the combined delegation has received from the Secretary of State.

I hope, too, that Mr. Lockhart, our Financial Secretary, who is going on well-earned leave this month, will be able from his experience as Chairman of the Supply Board to give further valuable information to the authorities at home as to the working of our local controls and the best means of co-ordinating our policy with that of the mother country in carrying out the general policy laid down by the Ministry of Economic Warfare. I have already referred to the importance of the economic front in the present war. This aspect is likely to become of increasing importance as the war goes on. By way of illustration I would refer to the recent amendment to the Defence (Finance) Regulations which have been promulgated to safeguard the Empire's resources in foreign currency. I would advise all interested in the subject who have not already done so to read the review of the situation given to Parliament by Mr. Cross, Minister for Economic Warfare, which appears in the London *Times* of January 18th.

The disastrous drought of the past year has had, I know, severe effects on some sections of the farming industry, particularly coffee, dairying and cereal production. Proposals for some measure of temporary assistance from Government on behalf of the coffee industry are receiving sympathic consideration. Government is taking active measures to minimize the distress among natives caused by the drought. There is no shortage of food in the Colony as a whole, but a serious situation has developed in certain districts as a result of the combination of shortage of food and lack of sale surpluses to provide the means of payment for purchased food. Government is assisting local native councils to obtain food for distribution to distressed areas at bare cost, and the Railway authorities have been invited to contribute by a temporary reduction of the internal railway rate on maize. As High Commissioner I have approved a recommendation of Railway Council that the maximum rate should be reduced to one shilling per bag up to August 31st, 1940.

[H.E. the Governor]

With regard to the legislation that lies before us, I have already referred to the Land and Water Preservation Bill.

The Income Tax Bill is a consolidating and amending measure necessitated mainly on account of the introduction of this tax by the Governments of the neighbouring Territories of Tanganyika, Uganda and Zanzibar.

Of the remaining eight Bills, I need only mention the Increase of Rent and of Mortgage Interest (Restriction) Bill. This Bill is the outcome of recommendations made by a committee appointed to investigate and report on the question of rent restriction. The provisions of the Bill limit, subject to certain exceptions, the rentals of dwelling houses and the rate of interest on mortgages, secured on dwelling houses, to the rates existing on the 3rd September, 1939, the date of the outbreak of war. Power is given to the Governor in Council to apply the provisions of the Bill to any premises used for business, trade or professional purposes when the annual rental does not exceed £250 per annum. Generally, the details of this Bill follow legislation in force in the United Kingdom.

Finally, I should like to take this opportunity of expressing the very sincere appreciation of Government of the valuable services which are now being performed by various unofficial bodies and individuals in connexion with the special local machinery necessitated by the war. In the work of the Supply Board and the Production and Settlement Board, and of various one-man appointments, Government has been able to draw on much valuable special knowledge.

Honourable 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 the prosperity and welfare of this Colony and Protectorate. (Applause)

MINUTES

The minutes of the meeting of the 5th January, 1940, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

BY THE CHIEF SECRETARY (MR. RENNIE):

Standing Finance Committee Report on Schedule of Additional Provision No. 3 of 1939.

Schedule of Additional Provision No. 4 of 1939.

BY THE FINANCIAL SECRETARY (MR. LOCKHART):

Annual Report on Kenya, Uganda and Tanganyika Savings Bank, 1938.

BY THE ACTING COMMISSIONER FOR LANDS AND SETTLEMENT (MR. ROBBINS):

Return of land grants, October-December, 1939, under the Crown Lands Ordinance.

BILLS

FIRST READINGS

On the motion of the Attorney General (Mr. Harragin), seconded by Mr. H. C. Wilkes, the following Bills were read a first time:—

The Income Tax Bill.

The Increase of Rent and of Mortgage (Restriction) Bill.

The Land and Water Preservation Bill.

The Official Secrets Bill.

The Notaries Public (Amendment) Bill.

The Administration of Estates by Consular Officers Bill.

The Land and Agricultural Bank (Amendment No. 2) Bill.

The Agricultural Mortgagors Relief (Amendment) Bill.

The Stamp (Amendment) Bill.

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

ADJOURNMENT

Council adjourned till 10 a.m. on Tuesday, 19th March, 1940.

Tuesday, 19th March, 1940

Council assembled at 10 a.m. at the Memorial Hall, Nairobi, on Tuesday, 19th March, 1940, His Excellency the Governor (Sir Henry Moore, K.C.M.G.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of 18th March, 1940, were confirmed.

PAPER LAID

The following paper was laid on the table by Mr. Rennie:—

Report by Hon. R. Daubney, C.M.G., O.B.E., and Lt.-Col. G. C. Griffiths, C.M.G., C.B.E., on their visit to the Near East in October, 1939, and statement by the Settlement and Production Board on subsequent developments.

ORAL ANSWERS TO QUESTIONS

No. 2.—LEAVE CONDITIONS

MR. COOKE (Coast) asked:—

In order to encourage officers to go on short leave, will Government consider adopting the new leave conditions at present in vogue in Uganda, and especially that regulation enabling an officer to claim the long leave due to him in Europe eighteen months after his return from such short leave.

MR. RENNIE (Chief Secretary):—

1. Under the present leave regulations, officers who would normally proceed on leave to the United Kingdom are permitted to spend their vacation leave, or a portion of it, in other countries or in the Colony if they so desire and provided that there is no medical objection. At least three months of the vacation leave (exclusive of voyages) earned at the time of departure on leave must be taken. On return from such leave, an officer begins a new tour of resident service, and the unspent balance of his leave is carried forward as deferred leave to be taken on a future occasion. It is proposed to review these conditions at a later stage in the light of experience.

2. The Government gave careful consideration to the desirability of permitting officers, after their return from leave, to be credited towards their new tour with such length of resident service as is represented by the unspent balance of the vacation leave previously earned. The Government understands that this proposal has been adopted in Uganda, but decided that it was unnecessary to do so in Kenya.

LORD FRANCIS SCOTT (Rift Valley): Sir, arising out of that reply, would the hon. Chief Secretary inform me what action Government has taken on the recommendations of the Standing Finance Committee: that officers taking their leave locally should be allowed to spend some part of the money which would have been spent on their passages had they gone to Great Britain, a recommendation which has since been adopted by the Kenya and Uganda Railways and Harbours?

MR. RENNIE: Your Excellency, in reply to the question, I would state that the recommendation of the Standing Finance Committee received careful consideration by Government, but inasmuch as that recommendation departed entirely from the principle of the passage regulations—namely, that the officer is given a passage ticket to the United Kingdom and is given in effect a reimbursement of his travelling expenses to the United Kingdom—Government did not consider it was possible to adopt the suggestion.

The noble lord is hardly correct, I would venture to state, in saying that the Railways have adopted this proposal. They are to a very great extent working on the principle of reimbursement of travelling expenses, and the question whether the Government of Kenya should adopt a similar procedure to encourage officers to take their leave locally is under consideration at the present time.

M. F. PATEL: PENSION AND GRATUITY

MOTION

MR. LOCKHART (Financial Secretary): Your Excellency, I beg to move:—

That this Council approves the payment of a reduced pension at the rate of £14-5-5 a year, with effect from the 2nd November, 1939, inclusive, and a gratuity of £47-11-8, to Mr. M. F. Patel in respect of his temporary service on the military establishment from 20th March, 1916, to 31st August, 1919, both inclusive.

The necessity for this motion arises from the provision made at the end of the last war under the Superannuation Acts, which cover the pensions of non-European officers, whereby service in a military department which was followed immediately by service in a similar capacity in a civil department and when in respect of that military service no gratuity or bonus had been granted, should be allowed to count for pension. In 1932 we enacted the Non-European Officers Pensions Ordinance, which made no such provision, but in cases of this kind, when pensions would have been granted on these lines under the Superannuation Act, it was decided that they could not be deprived of them, and therefore it was necessary to consider each case—they are not numerous, there have been a few in the past—and to vote a pension by resolution of Legislative Council. Similar cases to this have been so dealt with and approved by this Council in the past.

The question was put and carried.

MR. HARRAGIN (Attorney General) seconded.

INCOME TAX BILL

SECOND READING

MR. WILLAN (Solicitor General): Your Excellency, I beg to move that the Income Tax Bill be read a second time.

If I am somewhat longer than usual I hope that hon. members will bear with me, because, to put it mildly, the subject with which I am dealing is not an easy one.

As hon. members are already aware, income tax has been introduced into the neighbouring territories of Tanganyika, Uganda and Zanzibar, and as soon as this Government became aware of that the first important question which faced us was to decide whether income tax was to be passed on an East Africa basis or whether a person should be taxed separately and independently in each territory according to his income and his circumstances in that territory. If this Government decided on the former—that is, income tax on an East Africa basis—that of course meant several amendments to our 1937 ordinance.

Referring to that Ordinance for a moment, hon. members will remember that the basis of taxation under the 1937 Ordinance was income within the Colony; it had no regard to wealth outside. Well, there is nothing in principle to prevent any territory taxing the incomes of its residents, whether that income is derived from within the territory or from any place or any source outside that territory and, in fact, in the United Kingdom under Schedule D of the 1918 Income Tax Act it states:—

> "The annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever, whether situated in the United Kingdom or elsewhere and to any person residing in the United Kingdom from any trade, profession, employment, or vocation, whether the same be respectively carried on in the United Kingdom or elsewhere."

In other words, the United Kingdom taxes a person's world income.

So there is this principle, and there is no difficulty. It does not offend against any principle if we adopt a system of income tax on an East African basis, and since that is not offending against any principle it was an easy matter to decide whether to have an East African basis or separate and independent taxation in each of the four territories. Take a business in East Africa, with probably a head office in Nairobi and branches in Dar es Salaam, Kampala and Zanzibar, that business is really run on East African lines and, for the purposes of its trade, that business does not recognize political frontiers. Again, if a person happens to be fortunate enough to derive income from more than one territory, he looks upon it as a single income and not a separate one derived from each territory.

There is no doubt whatever, that since the three neighbouring territories have

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decided to introduce income tax, it would be a great convenience for individuals and companies to have the tax on an East African basis. I can quote three advantages which arise from that policy. First, that a person or a company will have to fill in one return instead of two, or probably four. Secondly, there will be no applications for release from double taxation. Thirdly, a business can set off its losses in one territory against profits in another and by filling up one return can make a net return of profits, which will be the income which will be taxed.

For these reasons this Government, in line with the governments of the neighbouring territories, decided to have income tax on an East African basis. That meant several amendments to our present law, and that is the main necessity for this Bill. But, in addition, it was decided to include further amendments which have been found necessary in the light of experienced gained from the three years working of the present law, and these also have been included in this Bill. We could have had purely an amending Bill. Actually I did start to draft it, but by the time I got to section 24 I had eleven double foolscap pages of amendments so, for the convenience of everybody concerned and so that the public should better understand the Bill it was decided to make a clean sweep and have a consolidating and amending ordinance instead of a purely amending ordinance.

I shall first deal with those parts of the Bill which are necessary on account of the tax being introduced into the neighbouring territories, and then go on with the amendments which are deemed necessary on account of experience gained in the three years working of the 1937 Ordinance.

First of all, I will turn to clause 7 of the Bill. This is the charging section, and I shall only deal for a moment with (1):—

"Income tax shall be payable upon the income of any person who is resident in the Colony, accruing in, derived from, or received in, the Colony and/or another East African territory."

Turning to clause 2, we find that "another East African territory" means the Tanganyika Territory, the Uganda Protectorate and the Zanzibar Protectorate.

A resident of Kenya with an income here and any of the other territories will fill up one return declaring the whole of their East African income; he will put in that return to the income tax office in Nairobi, and make one single payment of tax to that office. Really, under this Bill, he is put to no more trouble, though possibly to more pain than under the 1937 Ordinance. Then the amount derived from that taxpayer, together with amounts from other taxpayers, will be allocated between the four territories on a formula agreed upon by the governments of the territories.

From that simple process three questions arise. The first is—since the whole of the East African income of a person resident in Kenya is taxable here, how do we get over the difficulty that, under the bills of the other three territories, that man is also taxable as a non-resident on the incomes he derives from those other three territories? The best way of answering that is to take an example.

Take a man who derives an income of £500 from Kenya, £500 from Tanganyika, £500 from Uganda, and £500 from Zanzibar. His total income is £2,000, and let us assume that he is a bachelor and he is a resident in Kenya. He gets the Kenya resident's allowance, which is £350, so his chargeable income is £1,650. That is clearly chargeable here under that part of clause 7 (1) which I have just read, that is, income derived here or from other East African territories. So he is chargeable on £1,650. Hon. members must imagine that they have before them the bills for the other three territories. That is not a difficult matter, because their bills, with one or two minor details, are the same as this Bill. That being so, this particular bachelor is liable here under clause 7 (1); then he is liable in Tanganyika, Uganda and Zanzibar under the first part of clause 7, and I shall read this as if I were reading the Tanganyika Bill:—

"Income tax shall be payable upon the income of any person who is not

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resident in Tanganyika, accruing in, derived from, or received in, Tanganyika",

so that he is liable to be taxed as a non-resident on £500 there, and equally he is liable in Zanzibar and Uganda to be taxed on each of the £500 he derives in those territories. Thus we arrive at this decision: he is taxable on the whole of the income here, because he is resident here. Then he is taxable on £1,500 of his whole income as a non-resident of Tanganyika, Uganda and Zanzibar. So we arrive at the position where it looks as if we had taxed £1,500 twice and, in fact, we have.

How do we get over that? Clause 10 (1) (*x*) has been specially inserted in the Bill and it deals with the other three territories. It comes under Part IV, which deals with exemptions. We start with 10 (1): "There shall be exempt from the tax," and go on to (*x*): "any income accruing in, derived from, or received in" Tanganyika, or Zanzibar, or Uganda "which is chargeable with income tax in another East African colony" which is Kenya, so that we have taxed the whole lot here, and under that exemption paragraph we exempt the £500 derived from those territories.

We are still dealing with clause 10 (1). The next question is whether, if this particular bachelor remitted the £1,500 which he derives from the other three territories to Kenya, we have exempted it under our clause 10 (1) (*x*). The answer to that depends on the interpretation of the words "which is chargeable with income tax" in that clause. I am quite satisfied from the English Acts I have perused that the words "chargeable with" mean "brought into charge", and you cannot say when the £1,500 exempted in those three territories has been brought into charge. However, doubt has been cast on the wording of the paragraph, and to put the matter beyond all doubt I propose in select committee to move an amendment that that clause should be as follows:—

"(*x*) Any income accruing in, derived from, or received in, the Colony by a person resident in another East African territory which is chargeable with and not exempted from income tax in another East African territory."

That will put the matter beyond all doubt when a person resident here is non-resident in any other territory and derives income from the latter which he remits to Kenya.

The next question which arises from this simple process of one return is, what effect, if any, will be brought about by the fact that the rates in Uganda are going to be different from the rates here? Hon. members will remember that our basic rates under the 1937 Ordinance are Sh. 1, Sh. 1/50 and Sh. 2, and in December last year we passed a war taxation measure which puts on 40 per cent. Uganda are going to have our basic rates without that 40 per cent. While we shall charge Sh. 1/40, they will charge Sh. 1 and so on. The question then arises, what is going to be the effect of Uganda having different rates to Kenya? Here again I think this is simply explained by an example.

Again taking the case of the bachelor with a total income of £2,000 and resident in Kenya. His chargeable income is £1,650. The tax he will have to pay on his first £700 is at Sh. 1/40, the next £500 at Sh. 2/10, and on the next £450 at Sh. 2/80, so that he will pay here Sh. 3,290 in income tax. Assuming that he was resident in Uganda and had the same income, he would then pay, after deducting his resident's allowance of £350, on the £1,650, at Sh. 1 on the first £700, Sh. 1/50 on the next £500, and Sh. 2 on the next £450, or Sh. 2,350 as against Sh. 3,290 here, so that he would be £47 better off.

I have heard it suggested that this would make people go from Kenya to Uganda. The answer is no. There is no evidence that people have gone from Kenya to Uganda when we had income tax and Uganda had not, and I cannot imagine the bachelor concerned is going there on account of £47. First of all, and I mean no slight to Uganda, it would cost him £47 to move and, further, people have got to reside where their employment is.

The last question which arises out of this simple process is: will this system of taxing the total East African income

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bear more hardly on taxpayers than separate and independent taxation by each territory? Here again I thank I can best explain by giving examples, and for the purposes of simplicity I will confine myself to the two territories of Kenya and Tanganyika.

Let us take the case of two bachelors, A and B. Bachelor A resides in Kenya, and has a Kenya income of £200 and a Tanganyika income of £400, a total of £600. What happens under separate and independent taxation? In Kenya, on his £200 he pays nothing, because we have given the resident's allowance of £350. In Tanganyika, on his £400 he would pay at the rate, with war taxation, of Sh. 1/40 in the £; that is, on his £400 he pays Sh. 560. Let us see what happens when he is assessed on an East African basis. We take his total East African income at £600, then you give him a resident's allowance of £350, so that the chargeable income is £250, which at Sh. 1/40 is Sh. 350. The result is that on an East African basis that particular bachelor is Sh. 210 better off than under separate and independent taxation in each territory.

Let us take the case of bachelor B. He is a more wealthy person, for he derives £1,000 from Kenya and £1,000 from Tanganyika, and is resident in Kenya. Under separate and independent taxation he pays here on the £650 at Sh. 1/40, which is Sh. 910. In Tanganyika as a non-resident he pays on the whole £1,000; £700 at Sh. 1/40 and £300 at Sh. 2/10, so that the total tax he pays under this separate and independent taxation is Sh. 2,520. Let us see what happens to him under an East African basis of taxation. His total income is £2,000 less resident's allowance of £350, and he pays taxation on £1,650, which is Sh. 3,290, so that he is going to lose Sh. 770 on an East African basis of taxation. That, of course, is based on the assumption that the £1,000 from Tanganyika he leaves there and does not bring to Kenya. If he did, under separate and independent taxation he would pay Sh. 3,290 and would be faced with double taxation, and he would have to make application for relief from double taxation.

In general, the effect can be summed up as follows: That with smaller incomes, where the income of the resident of the territory is smaller than the allowances, the taxpayer gains, but with larger incomes the tax is increased where by reason of the total East African income the next rate of tax is reached. Of course, in the intermediate stages, where the total taxable income does not exceed £700, the tax is the same.

I have thought it desirable to go into matters in detail so that hon. members will be under no misapprehension as to what is the effect of having income tax on an East African basis.

Before leaving this question, there are one or two other matters. The first is with regard to companies.

As regards those resident in Kenya with branches in the other territories, companies resident in Kenya, if hon. members will turn to clause 2, means "any body of persons which has its registered or principal office in the Colony or when the control and management of its business are exercised in the Colony". Each such company will make one return to the Kenya income tax office, setting forth the profits and losses in each territory, and income tax will be payable on the net profits. For the purpose of dividing up the amount of tax money received among the four territories, we take that proportion of the profit made in each territory which that profit bears to the whole of the East African profits.

Secondly, I would draw your attention to clause 27 (2) on page 17 of the Bill. Clause 27 (1) deals with the rates of tax, which are: For every £ of the first £700, Sh. 1; for every £ of the next £500, Sh. 1/50; for every £ of the next £1,500, Sh. 2; and for every £ of the remainder of the chargeable income, Sh. 2/50. Clause 27 (2) says:—

"The tax on the chargeable income of any person, other than a company, not resident in the Colony shall be charged at the rate of two shillings and fifty cents on every pound of the chargeable income",

with this proviso:—

"Provided where any such person makes a return of his whole income

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accruing in, derived from, or received in, the Colony and another East African territory the amount of tax charged shall be that proportion of the tax calculated on such whole income at the rates specified in sub-section (1) of this section, which his total income bears to such whole income".

That is perhaps in language difficult to understand. We have first got to remember that the "whole income" means the East African income, and the "total income" means Kenya income. Clause 27 (2) has no application to a person resident either here or in another East African territory. It refers purely to a non-resident who resides outside the boundaries of the four territories and must be charged income tax on an East African basis in the same way that we are charging residents. It is proposed that each territory should take power to charge these non-residents at Sh. 2/50 in the £, and when they make a return of their whole East African income the rates will be those specified in clause 27 (1) plus, of course, the 40 per cent war taxation.

Take the case of a man in England deriving £500 from each territory, a total of £2,000. If that man makes a return of his whole East African income, he is chargeable at the rate specified in 27 (1), Sh. 1/40, Sh. 2/10, and so on, instead of at the rate in 27 (2), which is Sh. 2/50 and would be Sh. 4,270. By that formula Kenya would get a quarter of the Sh. 4,270, because the formula is arrived at by putting his Kenya income over his whole East African income, which is £2,000.

Thirdly, I would draw attention to the change in clause 5 (2) of the Bill, which empowers the Commissioner of Income Tax to specify the form of returns, claims, statements and notices under the Ordinance. At the present time these forms, returns, claims, statements and notices are prescribed by the Governor in Council, but now that the tax is on an East African basis it is essential that one central authority should prescribe the forms, and here we are following what they do in Southern Rhodesia.

Lastly, I would draw attention to clause 30, which deals with dividends. Under this clause all income tax paid on dividends, whether from Kenya, Zanzibar, Uganda or Tanganyika, are dealt with by the Kenya income tax office and is allowed in the assessment of the resident shareholders as at present. If there are four separate and independent systems of taxation, a shareholder who derives dividends from all four territories would have to make separate application for refunds. That is obviated under this East African basis. Further, if we had this separate and independent taxation companies would have to show separately the amount in each territory, so that hon. members will realize at once that this is a great convenience having it on an East African basis and will save companies and individuals a considerable amount of time and trouble.

These are the main amendments to the present law on account of the introduction of income tax into the three neighbouring territories. Now I come to deal with those parts of the Bill which have been altered in the light of the three years' experience gained in the working of the 1937 Ordinance.

First of all, I go back to clause 7, where the first amendment made is that passage allowances are no longer taxable. I think when the 1937 Ordinance was introduced this matter was viewed from an angle that not to tax passage allowances gave undue preference to Government servants. And I also think it was not realized and could not be realized at that time the number of anomalies and injustices which have arisen owing to the decision made to tax these passage allowances.

On the first point—that is that non-taxation of passage allowances would give undue preference to Government servants—if hon. members have seen, and I think they have, for they were supplied with copies, the 1937 report on the operation of the income tax, they will find in the schedule to that report that the number of Government employees and pensioners paying income tax is approximately 671. In the same schedule they will find the number of commercial employees paying income tax is 748. Of that 671 Government servants and pensioners quite a considerable number are pensioners who do not

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get these passage allowances. Therefore, the abolition of this allowance from this charge clause is no move on the part of Government to obtain preference for Government servants. In fact, the representations to take out this taxation of the allowances have not come from Governments servants at all but have come from the commercial community.

I agree, of course, that it will benefit both Government servants and employees of the commercial community, and I believe I am correct in saying that the provision which was included in the 1937 law which made the passage allowance taxable was taken from Ceylon. But hon. members may not know that no sooner was it put in their Ordinance than they took it out, for the simple reason that it gave rise to great dissatisfaction both among Government servants and employees of commercial firms. That was the reason why they took it out. I have discussed the matter at great length with the Commissioner for Income Tax, and he has pointed out to me that there are anomalies and injustice.

Take the case of two employees A and B in a company which acts as agent for a shipping company, and both are drawing the same salary. A, who is employed on the shipping company's business, goes home on leave by one of the company's ships and, because he is employed purely on that shipping business, receives a substantially reduced passage allowance, with the result that he has to pay very little income tax. B, who may be sitting at the same desk as A but is not employed on shipping business, goes home on leave a fortnight later and a full passage has to be paid by his firm, with the result that he pays more income tax than A. That is one example of the anomalies.

Again, you have two employees in the same firm, one in a healthy station and another in an unhealthy station. The second man, because he is in an unhealthy station, has to go home more frequently than the first employee, with the result that he pays more in income tax than the second employee. Then again, another man goes on leave by air because his company want to get him back quickly, whereas another goes by boat. The first has to pay more income tax than the second, because the passage by air costs more than a passage by boat. Two other men both in the same company: one goes on leave for six months and spends three months working in the head office in London, whereas the other man goes on six months leave and does not work at all, and yet both pay exactly the same in income tax.

There are these anomalies, and you cannot escape them, and the amount of tax derived from this source is not sufficient to warrant the retention to weigh against the anomalies and injustice arising. That is the reason why it has been taken out. I would remind hon. members that this Bill was referred to an *ad hoc* committee, consisting of four unofficials, two of whom are members of this Council, and myself, and that committee by a majority of 4 to 1 recommended that this taxation should cease.

Still on the same clause 7, the wording of paragraph (1) (*b*) has been altered. This deals with the taxation of travelling allowances, etc. Take an example. As the law stands at present, if an employee receives a travelling allowance and expends it for that purpose, it is not taxable. This may lead to evasion. You might get the case of an employee engaged for £700 a year—he then arranges with his employer to pay him £600 salary and £100 travelling allowance for getting from his house to his place of business. It is well settled law at home that an employee cannot charge the expense of travelling from his house, which is his own choice, to his office, since his duties do not commence until he arrives at his place of employment, and accordingly paragraph (*b*) was altered to prevent this type of evasion and to do away with the injustice that where one employee can have his salary paid that way another cannot.

Clause 7 (2) deals with quarters or houses situate on a farm or mine and excludes their value from any chargeable income. This gives a concession to miners, that the value of the houses occupied by them and their employees is exempt from taxation in the same way that farm houses are.

Clause 7 (5) deals with reserve funds. The present law, which allows money to

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be put to a reserve fund and kept there and be free from tax, is operating unfairly in favour of the wealthy companies as opposed to the less wealthy companies which have not sufficient cash or ready realizable securities to earmark against reserve funds. Further, the present law grants companies deductions at a time they are making profits and are able to pay income tax, and it operates harshly against them when they make a loss and have to take reserve funds to set off against losses, and it at once becomes taxable when, in fact, a company has made a loss and cannot afford to pay income tax on account of losses. Regarding moneys put to reserve funds in 1937, 1938 and 1939, they will not be taxable until they come within the scope of paragraphs (*a*), (*b*) and (*c*), and so far as that money is concerned there is no change in the law.

Passing on to clause 8—under the first paragraph, which is the present law, there is a clear liability that if a person leaves the Colony prior to the commencement of any year of assessment he has to pay income tax on the income derived in Kenya in the year he leaves the Colony. This raised an anomaly in the case of persons in Kenya prior to the introduction of income tax on the 1st January, 1937, because if any such person left the Colony on the 31st December, 1937, he would be liable to pay tax for 1937 on his 1936 income, and if he left on the 31st December, 1937, he would be liable in 1938 to pay the tax on the income he derived in the Colony in 1937. The result is that such a person, although he had only resided in Kenya for one year during the life of the income tax year, would have to pay income tax for two years. This anomaly is removed by the proviso to this section under which if a person leaves the Colony in December, 1940, he will have paid the tax in 1937, 1938, 1939 and 1940 on his income from 1936 to 1939, and will not be liable for the tax in 1941.

Passing on to clause 13, this deals with the deductions allowed. In 13 (1) (*c*) a concession is afforded in that an allowance is given where premises in the nature of factories, plant and machinery have been sold and not replaced. At the present time this allowance is only given when premises, plant and machinery are replaced, and hon. members will now see that there have been inserted in the second line of paragraph (*c*) the words "sold or discarded". It has been found in practice that machinery has become unsuitably aged to keep abreast of modern times, new methods have been adopted, and machinery has had to be scrapped, and now a deduction is allowed when it is scrapped and not replaced. That is a further concession in this Bill.

I come to clause 13 (1) (*d*), dealing with structural alterations, and here I admit the law has been tightened up. Under the law as it is at present, an allowance for structural alterations is permissible irrespective of their extent. This is contrary to all income tax principles, and cases have arisen in Kenya in which substantial sums have been spent on structural alterations which materially improve the capital value of the property. The allowance is now only granted when such expenditure is necessary to maintain the existing rent or annual value of the property.

There is a further concession in clause 13 (1) (*g*). At the present time the allowance for measures taken to prevent soil erosion is only given to farmers, but it is now open to any taxpayer who, in the course of his trade or business, takes measures to prevent the erosion of soil.

With regard to 13 (1) (*i*), under the present law the cost of clearing land is not allowed, but the cost of reclaiming land when the productive life of a crop has ceased is allowed. In practice, of course, this reclamation can never be estimated with any degree of accuracy, because it must be estimated several years before it happens. By paragraph (*i*) it is proposed to allow the cost of clearing instead, and this affords a concession, because when the land is reclaimed the reclamation cost, which is then actually and accurately known, will be allowed as an ordinary business expense.

Clause 13 (1) (*j*) deals with timber and land on which there is timber. This is entirely new, and affords a further concession. This paragraph is taken from

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one of the Income Tax Acts in force in the Commonwealth of Australia. It has been inserted because cases of hardship have arisen where timber has been cut and no allowance has been made for the cost when acquired by purchase. A man may buy 1,000 acres of woodland at £1 per acre and the timber on it is worth Sh. 10 an acre. He fells 500 acres in the first year, and this will give him an allowance of 500 times Sh. 10, which is £250, so that this paragraph does afford a further concession.

We pass on to paragraph (*k*), which is a long paragraph and in which four further concessions are granted.

First of all, under the present law hon. members will remember that an allowance is granted for measures taken to conserve or distribute water. This is widened by giving an allowance for the cost of obtaining water, that is by drilling or boring. That is one concession. Then, in the same paragraph, under the present law an allowance is granted farmers in respect of dipping tanks, new fences, etc., on the amount expended in the year. It has been found to operate unfairly, because suppose a farmer ordered a dipping tank in 1935 he got no allowance whatever, whereas if he got it in 1936 he was able to put it in his return and get an allowance in 1937, so that the first farmer was treated unfairly as against the second. Now we have allowed only wear and tear, with the result that every farmer will benefit equally, irrespective of when the money was expended for the purpose of buying a dipping tank, fencing, etc.

The third concession in paragraph (*k*) is contained in the second paragraph, which extends the wear and tear allowance to cover cases where property is leased and the burden of the wear and tear falls on the lessee and not on the owner. The fourth, and last, concession is contained in proviso (ii) to (*k*), which affords an allowance for the depreciation of certain premises. Hon. members will remember that during the 1937 debate a lot was said about depreciation, and it was pointed out that to make an allowance for depreciation was against income tax principles. We are not departing from that principle except in the case of those premises which contain machinery, etc., of a vibratory nature which gives rise to more than ordinary depreciation, and the maximum amount of depreciation allowed under proviso (ii) is 1 per cent of the cost of the premises. This is substantially in line with the allowance given by an amendment to the United Kingdom Income Tax Act.

In clause 13 (1) (*l*) a further concession is allowed by enabling taxpayers to set off a loss incurred in the year of assessment against the income assessed for that year and provide a substitute for the reserve fund allowance now deleted by clause 7 (5). Suppose a business man makes a profit of £500 in 1939 and a loss of £1,000 in 1940, by this clause he can bring back his loss from 1940 and set it off against the profit of £500 in 1939, and if he has already paid the tax on that profit in 1939 the amount of the tax will be refunded. That is the object of 13 (1) (*l*).

Clause 14 (*c*) prohibits any deduction being made for capital losses, and was not included in the 1937 Ordinance because it was then thought that the Southern Rhodesia, on which our Ordinance was based, did not contain any such prohibition. Actually the corresponding section in the Southern Rhodesian ordinance did not contain this provision, but it was overlooked that an earlier section in that ordinance did prohibit any deduction for capital losses, and for income tax purposes it is essential to have a prohibition against capital losses. All we are doing is to line up our law with that of Southern Rhodesia, and hon. members will recollect that in 1937 the task of the hon. Attorney General was to make this law as nearly as possible line up with the law of Southern Rhodesia.

I now pass to Part VI of the Bill dealing with personal deductions.

The first part to which I will refer is clause 24 (*b*), which deals with deductions on account of children. Under the law as it is at present, a person is granted an allowance for his child, whether he maintains it or not, and there are a number of cases in which parents have left the maintenance of their children to other persons and yet still apply for and

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obtain a deduction. Now no deduction will be allowed unless a person maintains his child. Further, the allowance with regard to children is restricted to children with incomes of their own of less than £75 a year, and this follows a recommendation made by the Standing Finance Committee. Finally, on the question of children, the allowance granted under the present law for illegitimate children has been deleted, there being no precedent for it.

Clause 24 (*c*), which deals with the allowance granted to dependants, has been widened on the one hand and restricted on the other. It has been widened so that an allowance is granted where a widower engages and maintains a housekeeper who is a female relative of his or of his deceased wife, and it is restricted in that no dependants' allowance is granted where the person maintained has an income of £150 a year in his own right. In the United Kingdom dependants' allowances are restricted to dependants with £50 a year or less, so that we are being three times as generous as in the United Kingdom.

Clause 31 deals with poll tax set off. Under the present law a taxpayer must produce his poll tax receipt before he can get the allowance granted. It has been found that the Inland Revenue Department have a complete register of all persons liable to pay poll tax, and people liable to pay income tax will automatically get deduction whether they produce their receipt or not. If they have not paid the poll tax, proceedings will be taken against them under the Poll Tax Ordinance.

Clause 34 relates to husband and wife. It amends the present law by giving the husband and wife the right to be assessed separately, although I had better say at once that it does not affect the amount of the tax payable. This will enable a husband unaware of the amount of his wife's income to apply for a separate assessment, and that relieves him of the difficulty of questioning his wife and might save a few domestic quarrels!

Provision is made in sub-clause (3) in accordance with the practice in Southern Rhodesia to charge tax on the payment of alimony against the person benefiting by that payment. A pays alimony to B. A is allowed to deduct the amount in his return, but B, who receives it, must include it in the income tax return. So we give a concession with one hand and take it away with the other.

Sub-clause (4) defines, I hope clearly, when a married woman is to be treated as living with her husband, and in consequence of paragraph (iii) a wife living in Kenya but not separated in law from her non-resident husband will be able to claim a resident's allowance.

I pass on to clause 38, which deals with the power to appoint an agent. This clause is designed to get income tax from non-residents, and it follows a recommendation of the Standing Finance Committee. At the present time we can assess non-residents, but the difficulty is to collect the tax. Now we are empowered to appoint agents in the Colony of such persons. Take a director of a limited liability company here resident in England. If he gets director's fees of £500 a year the money is remitted to him. If he does not pay Kenya income tax on that sum, the Commissioner of Income Tax will be empowered under the clause to appoint an agent here who probably would be the secretary of the limited liability company and assess that secretary on the £500 given the non-resident director. The secretary will then pay the amount of the tax due, and he is indemnified under clause 39, and will remit the balance to the non-resident director.

This clause has been criticized as being somewhat arbitrary, in giving the Income Tax Commissioner unlimited powers, and in select committee I shall move an amendment that (3) be added giving the right to a person appointed an agent of appealing against the Commissioner's decision.

Clause 40 deals with deceased persons. There is a change in the law here which is a concession, and it can best be explained by an example. Take the case of a person resident in Kenya whose income has been £1,000 a year for the last 10 years, and he dies on 30th June, 1940. He has been alive for only 3½ years of income tax law, and he and his

[Mr. Willan]

executors have to pay income tax for four years. By reason of the proviso to clause 8 to which I referred some time ago, he pays in 1937, 1938 and 1939 as under the present law, but in 1940 the executors pay only on income up to the time of death, from 1st January to 30th June. Thus income tax is only payable for 3½ years instead of four.

These are the main amendments to the present law in the light of three years experience gained in the working of it. There are in the remainder of the Bill minor amendments of no real consequence, and I do not propose to deal with them.

In conclusion, I have to inform hon. members that this Bill was carefully considered by that *ad hoc* committee to which I have referred, and that committee, which consisted of four unofficials and myself, has reported favourably on it. Further, this Bill has not only been closely studied by this Government but by the governments of the other three territories.

Finally, before I sit down, I should like to pay tribute to the co-operation and assistance given me by Mr. Mundy, the Commissioner for Income Tax, in the preparation of this Bill.

MR. HARRAGIN seconded.

Council adjourned for the usual interval.

On resuming:

LORD FRANCIS SCOTT: Sir, before speaking to the motion before Council, I should like to take the opportunity on behalf of the unofficial members of this Council to offer you, sir, a sincere welcome on your return to this country. (Applause)

Sir, there is one point which, on behalf of the European elected members, I wish to put forward, and that is to ask that Government will again give an undertaking that they will have an inquiry held into this question of income tax when the war comes to an end. You may know, sir, that originally, when income tax was introduced, on behalf of the elected members I asked Government that when further data was available the question should be referred to the Standing Finance Committee. Government accepted that proposition. In April, 1938, a motion was moved in this Council by the hon. elected member for Nairobi North that the question should be referred to an *ad hoc* committee. Government did not accept that motion, but stood on what they had previously agreed to, which was that the question should be referred to the Standing Finance Committee. Sir Armigel Wade, then Chief Secretary, said in debate:—

> "If, on a full review of all the facts and data when they have been collated and analysed, as the noble lord, Lord Francis Scott, suggested, some further inquiry seems necessary, there is nothing to prevent the appointment of such a committee as appears to be desired by some hon. members opposite."

The question was referred to the Standing Finance Committee, and at the end of their report in January, 1939, they stated that they did not consider any good purpose would be served by the appointment of an *ad hoc* committee at that time. This is what they actually said:—

> "We believe the fact of the matter to be that there is no widespread dissatisfaction with income tax as it now exists in Kenya and we are unable to see that any useful purpose would be served by prolonging the present enquiries. We do not, however, wish to imply that this report of ours is the 'last word' on the subject, or to suggest that no further inquiry will ever be warranted. On the contrary we believe that, when the Colony has had more experience of the operation of the tax, it will prove desirable that a further investigation should be made."

There is one other point with regard to this which I should like to make.

There was published an official communique from the Government of Kenya quoting from the Secretary of State in a despatch on the 25th January, 1939, in which it says:—

> "The relative portion of the record which you have liberty to quote"

—that has reference to an interview which the Secretary of State had with the hon. member for Kiambu in London—

[Lord Francis Scott]

> "reads as follows:—
>
> 'I said I was quite prepared to have the working of income tax in Kenya examined by an absolutely impartial, outside inquiry after the experiment had been given a fair trial.'"

Of course, an examination by the Standing Finance Committee cannot be called on "outside inquiry" so what we do ask now, and no doubt Government will give the assurance, that when the war comes to an end an outside, absolutely impartial inquiry shall take place.

HIS EXCELLENCY: Perhaps I might make at this moment an observation.

Hon. members will appreciate that this proposal has been put forward to me at short notice, and I have not had an opportunity of examining what has been said by my predecessors on this subject, but I am quite prepared to say this: That, when the war is over, should there be a general demand for an inquiry into the operation of income tax in Kenya, Government will be prepared to recommend to the Secretary of State the appointment of a purely impartial outside inquiry.

Hon. members will appreciate that we are now providing for the collection of income tax on an East African basis. It will therefore be appreciated that it may well be that any such inquiry would have to be conducted on a similar basis.

LORD FRANCIS SCOTT: I thank you for that assurance, Sir, and I may say that we have on this side of Council always maintained that if income tax was introduced it should be on an East African basis and applicable to all these territories.

I do not intend to occupy Council very long with the Bill which is before us. In fact, there are only three points to which I intend to refer.

The first one I do not think the hon. and learned mover made any reference to, and that was the reservation by the majority of that *ad hoc* committee in which they said they were "unable to agree to the inclusion of clause 14 (c) in the Bill in the absence of any specific provision in clause 13 whereby a deduction may be granted in respect of certain expenditure of a capital nature incurred by persons carrying on mining operations." That was recommended by the majority of the *ad hoc* committee, and I should like to say that I am in very strong agreement with that recommendation, and I do trust that Government will see their way to making some provision whereby deductions may be granted in respect of certain expenditure of a capital nature with regard to mining enterprises.

The next point I should like to refer to is the question of passages. When income tax originally came before Council, this question was strongly debated and, if I remember rightly, the hon. and learned Attorney General put up very strong reasons why passages should be liable for income tax. Personally, I am not yet convinced that any case has been made out as to why an alteration should now be made. There are always anomalies in all these things, and if people do get passages as part of their emoluments and therefore as part of their income and are to be exempt from having to pay income tax on them, it surely creates a much bigger anomaly in respect of the citizens of the country who have to pay on the money they spend in paying for their own passages.

If for administrative reasons it is found too difficult to keep in the present provision, I suggest there is a way by which this inequity may be overcome. You can take it that all these employees who are given passages as part of their terms of service, whether Government servants or whether commercial servants, get a passage roughly speaking once in four years or thereabouts. You can then estimate the value of that passage, a flat value, whatever it may be, £100 or £120 return, and I suggest that other members of the community who do not enjoy that privilege might be given an allowance against their chargeable income of £25 or £30 a year as may be agreed on, so as to do away with that inequality.

There may be objections which may be voiced by my colleagues, that in doing so we shall perpetuate the idea that it is necessary for people to go out of the country every four years. I have no wish

[Lord Francis Scott]
to do that, nor do I believe that for purely health reasons it is necessary. On the other hand, I do feel that it is probably a good thing from the mental point of view for people to get a change of environment, and I think nothing would be of greater benefit to our Empire if every inhabitant of Great Britain had to go away once in four years and visit some part of the Empire. It might have a great influence on their outlook towards Colonial matters! (Hear, hear.)

I put forward that suggestion, and hope that when the Bill comes before the select committee it may be considered, if the committee come to the conclusion that the present arrangement about passages is not practicable.

The only other point I wish to mention is this. I was sorry to hear to-day that while Tanganyika has apparently come into line as regards the rates, Uganda is going to have different rates. I do think if we are to have income tax in East Africa the rates should be similar all through.

Apart from that, I have no comments to make, except to congratulate the hon. and learned mover on the amazingly lucid clear exposition which he put forward on a rather difficult and complicated bill.

MR. SHAMSUD-DEEN (Indian Central): Your Excellency, I have not much to say on this Bill, and whatever I may say or any remarks I may make, it must be understood that they do not represent the views of my colleagues, because from the very beginning when income tax was introduced my view has been different to theirs. But there is one little point on which I have the authority and concurrence and full co-operation of my colleagues, and that is to associate myself on their behalf whole-heartedly with what the noble lord, the hon. Member for Rift Valley, said in expressing a welcome to Your Excellency on your return to this Colony. (Applause.)

I have said from the very beginning that the Income Tax Ordinance is a law that has been prematurely applied to this Colony. This Colony is not ready for any form of income tax. I do not wish to go over the same ground again, but if some part of the community who entirely wrongly support the principle have begun to protest now, it is their business, I had almost said funeral, but they have made their bed and should lie on it. But they are already beginning to feel the pin pricks. In time they will find, as the law is tightened up, that they have nothing but a bed of thorns to lie on.

With regard to what the hon. Member for Rift Valley said as to the exemption of passage allowance, I am rather convinced that there is a lot in what he has said. That is to say, if exemptions are granted to employees of Government or firms, the same privilege should be extended to private individuals, but I am not in favour of a regular sum being allowed for their passages, except that when an individual has actually proceeded for a holiday overseas a reasonable amount of passage should be included in his income.

I wish I could associate myself with the congratulations which the noble lord extended to the hon. and learned mover for his amazing introduction of this Bill. To my mind, his speech appeared to be an amazing maze of facts which looked like a regular jigsaw puzzle. He tried to elaborate it by giving illustrations and examples of different things, but I submit that laws applicable to the public should be so simple that they would not require an expert lawyer to interpret them and they should be easily understood by everybody.

There are one or two things I wish to say. One is that I have not been able to understand why the K.U.R.H. should be exempted from income tax. I have said that before, and I see no reason whatsoever for the exemption being extended to the Railway. There is a provision in this Bill under which the revenues of local authorities are not exempted, and you do not extend it to traders whose incomes may be derived from any business. Well, the Railway is carrying on a regular business, and yet they are immune from any form of income tax. It will be said that it is a concern in the interests of the general public, but past history has shown that when the Railway are in trouble they come to the taxpayers, whether local or British, and it is

[Mr. Shamsud-Deen]
only fair that when they are in a position to pay a share of income tax to Government out of the income they earn they should do so.

There is one other minor point I wish to refer to. On page 6 of the Bill I find in clause 10, and in paragraph (*c*), the words occur "Asiatic widows and orphans". A lot of my countrymen strongly object to this expression, Asiatics—it sounds as though it refers to some form of ticks belonging to Asia and not to inhabitants of Asia! Further on, in (*e*), the words are used "Asian Civil Service". I cannot see any reason for the differentiation in the two paragraphs. I think Asian is probably more respectable than Asiatics. I have expressed that before, and that the word European is so loosely used in its general application that it is merely a terminological inexactitude, while if anybody talks about Europeans they mean British. I wish Government would take note of that, and use the word British whenever necessary instead of European, because that is a galling expression to British Indian subjects when they think of those inhabitants of Europe who are now out to extinguish and exterminate British subjects and yet are included in our laws without any discrimination being shown.

The noble lord was rather optimistic when he thinks that this matter of income tax will again be inquired into either by the Standing Finance Committee or any *ad hoc* committee, to which Your Excellency has already given an assurance. I also give the assurance that it can be inquired into by as many committees as possible, but the result will not make the slightest difference. This law is like a nut put on a screw: the moment the first thread is passed it is very easy to tighten up the rest! (Laughter.)

EARL OF ERROLL (Kiambu): Your Excellency, I do not intend to go into any of the details of the Bill because, as hon. members have probably gathered by this time, my objections to income tax are objections based on principle and not on detail.

I think I made it clear in the budget debate that I did not oppose income tax at this time during the war period, because I believe that all our efforts should be directed to the successful prosecution of the war and that the less domestic difficulties we had in this country the greater our efforts would be towards that end. When I say that, I hope nobody would ever think for a moment that I am abandoning the principle. I am only letting it slide for the time being in order to try and help as much as possible: it is in the form of a truce more than a retreat.

One thing struck me very much indeed yesterday in your communication from the chair, sir. You said quite rightly, and the hon. and learned mover has stressed it to-day, that this Bill is now on an East African basis. It appears paradoxical to me that the Government of Kenya should consider this as a permanent measure while the Government of Tanganyika through their Governor announced it as a war measure. Not only did he so announce it, but the title of the Tanganyika Bill indicates that it is a war measure. I would far prefer to have seen this Bill termed "The Kenya War Expenditure Income Tax Ordinance" than its present title.

Another point is this. We are to-day as an Empire fighting a totalitarian war, and here in this country we are subjected to what I suggest is the greatest totalitarian despotism in the world, the Colonial Office, and I could never agree to any such legislation as this under ordinary circumstances as long as we have our present constitution whereby the settlers of the country are capriciously deprived of all they have got without any control of the property confiscated from them. I would remind hon. members that not so very long ago a king of England had his head cut off for this very reason. I am not suggesting that such a drastic step should be taken in this case, but I would submit once again that I can never agree to this sort of legislation so long as we have no reform of our constitution.

LADY SIDNEY FARRAR (Nyanza): Your Excellency, I shall not go into matters of principle to-day, and I only have three points on which I want to touch. Two of those have already been referred to by the noble lord the hon.

[Lady Sidney Farrar]
Member for Rift Valley, I would like, however, to enlarge on the first one, the report of the *ad hoc* committee on the subject of the mining industry and income tax.

If I may be allowed to say so, sir, in your speech yesterday I regretted that in mentioning the duties of the young men still engaged in agriculture you did not also refer to the young men who, in many cases against their will, are still working in the mining area as against joining up with the fighting forces. The question of additional assistance for the mining industry at the present time is based on the fact that gold production is undoubtedly one of the most urgent forms of production during the war period. The production in this country has not been based on capitalist enterprise, taken as a whole. At the present time the success of the gold fields to a very great extent is dependent on the small worker, and the small worker has not got capital behind him. The capital required for additional machinery for the necessary development, if we agree at all that gold production is necessary at the present time, must come out of the small worker's profits year by year, and it is from those profits that the necessary machinery up-to-date has been purchased in all but cases of a few well capitalized enterprises.

That provision should be made for this fact and that certain deductions should be granted in respect of a capital nature by persons carrying on mining operations has been a point raised ever since income tax was introduced into this country by the mining community. I trust that Government will find it possible to meet them on this subject.

Another point already raised, the question of the passage allowance, as the noble lord the hon. Member for Rift Valley said, I should like to lodge a protest that in no way whatsoever should we agree that leave out of England is necessary to the well being of the settlers or other communities, commercial or governmental, of this country. With the exception of a very few persons engaged in definitely unhealthy areas, I find it impossible to agree that passages are a necessary free gift to employees, any more than they are considered absolutely necessary by the genuine farmer of this Colony. Therefore, I look on passages as a direct emolument to those in whose contracts passages are included.

I consider that this emolument can be brought down to pounds, shillings and pence even in the case of the shipping employee, and I see no reason at all why the position of first, second, or third class passages cannot be based on the usual first, second or third class fares of ordinary persons not entitled to the benefit of a passage in their emoluments. That was one of the arguments adduced to-day.

There is a third point I should like to raise. I regret very sincerely that in the amendments to the Ordinance the question of the allowance for children has not been more carefully considered. I think that Great Britain must be one of the few countries in which at the present time it is not considered advisable that large families should in every possible way be encouraged. In the Ordinance at the present time there is a deduction of £75 in respect of one child, and a deduction of £60 in respect of each subsequent child; in other words, a reduction of £15. If I remember rightly, in other countries such as Italy they gave an actual bonus for the second, third, fourth, fifth, or twelfth child, but the parent is not penalised. In this Bill, they are not only penalised in respect of the allowance but further penalised in clause 24 (*b*) (i) in that the total deduction allowed must not exceed £255. Therefore a person with 12 children will get no allowance whatsoever. Whether we agree that all twelve children are advisable or not may be a personal matter, but from the point of view of the Colony it is regrettable that a single child family should be preferred. I would ask that in select committee the question of not penalising the larger families should be considered.

COL. KIRKWOOD (Trans Nzoia): Your Excellency, seeing that the present Income Tax Ordinance will be repealed, and that on its introduction I made a declaration, I must repeat that declaration to-day: that, while not being opposed to income tax *per se*, I am

[Col. Kirkwood]
opposed to income tax in Kenya on general grounds, and on constitutional grounds that it is direct taxation without adequate direct control over the finances.

Secondly, I also support the minority report which takes exception to the exclusion of section 5 (1) (*b*) of the 1937 Ordinance which refers to passages. I cannot see any justification for class legislation of this type. I suggest if that is going to go, I shall certainly oppose it when it comes back from the select committee. If I find there is a recommendation or something put into this Bill which will also give the unofficials or officials deductions for passage money either once in four years or based on some equality with present proposals in this Bill I could agree to that, but not as it stands. As I have said before, it would be class legislation and most objectionable.

Thirdly, I was not very well pleased with the assurance Your Excellency has given. The assurance I accept in spirit, but I do not like the phraseology when you say, as I understood you to say, that you would recommend to the Secretary of State an inquiry after the war provided there was a general demand for revision. I do not understand what general demand means. I can imagine the hon. Attorney General in time to come stating that that meant a general demand in the three territories, seeing that this Bill will apply to the whole of the East African territories. I should like to see for the word general the words "a demand in Kenya". But why put that proviso in at all when surely, if there is a demand by the European elected members in this Council for that assurance to be implemented, seeing that they represent the whole of the European population in Kenya, that should be taken *ipso facto* as a general demand for the inquiry we have asked for.

Beyond that I do not wish to take up the time of the Council. I only hope something will be done on the lines I have suggested regarding passage allowances for unofficials.

MAJOR GROGAN (Ukamba): Your Excellency, on a previous occasion I ventured to suggest that the title of the original bill was an inadequate one and did not incorporate the principle of a capital levy. I am glad to see that in this Bill the objections based on the assumption that it was in fact in some respects a capital levy have been largely remedied, but there are still factors in the Bill which constitute it a capital levy, and I trust that the select committee will attempt to eradicate the last vestiges of that quality.

The main reason given for the introduction of this Bill is quite obvious, that the principle is now being applied to East Africa as a whole and not to Kenya only. Therefore this is an occasion when we should remind ourselves of what happened in respect of the other countries now incorporated under the operation of this Bill.

Take the matter of Zanzibar. It was proclaimed to be a principle totally inapplicable to the conditions of Zanzibar by no less authority than Sir Alan Pim in his genuine Pim No. 11. The reasons he adduced were, generally speaking, applicable to this country. In Uganda the principle was turned down by the treasurer as being quite inapplicable to the circumstances of Uganda, and the truth of that statement is now recognized by the fact that the richer portion of the community in Uganda are not included within the operations of the Bill. Therefore it is not correct to call it an Income Tax Bill in Uganda at all, it is a special war tax levied on Europeans and Indians as distinct from the richer members of society. In the matter of Tanganyika, it was stated very emphatically and determinedly by the Colonial Office representative at the League of Nations that the principle of income tax was totally inapplicable to the conditions of Tanganyika for reasons that were very largely equally applicable to this territory. As the noble earl the hon. Member for Kiambu has already pointed out, His Excellency the Governor of Tanganyika has stated definitely and given a categorical assurance that this is in Tanganyika a war measure and, further, in view of the objections that have been raised to its application to these very territories, I think we are now entitled to assume that this has now fallen into the category of a war measure, and is therefore bound to

[Major Grogan]
be on a general territorial basis re-considered both in principle and every other respect after the war, otherwise everybody concerned is completely stultified.

With respect to the assurance you were asked to give, sir, my noble friend the hon. Member for Rift Valley read out the assurance given by the Secretary of State himself. I take it we are entitled to rely on that assurance, and on that reliance we on this side of Council—and I myself as you remember am an opponent of the principle of this Bill—are prepared to do everything possible to assist in this matter on the supposition that this is a war measure.

I am not going to deal with the details of the Bill, because they will be dealt with in another place, but there is one point I should like to lay great stress on, that the effect of all direct taxation as distinct from indirect taxation on consumption is necessarily deflationary in its effect on a country. We have a great many factors which are deflationary in their effect on this country. There is the Railway, which absorbs enormous sums of money from the community every year, involving substantial sums shipped out of the country and invested in London. We have Government, which invests all its balances, if any—which are now quite considerable—also in London. A large proportion of the Civil Service and other members of the community at short intervals are passing home and spending considerable sums of money in passages and a proportion of their pay in London. Now we are faced also with the problem of the prices of our products being largely fixed by London, and fixed not in relation to the general trend of world prices but in relation to the needs of the United Kingdom.

All these factors are deflationary, and if it had not been for the very large expenditure of Imperial moneys in this country in war preparations there is very little doubt whatever that this country would have been faced with a very severe internal monetary crisis. That fortunately was relieved by this expenditure, but we must not regard that as a permanent factor on which we can rely. It is well known to everybody that the main problem facing this country on its entry into this war was the terrible burden of agrarian indebtedness in relief of which very few steps were taken compared with those taken by other comparable countries. Therefore it is very important for the future stability of the country that every possible opportunity should be taken advantage of to relieve that burden. For the moment certain of our products do in fact show a margin over costs, which is quite a new phenomenon, but costs are rising rapidly, and that must be an evanescent phase.

I therefore press very strongly that it should be an instruction from this Council to the select committee on the Bill to explore the possibilities of exempting all sums set aside for redemption and reduction of agrarian indebtedness or the reconsolidation of farms exhausted by the uneconomic prices from the operations of this Bill. I realize there are very considerable technical difficulties in the way, I have no doubt they can be overcome, and if that principle could be incorporated I think it would be a very great advantage to the community.

That is all I have to say on this subject, and I trust the principle will be accepted by Government.

MR. ISHER DASS (Indian Central): Your Excellency, I rise to support this Bill, and I take this opportunity of congratulating the hon. and learned mover, who has taken upon himself the very difficult task of explaining the details of the Bill in very simple language and a very simple manner, so that everyone who has not had the time to study it closely is able to understand it more clearly than before.

The noble earl the hon. Member for Kiambu, my colleague Mr. Shamsud-Deen, and the hon. Member for Ukamba have on certain occasions criticized destructively the imposition of income tax, but so far in this Council I have never had an opportunity of hearing from them any constructive suggestions to replace this system. For their information, I must point out that no idea or system can be replaced by force of argument, but can only be changed by a better idea or a better system. If they had suggested any constructive ideas or system I think Council would have taken

[Mr. Isher Dass]
it into consideration, otherwise mere condemnation for some fancy reasons cannot be taken into consideration, I am sorry to say.

I had the privilege of being a member of the committee also on this Bill, and every point raised by the hon. Member for Uasin Gishu on behalf of the farming community and every conceivable claim put forward by him was considered, and very favourably considered, and concessions if at all possible were granted even at the sacrifice of the taxpayers to the farming community under this amending bill. Moreover, certain concessions were not included in the original bill, such as the question of deductions on premises, fair wear and tear, conservation of the soil, felling of trees, clearing of land, and these have now been granted.

At the same time, the hon. Member for Uasin Gishu went further, to ask for certain concessions for the mining community which the committee unhesitatingly and without grudging them granted, as well as those suggested by the hon. Member for Nyanza. In a very few instances the committee thought fit to tighten up the legislation in order to extract more money from the taxpayers.

One or two points have been raised in connexion with clause 7 (1), so far as the abolition of passage money is concerned. I hold no brief for Government officials, but in committee we had the co-operation of the Commissioner of Income Tax, who gave us the figures already supplied to this Council by the hon. and learned mover: 671 officials and 749 unofficials. Not only that, but the actual amount involved in the two cases is so trifling that the committee did not take that step with a view to favouring Government officials, but considered more the side of the commercial community rather than the official side. The difference was £1,200, which was not worth worrying about as to whether tax should be paid on it.

Everything was taken into consideration, as well as other suggestions which were found impracticable, and the committee, with the exception of one, were of the opinion that this provision should be removed from the Bill, the question of the passage allowance be deleted, after a very thorough examination of all the suggestions put forward by members of the committee, I can assure Council that there was no favouritism to anyone.

There is one more point. I suggested it, and I had the approval of the hon. and learned mover, who was chairman of the committee, that although it was beyond the terms of reference of the committee that I could raise it when the Bill was brought before Council. I refer to clause 10 (1) (*b*), in connexion with the exemption of the income of the Kenya and Uganda Railways and Harbours services from income tax. I will support the suggestion of the hon. member Mr. Shamsud-Deen, that it has been said in this Council by the hon. General Manager of the K.U.R.H. that it is a business concern. If it is a business concern, it should be, treated on the same basis as other commercial concerns are treated, and if it is not, and it is purely a taxing machine, I say that even a taxing machine should be treated the same as other taxing machines like the Post Office are treated, and Government should be prepared to consider the case one way or the other.

Under clause 7 (5) reserve funds of commercial concerns under certain circumstances are chargeable with income tax. If that is the position, when we compare these commercial houses with the Railway we find that the latter charge certain depreciation on their stock, and they have on investment various funds, and in addition to depreciation charges and replacement costs they transfer to the extent of one million pounds to their reserve fund. That million pounds should be chargeable with income tax if it is a commercial concern, but if it is a taxing machine to extract money from people's pockets I think any revenue derived should be transferred to the general revenue and the whole Railway system become part and parcel of the Government of Kenya. It should not be treated as a separate entity at all, because the taxpayers of this country have to lose in both cases.

This is the point which I had the approval of the chairman of the committee to raise in this Council for consideration.

[Mr. Isher Dass]

If this Bill is referred to a select committee and any further concession in a reasonable form is asked for, I am perfectly sure that I or any other member on this side of Council will be only too pleased to grant it.

MR. NICOL (Mombasa): Your Excellency, the introduction of income tax throughout East Africa and its centralization under one control, is a step nearer to what the commercial communities have always pressed for: a united Africa. As the hon. and learned mover said, commerce is run on an East African basis regardless of dotted lines on maps, and I for one cannot understand why we cannot have a unification of Government services. The Bill brings in one very important principle, whereby the Governors of the East African territories have delegated their powers under the Bill to one commissioner of income tax. He ceases to be a servant of the Colony of Kenya, he is the servant of East Africa as a whole. I hope that this far reaching experiment may be extended still further in other essential services, and possibly now is the time for Government to accept the invitation of the Associated Chambers of Commerce to call a round table conference of all persons or bodies and sections interested to discuss this question to see whether it cannot be extended.

There is one thing which I think has perhaps been overlooked by the hon. and learned mover, and that is that in this East African income tax there is no intention of imposing a heavier burden on the taxpayers, but it is quite obvious in a way that this Government is going to benefit to a greater extent than was originally anticipated at the budget session when the estimates were discussed. I should like to say that perhaps it might be desirable to examine the graduations which were introduced to deal with Kenya income with a view to a more scientific adjustment to deal with East African income.

I agree entirely with the remarks of the hon. Member for Kiambu when he drew attention to the fact that in Tanganyika this has been introduced as a war measure, and I believe the same applies to Uganda and Zanzibar. Perhaps in view of that it might be possible to enact this as a war measure which should be applicable for the duration of the war and a year after, as was the case with the taxation introduced at the end of last year.

With regard to the amendments in respect of Kenya, I am very glad to see the abolition of the passage allowance as taxable income. We have had sufficient evidence of the anomalies which this has produced. I think perhaps it is only right to say that passages are not in any way in my opinion a gift; they are a contractual obligation to employees, if their homes are not in Kenya. If you live here it is a different thing, it is your home, but if you have to be imported from somewhere else and part of your service says you will be transported to the place of your work it becomes a contractual obligation and not a gift, and you cannot expect a man to live away from his home without visiting it forever, however healthy the country may be.

I am very glad to see an important concession given to farmers which is now being extended to miners, namely that the rent value of their housing is not subject to income tax assessment. But there is one important omission from the concessions granted by Government, and I would like to suggest to Government that stand premia should be treated as part payment of rent which, in fact, it is. If you buy land and have to pay a stand premium of £500, that should be able to be spread over a period of a year, for it is in effect the payment of rent in advance.

A suggestion which I put up some time ago when the Standing Finance Committee were considering various alterations necessary to the Bill, has not been included, and I would make one more plea. That is, at the present time you are allowed to pay your tax in two instalments. There is nothing to encourage you to pay your tax all in one go and before the due date, so that Government has the use of your money and gets the tax in. It must simplify their accounts and assist in many ways, and I suggest again for consideration of Government that perhaps some form of rebate should be allowed to a taxpayer who dubs up his tax on or before due date and does not

[Mr. Nicol]

take advantage of the two instalments to spread it over the year.

On page 24 of the Bill, clause 38, I should just like to ask what is the position with regard to a company which may be registered here but the actual control is in London and is subject to the home tax? The hon. and learned mover referred to the position of a director settled in London drawing director's fees from a company operating here. What is the position regarding a company also operating out here but having a London board which has a London office and is taxed at home? There is the question of double taxation, I know, but would these directors' fees not be collected from home revenue and Government here get their whack out of that by application to the home authorities? I hope I have made that clear.

DR. WILSON (Native Interests): Your Excellency, in rising to speak I quite shamelessly admit that I am not speaking on this Bill but only to associate myself and my hon. colleague representing native interests with the welcome extended to Your Excellency by the noble lord the hon. Member for Rift Valley and the hon. member Mr. Shamsud-Deen. We do not want the natives of Kenya left out of that welcome.

But, in order to bring myself in order in this debate, I should like to ask the hon. member in charge whether clause 27 (2) of the Bill does, or does not, mean that a non-resident of Kenya will be charged Sh. 2/50 in the £ on his income?

MR. LOCKHART: Sir, the hon. Member for Nyanza raised the question of capital allowance for mining companies for the purpose of assessing income tax. The case for that allowance, whatever that may be, does not rise on the argument put forward by the hon. member, which was that in the case of mining companies capital development has to be carried out from profits. Government would never recognize that as a reason for income tax purposes. The case, such as it may be, for an allowance to mining companies is because the operations of a company are not necessarily continuous, and may be brought to an end through exhaustion of the ore. I think the attitude of this Government has been made plain, and it is this: That for so long as the industry is not paying special taxation on gold mining, which is common everywhere else, Government considered that further concessions to the industry on this particular question is wrapped up with the general question of taxation of the gold mining industry.

The hon. Member for Ukamba also raised the question of capital allowance, that is to say, treating the repayment of capital for agricultural enterprise (I understood that was his proposal) as expenses. I take it that is what the hon. member meant. That is quite a novel suggestion——

MAJOR GROGAN: On a point of explanation, not as expenses but exemption on the same lines as amounts set to conservation and so on.

MR. LOCKHART: Well, I suppose the result is the same. (Major Grogan: No.) At any rate, to set it off against income tax for taxation purposes. The suggestion is quite a new one, and I have heard it this morning for the first time. Neither Government nor the principal officer concerned, the Commissioner for Income Tax, has had any chance to consider it, and I do not think the hon. member can ask that any statement on the matter should be made, and certainly not that any instruction should be given to the select committee as he suggested.

The hon. member Mr. Isher Dass raised the question of exemption of the income of the Railway. The position is that the only taxable income which the Railway would have are sums which are applied either to development or reserve for the future assistance of rates on the Railway. They are to be used for the benefit of the users, and I am extremely surprised that any unofficial member of the Council should use the Railway rates as a method of taxation. It would be an easy method and one that appeals to me personally very much, but I think no one on an impartial examination of the Railway's finance would suggest it in the public interest, to say nothing of the very grave complications which would arise owing to the fact that the earnings of the Railway come partly from Uganda and partly from Kenya.

[Mr. Lockhart]

I should just like to correct one remark made by the hon. member for Mombasa, in which he suggested that as a result of this Bill the revenue of this Colony would be increased. There is no reason at all to suppose that the introduction of income tax jointly for Kenya, Uganda and Tanganyika will have any such effect.

In regard to the hon. member's suggestion that payment of stand premia should be regarded as part payment of rent, on the ground that the premia diminishes the rent to be paid, of course it does, but so does the purchase of freehold property which extinguishes the rent forever, so that I am quite unable to see any distinction in principle between the two.

The hon. member suggested there should be a grant of rebate in the case of income tax paid in one instalment in the case of taxpayers who did not take advantage of the double instalment method. The effect would be very slight. Any rebate we could possibly give would be small, and I think the complications are too great to allow that suggestion to be considered.

MR. WILLAN: Your Excellency, the shortness of the debate on this measure leads me to believe that there is nothing much wrong with this Bill, because since the interval the debate has only continued for about 65 minutes.

Taking the criticisms and comments in order, the first point raised by the noble lord the hon. Member for Rift Valley and reiterated by the hon. Member for Nyanza, and then also by the hon. Member for Trans Nzoia, was on the question of the non-taxation of passage allowances. The noble lord said there were always anomalies in all things, and the hon. member for Trans Nzoia went on to say that the non-taxation of these allowances was class legislation. With regard to those two remarks, there are always anomalies in all things, that is perfectly correct, even in other parts of this Bill, because if the noble lord will turn to clause 5 (2) he will see there is an anomaly there with regard to non-taxation of houses belonging to farmers, and he will also see that anomaly has been repeated now by the fact that we are not taxing the houses occupied by miners or their employees.

I suppose when the hon. Member for Trans Nzoia talks about class legislation he does not mind, being a farmer himself, benefiting by that differentiation when it benefits himself, but when it benefits somebody else of course he must object!

The hon. member Mr. Shamsud-Deen rather amazed me. He talked about this being an amazingly difficult bill and could not understand why bills could not be framed more simply. I am sorry he has gone—perhaps he anticipated this. (Laughter.) But I shudder to think what he would say if he had to study the income tax law at home of 1918 and all the various schedules under it. I am very sorry indeed for his disappointment regarding the drafting of this Bill, but I will quote what has been written by a very eminent jurist: "It may be well to warn the draftsman that in his case virtue will, for the most part, be its own reward, and that after all the pains that have been bestowed on the preparation of a bill, every Lycurgus and Solon sitting on the back benches will denounce it as a crude and undigested measure, a monument of ignorance and stupidity." (Laughter.)

A question was raised by the hon. Member for Nyanza on the allowance for children. Under this Bill and under the law as it is at the present time, we have been very generous in our allowances. If you take a married man with four children, a prudent married man who has made necessary insurance, actually you will find that man is not taxable until his income goes above £1,027 a year. I do not think we can go any further than that, even for people with more than four children.

Regarding the remarks made by the hon. Member for Mombasa, he stated that in Tanganyika income tax is a war measure. That is so in their 1939 Ordinance which was passed at the end of 1939. I do not quite know what they will do in their 1940 ordinance but, so far as Uganda is concerned, I have seen their bill and it is not a war measure. With

[Mr. Willan]

regard to Zanzibar, I do not know and I am not prepared to commit myself either way, whether it is a war taxation measure or not. So far as I know, Zanzibar will adopt the Uganda rates, which are the basic rates under our 1937 Ordinance.

Regarding his other questions, most of them were dealt with by the hon. Financial Secretary. There was only one problem put to me, in clause 38, the question of appointing an agent, and the hon. Member for Mombasa cited the case of a company with its head office in London which operates here. I cannot give a definite answer, because it depends whether the director's fees are met from profits in the United Kingdom or from here. If from home, there is no necessity to appoint an agent here; if from here, and we cannot get the tax from the director, we shall have to appoint an agent. The whole thing resolves itself into a question of fact.

Regarding the question of the hon. member Dr. Wilson as to clause 27 (2), as to whether a non-resident of Kenya will be charged Sh. 2/50 in the £, as I explained in moving the second reading this may have to be altered in select committee, but the intention is that it shall not apply to any person resident in any East African territories.

The question was put and carried.

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

Mr. Willan (*Chairman*),
Financial Secretary,
Director of Agriculture,
Elected Member for Nairobi North,
Elected Member for Ukamba,
Elected Member for Uasin Gishu,
Elected Member for Aberdare.
Mr. Pandya,
Mr. Isher Dass,
Mr. Montgomery.

MR. WILLAN seconded.

The question was put and carried.

ADJOURNMENT

Council adjourned till 10 a.m. on Wednesday, 20th March, 1940.

Wednesday, 20th March, 1940

Council assembled at the Memorial Hall, Nairobi, at 10 a.m., His Excellency the Governor (Sir Henry Moore, K.C.M.G.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of 19th March, 1940, were confirmed.

ORAL ANSWERS TO QUESTIONS

No. 8—WORKMEN'S COMPENSATION ACT

MR. ISHER DASS asked:—

Will Government please state when the Workmen's Compensation Act is likely to be introduced in this Colony?

MR. RENNIE: I regret that I am not in a position to give a definite reply. With a view to the introduction of the necessary legislation into the Legislative Council, a Committee will shortly be appointed to examine in detail the Model Ordinance dealing with workmen's compensation which was forwarded by the Secretary of State for the Colonies.

INCREASE OF RENT AND OF MORTGAGE INTEREST (RESTRICTIONS) BILL

SECOND READING

MR. HARRAGIN: Your Excellency, I beg to move the second reading of the Increase of Rent and of Mortgage Interest (Restrictions) Bill.

As hon. members are aware, this bill is the result of the deliberations of a small *ad hoc* committee which was appointed a few weeks ago. The bill, I think I can safely say, has met with general approval with regard to its principle, though I do not think I have ever known a bill where so many different people had so many different ideas as to amendment of detail. I have in my bag to-day about 12 pages of suggested amendments, some saying the bill does not go far enough and others saying that it goes too far, and it will be a matter for the select committee to decide what alteration should be made in detail.

[Mr. Harragin]

It is interesting to note at this stage that the bill really is a copy of the English Acts, starting off with December, 1915. I mention that particularly, because a great deal of criticism has been laid on the draftsman of this particular bill we are considering because of its retrospective effect, and it will be interesting to members to know that on the 23rd December, 1915, the House of Commons passed a bil with retrospective effect to 14th August, so that hon. members will realize that we have a precedent for the few months we are suggesting this bill should be dated back. In any event, the exact date is a matter for consideration by the select committee in due course.

The English Acts started in 1915, there were amendments in 1917 and 1918, a consolidating bill in 1920, and a further amendment in 1923, so that the bill which you have before you is the result really of all these various amendments, and it can hardly be said not to have been carefully considered in another place, and it incorporates all these amendments which we find in the 1923 Act which had to be introduced as the result of actual experience in England. I am the first to admit that what is good for England need not necessarily be taken verbatim as necessary here, and I have repeated it on various occasions, and it may be necessary in select committee to alter various details. For instance, the maximum amount of rent which this bill should cover. The relative value of rents here differs from those in England: in England the maximum is fixed at £100, here it is £150—suggestions have been sent in to me that it should be increased to £200.

If I may run shortly through the bill clause by clause, I will attempt to draw hon. members' attention to the points likely to arise and give trouble in select committee.

The first point is with regard to the definition of the word "court". In this bill you will see it means "Supreme Court". That, I may say, corresponds to the High Court in England, and also to the county court. In a great many cases we find in the English Act that the county court has jurisdiction. It is a question for consideration whether we should not allow the Chief Justice to appoint special magistrates who have had experience as magistrates of the first class to take these cases, if there are going to be a great many of them and the Supreme Court is likely to be cluttered up with this work.

Of course, one of the most important definitions is the one dealing with "standard rent". That is the second definition which occurs in clause 2. As it reads, "standard rent" means—

> "(*i*) a rent not exceeding the rent at which the dwelling-house was let on the 3rd day of September, 1939."

Hon. members will realize that why the 3rd September was chosen, is because it is the day war broke out. The definition also goes on to say that where a dwelling-house was not rented on that date, it shall be the rent at which it was last let before that date, and in the case of a dwelling-house first let after 3rd September the rent at which it was first let.

I should like to make it perfectly clear that this bill does not attempt, nor does the English Act, to control rents of houses built after 3rd September of last year, the reason being, of course, that we wish to encourage those who want to build at the present time, and there is no restriction put on those rents in this bill.

The next point is with regard to the definition of the word "dwelling-house". This only refers to dwelling-houses where the rent does not exceed £150. It is a question for consideration whether that should be altered to read £100 or £200 as various advocates, tenants or landlords will ask you to do in due course in committee.

Clause 3 tells you exactly to what this bill applies, and sets out with regard to mortgages in particular that, where there is taken directly from the English Act, the value of the house is less than one-tenth of the whole value it does not come under this bill at all. Where it is more than a tenth, in (2) provision is made for the landlord to apply to have the mortgage so to speak cut in half, so that you

[Mr. Harragin]

have one special assessment with regard to the amount of the mortgage on the house, which then comes within the provisions of this bill, and the remainder will be on the land on which the house stands.

There is a slight mistake in clause 3 (4), to which I plead guilty, though it is taken direct from the English Act. Apparently the gentlemen who do valuations in England and here differ as to what they mean by rateable value. In England it means the annual yield to the landlord, the rent received, and here it means the capital cost of a house, so that unless some amendment is made in select committee—I am only quoting one expert we have in this Colony in this matter—we may stultify to a great extent the value of this bill.

Clause 4 is a most important clause in the bill. It says very simply that no increase will be allowed in rents except the permitted increases which come in clause 5, after the 3rd September, 1939. Then you come to the permitted increases, in fact, only two: one, the second, which is easiest to deal with, where rates go up, and the first, where the landlord is allowed to put up the rent after structural improvements but not including as this says "expenditure on decoration or repairs". In that case he is allowed to charge 10 per cent of the amount expended on those improvements.

Sub-clause (2) makes it quite clear that any transfer of liability from the landlord to the tenant will be deemed to be an increase in rent. This is necessary, for the simple reason that if he offloads his rates on to the tenant or something like that in effect he gets more rent.

Clause 6 deals with the time limitation as to the permitted increase in rent, and makes it clear that the Ordinance does not permit an increase except at what is called "the permitted period". A landlord cannot, if he thinks he would like to, increase the rent because the rates have gone up, except at the time he would have been permitted but for the Ordinance being in force to have increased the rent in the ordinary way. In addition, by sub-clause (2), he must give notice to the tenant of his intention to increase the amount.

The question of mortgages is, of course, more difficult, because it is easy to calculate the amount spent on structural improvements and also quite easy to find out the amount rates have risen. So, in dealing with a mortgage increase, one has got to be more drastic, and all that is permitted is that at the appointed time when the mortgage runs out the mortgagee is entitled to increase the mortgage interest by 1 per cent and no more, provided 1 per cent does not make it greater than 8 per cent all told.

We then come to clause 8, which deals with the restriction on the right to possession. In effect it says that you cannot eject a tenant unless the lawful rent allowed under this bill has not been paid. That is obvious, and is found in sub-clause (*a*) of (1). (*b*) is also what one would expect to find, that where a tenant is guilty of being a nuisance to his neighbours or of allowing illegal practices in the house and things of that description, he can be got rid of. (*c*) deals with the tenant who gives notice and then later withdraws it. In that case, where the landlord has arranged to sell the house or to rent it to somebody else, the tenant will have to stand by his notice. (*d*) refers to where the house is genuinely required by the landlord for himself or in connexion with his business, and there for the first time we find introduced the principle of alternative accommodation. It is provided that the landlord can only get the tenant out provided he can find for him suitable accommodation elsewhere. (*e*) deals with cases where the house is required by a local authority, and again alternative accommodation has got to be found. (*f*) deals with a landlord who is in H.M. Forces and has offered accommodation to the tenant where the landlord has acquired the property after joining H.M. Forces, and (*g*) refers to the case where the tenant has left the house in order to join H.M. Forces and then wishes to resume for some reason or other occupation later on.

Then follow two sub-clauses which make it unnecessary—I am referring to

[Mr. Harragin]

(1) (i) and (ii)—for alternative accommodation to be given where the tenant was occupying a house by right of employment. What I mean is this. Assuming a man is given a job at £500 a year and a house, if he gives up that job or leaves he cannot claim under this bill to be able to keep on the house. The house is part of his emoluments which he has given up. The second case is where the landlord gave up the occupation of a dwelling-house in consequence of service in H.M. Forces during the war. In that case alternative accommodation has not got to be found.

Sub-clause (2) is a very wide clause in that it gives the court discretion to postpone or adjourn any application that comes before it. That really means that assuming a tenant did not pay his rent within twenty-one days required under the bill, and the landlord sought to eject him, if the tenant could satisfy the court that he would be in a position to pay the money within a comparatively short time the court would be permitted to postpone the case to give him a chance to pay the amount, in which case no ejectment order would be made.

Sub-clause (3) provides that a sub-tenant may not be turned out because of the misbehaviour of the tenant himself. What is meant is that where a tenant has sublet a room or rooms, because he himself is leaving the house, for whatever reason it may be, that does not mean that the sub-tenant may be turned out. The new landlord, whoever he may be, or the old landlord will be permitted to be the landlord of the sub-tenant, and the latter will have all the rights he would have had under the old tenant.

(4) provides for the case of the landlord who obtains possession by misrepresentation.

Clause 9 deals with the restriction on the calling in of mortgages. In short, it means that no mortgage may be called in as long as the interest is not overdue more than 21 days, that the covenants of the mortgage are observed, and that the mortgagor has kept the property in a proper state of repair. There is an exception made to that in the case where in principle of the capital is repayable in instalments over a period of 10 years or longer, and it does not apply also in the case of the mortgagee in possession, which is only natural. In the case of a mortgage on leasehold property, complete discretion is given to the court; nothing is laid down that the court shall do anything but justice so that the mortgagee shall not be unduly harshly treated.

Clause 10 forbids premiums to be given, and it is a very necessary clause. It did not appear in the original Ordinance at home, and what was found was that the landlords were being given premiums of say £100 by the would-be tenant to allow him to occupy the house. The house was then rented at a very reasonable rent in accordance with the terms of the Act, but in effect the landlord had received extra rent by way of premium. The second sub-clause provides the penalty for contravening the clause.

The question of furnished houses was more difficult to deal with, and it is really left at the discretion of the court. I refer to clauses 11 and 12. When I say it is left to their discretion, there is a definition given of the normal profit beyond which a landlord may not charge, and the normal profit is based on the normal letting, as it reads at present, for the year 1938. It has been suggested in one or two memoranda that it might be made 1939. There is nothing sacrosanct about 1938: it was the last completed year of which we were able to get records easily. A penalty is provided in clause 12 for the charging of what is called "extortionate rent", which means rent in excess of the normal rent, of which an effort has been made to give a definition in clause 11 (2).

Clause 13 makes it incumbent on the landlord to supply the tenant with a statement of what the standard rent was in that particular year.

Clause 14 provides for the recovery of over-payments which might have been made to a landlord.

Then comes a rather long and not very important sub-clause (2) to clause 14, which makes it incumbent on a landlord, if he has entered the wrong rent in his rent book, to delete that from the book. The reason is that when a landlord is next renting a house, if he or his agent goes around with a book which shows a wrong entry it is comparatively simple for him to get more rent than he is really to be entitled to.

Clause 15 imposes restrictions on the tenant. It makes it clear that the tenant has got to abide by the terms of the agreement or contract in the same way that he gets relief under this bill: that he must give normal notice as provided in the contract when leaving and, in the event of their being nothing in the contract with regard to notice the notice is laid down as three months. It also forbids the tenant himself obtaining money as a reward for leaving particular premises. That is to avoid people being able to bribe tenants to leave in order that they themselves can get hold of the property; that is, either the landlord himself or some other tenant. Sub-clause (3) I have already dealt with earlier, making a sub-tenant the tenant of the landlord when the tenant who originally rented the rooms has left.

Clause 16 gives power to the Supreme Court to make rules.

Clause 17 which, queer though it may appear, is similar to the clause which appears in the English Act, provides that the Governor in Council may by Proclamation apply the provisions of this bill to business premises. It is a question for consideration in select committee as to whether it is necessary to have this clause in at all or whether it would be wiser to wait until the necessity arises with regard to business premises. It is only true to say that evidence with regard to it being necessary in regard to business premises at the moment is not strong, although there was, of course, a lot of evidence to satisfy the committee that in the case of dwelling-houses it is necessary to bring in something of this description as soon as possible.

MR. WILLAN seconded.

LORD FRANCIS SCOTT: Sir, while the hon. and learned mover has explained all the details of the bill, I failed to hear any reasons put up as to the necessity for having this bill at all. Presumably the only reason which can justify a socialistic measure of this sort is if profiteering has been indulged in as a result of the war, but we have had no information in that regard. The only reason given in the "Objects and Reasons" is:—

"This bill is the outcome of a recommendation made by the committee, which was appointed by His Excellency the Governor on the 23rd October, 1939."

I am afraid that that is not of much use either to this Council because, apart from members of Executive Council, I do not think anybody knows anything about the committee or its report which has not been laid on the table, and the committee was not appointed by Legislative Council.

We are told that this bill follows English practice, and I was glad to hear the hon. mover say that it did not necessarily mean that English practice should be applied here. I should like to emphasize in cases of this sort that this is a new country, a growing country, in no way comparing in matters of this sort with an old-established country like Great Britain.

There is one defect, a notable defect, that I see in this bill, there there is no time limit of any sort; it is not introduced as a war measure or for the duration of the war, so it is presumably brought in for ever. If that is so, I shall have to oppose the bill. Apart from having a definite time limit I do feel that in the case of Kenya there should be periods when the amount of rent restriction and so on can be reconsidered, and my reason for that is this. The value of money is bound to vary during a great war such as we are now embroiled in, and it may happen that businesses increase, prices alter, and various people may do well, but the landlord has to be kept down for ever to the pre-war rates he was charging which, certainly in some cases that I know of, were very low. Speaking of a town in my own part of the world, Nakuru, some of the rents were lower at the date mentioned in this bill than they had been for six years, and I think hardships may be entailed

[Lord Francis Scott]
in that way unless there is some opportunity, say once a year or something of the sort, when the question can be re-considered. Take a place like Nakuru, it is a small town, but if there is going to be an air training school just outside with a large number of people there the town of Nakuru may increase very much and the standards of values of houses there may go up.

Any landlord who builds a new house subsequent to this bill will get the benefit, while landlords who, after all, showed initiative and enterprise in building in these young growing towns will be penalized in comparison with the newer landlords.

I do not propose to go into further detail. There are other hon. members here who are more competent to do that, but I do hope Government will consider some of the points I have raised which seem to me of fundamental importance.

MR. NICOL: Your Excellency, I welcome this bill because we have had examples in Mombasa of certain landlords putting up rents unnecessarily. At the same time, I do agree with what the noble lord, the hon. Member for Rift Valley, has just said, that there should be some arrangement for a periodical reconsideration, and I hope Government will be able to make some alteration in that regard.

Turning to the bill itself, clause 2 (2), standard rent: I think something ought to be put in there in regard to persons who have bought their houses after paying rent, rather on the hire purchase system. If you are buying on the hire purchase system your instalments would be very much larger than ordinary monthly rent in order to pay the total amount off. I hope I have made myself clear on that point.

Clause 3 (4) has been dealt with.

In regard to clause 5, in line 24 I suggest that the word "assessment" be inserted before the word "rates". Rates at home include water, out here water is paid for by the individual. It might also be well to define assessment, and I suggest the definition of rates which is to be found in the Government Rating Ordinance.

Do I understand paragraph (*a*) of that clause to mean that if a man spends £500 a year on improvements he can put up the rent by £50, providing the improvements took place after the 3rd September and between the date of this bill passing through Council? What happens if the house was unoccupied say in July or August of last year and since the last letting certain sums have been expended on improvements? Is it clear that the landlord can benefit from those improvements under this clause?

Clause 6 does not seem quite clear. Supposing a house is let on a monthly tenancy: does it mean the rent can only be increased for one month or for the period of the letting? I do not think that is quite clear. I have had representations about that. It is suggested also that after the word "mortgage" on line 56 should be included "chattels mortgage". Some fear has been expressed to me that the banks seem to have a free hand.

The landlord cannot apparently put up the rent unless he has paid out some capital for improvements, but under clause 7 the mortgagee can increase the interest 1 per cent without any improvements being made or money being spent at all. Is that the position?

I take it that in clause 8 it is not intended that the bill should operate harshly against monthly tenancy, and it has been suggested that this clause might be so interpreted. It might perhaps be clarified. On line 40, some people have suggested that a word there should be omitted. I am not pressing it. Clause 8 again, (*f*) and (*g*): it is suggested that "war" might be defined to make it quite definite it is applicable to the present war starting on 3rd September.

Clause 11 is not particularly clear as to profit on what: profit on the furniture or on the house? I suggest that might be clarified. Sub-clause (2) might almost be termed the lawyer's delight: what is the definition of "reasonably"? That has caused many an argument in the courts in the past, and while I know the legal Trades Union persons are pretty good perhaps we might have

[Mr. Nicol]
this more clearly defined and so save unnecessary litigation.

In regard to clause 17, the hon. and learned mover suggested that business premises might be left out of the bill at this stage, but why take two bites at a cherry? Put it in, and we have got it there if we want to use it rather than having to go through the process of bringing in a new or an amending Ordinance.

With those remarks I support the Bill.

MR. HUNTER (Nairobi North): Your Excellency, I feel bound, before passing on to the consideration of any of the details of the Bill, to examine rather closely the general principle underlying it. I feel it is necessary to do that for several reasons.

In the first place, in ordinary circumstances interference of this nature is repugnant to one of the basic principles of British people's life. In the second place, I assume that this Bill is not introduced at the dictates of Colonial Office; it is one of purely local concern to be settled on an equitable principle as between the inhabitants of this Colony. In the third place, arising from that, it appears to me that the hon. members on this side of Council have perhaps more than ordinary responsibility to examine the principles of the Bill and the details which may arise from that examination. In the fourth place, as the noble lord, the hon. Member for Rift Valley has already pointed out, the hon. and learned mover made no attempt to do so.

When I mentioned in the first place that the basic principle of interference which this Bill implies was repugnant to one of the main tenets of the political faith of many members of our nation, I did not necessarily wish to imply any opposition to the basic principle of the Bill itself. I do, however, wish to imply and to emphasize most strongly that the basic reason on which I feel able to support this Bill is that exceptional circumstances have arisen on account of the war, and for that reason I wish to associate myself with the noble lord in saying that it is imperative that the Bill should only remain in force for so long as the conditions brought about by the war exist, and on that basis only can it be supported. I want to emphasize that still further, because the majority of Englishmen—and I use Englishmen in the broad sense, including probably many of our hon. Indian friends and those who live under the main principles of English political faith—the majority of Englishmen believe in a policy of *laisser faire;* that is, Government should only interfere when there comes some urgent necessity to do so. I think their belief in this is for one thing: because Governmental action is less effective than voluntary action brought about by conviction, and I do not imply anything against this Government or any other Government, it is merely a question of human nature. In the same way the duties of Governments under conditions existing in the world today are already exceedingly burdensome, and any addition to these duties tends to diminish Government efficiency in respect of tasks which it cannot but fulfil. In the third place, as I have already said, interference with the liberty of the subject as commonly expressed in such terms as "an Englishman's house is his castle" and so on, is repugnant in itself. Allowing that, even John Stuart Mill, probably the greatest exponent of the principle of *laisser faire*, recognized that interference was necessary in certain conditions, when individuals failed to co-operate to the common good. He instanced such things as restriction of hours of labour and so on.

Believing this, when I read this Bill I asked myself three questions. Firstly, is there an abnormal state of affairs in many districts of the Colony in existence to-day? and I came to the conclusion that the answer was undoubtedly "Yes". Secondly, does the existence of war bring about limiting factors to the adjustment of those conditions by the ordinary laws of supply and demand? and again I think the answer is undoubtedly "Yes". Thirdly, could the state of affairs be rectified by voluntary co-operation among the individuals concerned? and I am sorry to say there appears to be abundant evidence that the answer is "No".

As regards the abnormal state of affairs which exist to-day, I think it is

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fair to say that in Nairobi at any rate it was possibly a pre-war problem, and possibly always will be an ordinary problem so long as the Colony continues to grow at the pace and in the way we all hope it will grow. It was accentuated possibly by an influx of refugees, but it has been greatly accentuated—and this is the important point in connexion with this Bill—since the war by the concentration of persons in certain towns on account of the military and the people who come in their wake. In so far as that, and possibly also the refugee problem, is concerned, this increase in the demand for houses is purely incidental. I regard that as important, because it means that it is not due to any particular foresight on the part of house owners or builders, and therefore there is no particular occasion to give reward for foresight which did not exist. It is important that that aspect should be stressed, because reward for such foresight is most essential in the interests of the community and is sometimes overlooked. There may be a tendency to overlook it in such conditions as the introduction of price control of certain commodities. Where an individual has exercised particular foresight in bringing in additional supplies, even if those supplies have not met to the fullest extent the additional demand, the person who exercised that foresight is reasonably entitled to some premium in addition to ordinary profit or rent which he might get for the commodity concerned.

Now, as regards the possibility of rectification by the ordinary laws of supply and demand, as the hon. and learned mover has pointed out on the one side there is the factor that it is not intended that the Bill should apply to houses built after its introduction, but the rental of existing houses is, of course, affected by any limiting factors which may introduce the probability of such accommodation being furnished, and I think there are factors. In the first place, one of the causes of the influx of population was the concentrations brought about by the military. It is not a remote possibility that such concentration may, by a stroke of the pen or some unforeseen action, be suddenly removed, and the position almost entirely reversed. That is also another point in another direction in ensuring on the one side fair treatment to the landlords. There is another factor, that in war time there is a certain lack of security to the investor of capital in almost any enterprise, and probably this brings about some consequential hesitation in the erection of new houses in the Colony.

For these reasons I believe there is at the present time a case for state interference, and I therefore support the Bill in general principles.

I say in general principles, because legislation of this type merely seeks to remove an injustice to a large number of people and transfer that injustice to a few individuals. It is the duty of the Legislature to prevent that injustice in its removal from a large number of people being applied to more individuals than it can possibly help. I am therefore sorry to see that the Bill as it stands at the moment provides solely for the reference of disputes to what one might term the awful arbitrament of the Supreme Court. I say that not with any disrespect to the courts—I am one of the great believers in them—but because, and I borrow the phrase advisedly from Mr. Chamberlain, because we all know that as in war resort to litigation so often means that both sides lose. I do submit that in bringing in an arbitrary measure of this type, and no one can suggest that it is not an arbitrary measure—witness the one particular date, 3rd September, being fixed for the rental—I submit it should be made as elastic as is practicable, and the submitting of any disputes which may arise under it should be arranged as cheaply and easily as possible. It was, therefore, with great pleasure that I heard the hon. and learned mover suggest that it may be possible to transfer to special magistrates appointed by the Chief Justice some of the disputes which may arise out of this Bill.

I am not quite sure in my own mind that that goes far enough, that something could not be done by the appointment of a rent tribunal or rents tribunals, in different districts. That is an important point when it comes to consideration of any details of the Bill, because if the set-

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tlement of disputes, and some appeal in hard cases, for which provision does not seem to be made, can easily be arranged, it might be possible to modify some clauses in the Bill.

If I might turn to the Bill itself.

Clause 2, standard rent, is provided for as being standard rent as at 3rd September. In the light of my opening remarks, I think it is reasonable to assume that in general terms this represents a fair and equitable arrangement, especially in view of the fact that there may be factors before the war which tended to increase rents in most parts of the country. I am by no means satisfied that that is so in all parts of the country. The noble lord mentioned Nakuru, and there are doubtless other districts. It seems to me unreasonable, and unnecessary that there should be no sort or kind of appeal in any hard cases which might arise, although admittedly some slight provision is made for it under another clause, to which I will refer later on. A mere comparison with England as regards that particular subject is obviously inadequate. There is a very large population in England, and an influx of a few hundred people into one particular district or another has probably no great influence on rents, but an influx or efflux of a handful of people in Kenya certainly has. I hope the select committee will examine with care whether that provision will be fair in its application to all parts of the Colony.

The noble lord also referred to the monetary factor, and I think that is a point which must be emphasized, because there is a tendency in all legislation to fix almost anything in terms of a standard without any recognition of the fact that that standard is as variable as any of the items it seeks to fix. Therefore, obviously it is necessary provision should be made from time to time, I do not know whether it should be by resolution of this Council or otherwise, for some adjustment if necessary in the light of the value of money at the time.

There is also in this clause the fact that the standard rent must not exceed £150. If this principle is fair—or rather, if it is necessary to bring it in as expedient, and I submit that it is—it should be necessary to bring it in in respect of all houses which are affected by the special conditions to which I have referred. And in accepting that principle I am by no means satisfied that £150 or necessarily any figure is the basic one to be adopted. We hear in this Council and elsewhere a good deal about precedents. We were told yesterday in another matter that clauses were inserted in the Bill from precedents in other countries and taken out from others. I quite appreciate that, it is nice to be able to turn to precedent for cover in case anything goes wrong, but slavish adherence to precedents appears to me almost an admission that we are unable to think for ourselves. I do suggest that if there is to be any limit and if we are to admit the principle of the Bill, there is no excuse in a Colony such as this for limiting it to what I might call vote-catching limits, and I am not at all sure there is a necessity for one, and secondly, that that limit should not cover anything but the luxury type of house, the demand for which will only be affected in a minor degree by war conditions. Consequently I submit that the limit, if there must be one, should certainly not be less than £200.

In clause 3 (1) (*b*) I am amazed to see that a lien on a house secured by an equitable mortgage is to be omitted from the operation of this Bill. I am aware that an equitable mortgage does not in itself provide for any specific rate of interest. I do, however, presume that it is the intention of Council that Bills of this nature should operate on principles of elementary justice, and if a lien is made on the security of a house, whether it is secured in fact by a legal or equitable charge, the principle to my mind is identical, and if there is any necessity, as I believe there is, to limit the rate of interest on mortgages, it should equally apply to an equitable mortgage.

As to sub-clause (4), the hon. and learned mover has already drawn attention to clauses 2 and 3, rateable value, which would exclude every house in the Colony in which rateable value exists. I am afraid I am not in a position to know to what extent the houses in this Colony have a rateable value: I believe

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they have in certain towns, probably they have not in agricultural districts. Reverting to the question of rents tribunals which I suggested, it appears to me that here is a clause which the select committee might usefully consider might be modified in that light. Taking first houses which have a rateable value, and assuming for the moment the rateable value is a fair equivalent to the capital cost, it appears to me that the rent should be limited to some fair and reasonable return based on that capital value, and some provision should be made for houses, if there are any, for which no rateable value exists. It is, for example, more than possible that someone on 3rd September on overseas leave or elsewhere, had let the house at a purely nominal figure on that date, and if there is no rateable value he has to go on letting that house for a purely nominal figure for the rest of the war under the Bill as it stands at the moment.

Coming to clause 8, the restriction clause, the provisions are in themselves rather objectionable, I think. I cannot see why a landlord wishing quite honestly and reasonably to re-enter the possession of his own house should be concerned to see whether the tenant can obtain premises of equal value and equal rental. That seems to me unnecessarily arbitrary. I agree that some provision should be inserted to prevent dummying or anything of the sort, but I believe that some sort of rents tribunal might usefully prevent unnecessary hardships provided some loophole is inserted in the Bill. Again, just below line 20 of the clause, are two sub-clauses under which it is not necessary to establish the existence of alternative accommodation. I would like to mention there the question of the landlord who, after the introduction of the Ordinance, proceeds on overseas leave. I cannot see why on his return he should not be able, without let or hindrance, to resume possession of his house, and I think some additional sub-clause should be inserted to cover that point. I am not even sure that it should not equally apply to the regular tenant of a house who proceeds on leave.

I am aware that in raising that point I may be at difference with some hon. members on this side of Council, who are reluctant to recognize the existence of overseas leave. But I myself have had my home in Kenya for just over 99 per cent of my life, and although I believe that overseas leave is a thing which might tend to disappear it is futile not to recognize the existence of facts as they are to-day.

We then come to clause 14, and I must say I feel extremely reluctant to support any principle of retrospective Government interference in a civil contract entered into by both parties to that contract. That such a state of affairs would arise is, of course, due to the dilatoriness in introducing this measure, and it seems to me—I am not blaming Government on that account, I fully appreciate the multitude of ordinances, regulations and so on which have been brought in since the war began—but I do submit it is a very great hardship to say to someone: "We are going to take away from you retrospectively something you earned in good faith under the law of the Colony" and which might have already been spent. I recognize on the other hand there may be, and I think there are, cases where some landlords have taken somewhat unscrupulous advantage of the present situation, and therefore I am forced to believe that the only reasonable basis is one of compromise, and the clause should be made retrospective to 1st January.

I have had a good deal to say about possible hardships to landlords, but I have only said them because of the arbitrary nature of the Bill and the fact that no provision is made for the protection of landlords if the pendulum swung the other way unless the State were to bear the burden, and there is no reason why it should. There cannot be any provision, but I thought it necessary to raise these points from the landlords' point of view before one can conscientiously support the point of view of the tenant. Subject to those safeguards, I do believe the point of view of the tenant and the general welfare of the community should be paramount, and I therefore support the principles of the Bill.

Council adjourned for the usual interval

On resuming:

MR. PANDYA (Eastern Indian): Your Excellency, I support this measure, but I should like to make one or two observations in regard to the principles involved in the Bill.

In the first place, I do not agree that a Bill of this nature should be a permanent measure on the statute book. It may be necessary at the end of the war to renew some of its provisions or to extend it for a further period and, so far as I am concerned, though it was not made clear by the hon. and learned mover but, in view of the fact that the date which is mentioned, the 3rd September, to be the declaration of war, I was more or less convinced that at the back of the mind of Government they had in view limiting it to the period of the war. If that is so, I do not see any reason why it should not be so limited, so that we can consider at the end of the period whether there is any further necessity for it in this country.

There is not the slightest doubt about it that the Bill is very arbitrary, and that it is one-sided too, but I think the circumstances are such that we cannot but reasonably pass a measure of this nature in view of the present abnormal conditions due to the war. But there is one point I should like to make, that we have even during this war recognized the principle of controlling profits by controlling prices of various articles and other things which are necessary to the life of the community. Particularly in regard to business we have agreed to the principle of controlling prices and profits, but in that control we have also agreed to the principle that prices could be increased due to certain factors which can be brought to the notice of the Supply Board. In this Bill I notice that the rents which are called basic rents on the 3rd September have been made more or less permanent.

I agree with the remarks of the hon. Member for Nairobi North in his able speech—I congratulate him on that speech—in which he pointed out various factors, and one of those he mentioned was that he found no clause which allowed in certain circumstances rents to be increased. I do not imply there will be any such necessity; in all probability, if we wish to keep the cost of living down, one of the first things we have to do is to limit the rents, and I am not against that principle. But, in certain given circumstances, there should be a clause, in my opinion, which should allow a special board or any other board appointed, to review the position at the end of certain periods or for certain definite reasons.

It has been pointed out by the hon. and learned mover that this restriction would not apply to buildings put up during the war or after the 3rd September. It may be so in practice, but in my opinion it does apply to a certain extent, because as long as tenants are in a position to pay low rents for old buildings there will be no demand for new buildings during the war, and no one is going to put up a building understanding at the same time that the rent will have to be about the same as it is ruling at present in the country. It will act as a sort of limit to the future building programme of the country, but perhaps from the point of view of the country it is desirable it should be so, and I do not see at this stage that it is a very big point which materially affects this Bill.

The hon. and learned mover mentioned concerning clause 17, which applies to business premises, that it may be considered in select committee as to whether it should be kept in or taken out. In my opinion, this clause should be kept in the Bill, and I should apply that to the districts and to the towns; and when once a case is made out His Excellency should have power to apply the provisions of the Bill to those towns and districts. I hope this question will be considered by the select committee.

The hon. Member for Mombasa said that rents were going up at Mombasa, and on that ground he proposed to justify the necessity for this Bill. As far as my information goes, rents are actually coming down. There may be certain instances where rents have gone up but, in general, I can say definitely that rents in Nairobi and Mombasa, especially dwelling-houses, are going down. How long that position will be maintained I cannot say. This measure, therefore, to

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my mind is more or less a preventive measure which may become a necessity in the near future, although the necessity is not so apparent at the present moment.

It is from that point of view that I am in agreement with the principles of the Bill. I will not go into details of the various provisions, because I think the points made by hon. members will no doubt be considered very carefully in the select committee stage.

MAJOR GROGAN: Your Excellency, I wish to join in the protest made by the noble lord, the hon. Member for Rift Valley, against the procedure adopted in respect of this Bill.

At the end of the Bill it says:—

"Objects and Reasons.—This Bill is the outcome of a recommendation made by the committee, which was appointed by His Excellency the Governor on the 23rd October, 1939, to investigate and report on the question of rent restriction."

This Council has no cognizance whatever of any such committee. I personally, until I examined the Bill, never knew there had been such a committee. We have no responsibility for the appointment or personnel of it, we have never been privileged even to see the recommendations of the committee or the reasons which they might or might not have. It is entirely improper, therefore, to be called on here to consider a Bill the result of the deliberations of a committee we know nothing about and whose conclusions we have not even been entitled to see. And I say that as a protest.

The first question is, what is the real justification for this Bill? No case has ever been made out here for such a Bill. Perhaps possibly such a case has been made by this mysterious unknown committee, but I have no idea of any such justification. I confirm what the hon. member Mr. Pandya says: As far as I am conversant with the present trend of things the tendency is for rents, for the smaller properties in any case, to come down in Nairobi as he says they have in Mombasa. That is probably due to what we know has taken place, the very serious exodus of artisans from this part of the country as a result of the war.

This is a most violent interposition in the affairs of man, which can only be justified by a very carefully considered case for intervention on behalf of some unknown mass of citizens.

The main fallacy already referred to by several speakers is that the Bill assumes there is something static about the measure of value. This adoption of 3rd September as a sort of standard from which all values in future are to be based is, of course, a grotesque fallacy. We cannot possibly keep static values which are constantly variable. It is a ridiculous, absurd principle to try to apply to this country, the absurdity of which is already becoming transparent to us in the futile attempts made at price fixation at the beginning of the war. (Mr. Lockhart: Question.) The first principle laid down is the price to be fixed on a mysterious date, 3rd September. Since then, of course, the trend of world . . .

MR. LOCKHART: On a point of correction, the 26th August was the date selected.

MAJOR GROGAN: I accept the correction. That had no earthly justification because it had no relation at all, where 3rd September might have had some significance. (Laughter.) The point is this —I am sorry my hon. friend intervened —that we found by experience as the rest of the world found by experience since the beginning of the war that it was essential to alter prices in conformity with the change in the ruling values. The fallacy of price fixation based on the 26th August was altered to the more sensible one of that based on the real world value of an article, which is the cost of replacement. We have been driven from the original fallacy of price fixation on this arbitrary date to the reasonable principle of replacement. The same principle must necessarily apply in the case of housing or any other accommodation.

Another point in connexion with that is that even if we take this mysterious date in August we must bear in mind that the base line on which we started the

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war here is a slump level, and it is quite notorious among people who have something to do with real property in this country and building that, generally speaking, house property as distinct from commercial property has not been a good investment. I speak with considerable knowledge, because there have been times when I have owned quite a lot of house property, but I found it unremunerative, so that I took every possible opportunity and completely succeeded in divesting myself of every item in that category except a small hut which I built for myself and in which at present I live. So that I know from experience that house property has not been a profitable investment here. And, speaking in general terms, not only is that a fact, but quite recently it has been reduced to a low return indeed as the result of the slump.

This Bill, as has been pointed out, is a very remarkable Bill. The hon. and learned mover and myself have on occasion bandied a few compliments, in the course of which we have described one another in our various capacities. Previously his rather dictatorial attitude has been rather on the Fascist side, but naked and unashamed he has come out now even more openly than Stalin could and without any sort of question has imposed the most 100 per cent communistic measure in this Bill ever put before the people of this country.

We are told as an apology that this is a copy of the English Act. I was in politics in England for quite a considerable time, and this English precedent is quite an improper precedent for this country, because everybody knows quite well that the Rent Restriction Act in the last war was forced on the Government in England by political expediency, and nearly all members of the House of Commons had a very large proportion of their voters interested in using other people's property at less than its value rather than in the interests of the people who provided the value—that does not apply in this country except in the case of the hon. Member representing Mombasa!—and the natural result in the last war was that very shortly after the war there was an enormous deficiency in houses.

In order to fulfil that deficiency Government had to spend fantastic sums of money in subsidising building. I think this Bill will have a certain effect here, although the hon. mover has pointed out that, under the Bill, houses built after the war, after this mysterious date, will not be subject to this Bill. He did not tell us at what state the houses had to be, whether they had to be completed or begun after the war or the last tile put on the roof. All that is part of the inherent complexities inherent in a Bill of this nature. That does lead to an interesting consideration, and that is, supposing somebody started building a house before the war, and at a very low rate for accommodation purposes put somebody in to keep the place warm for himself. Somebody builds an identical house next door and had not quite finished putting on the roof and claimed that it was completed after the war. Those two people, owning the same property, can charge entirely different rates to people for the same accommodation. That is a gross absurdity difficult to contemplate even in this assembly!

In the matter of justification for this Bill as a slavish imitation of the procedure of England, it should be pointed out that circumstances are entirely different. You cannot in fact go and camp in London in a hut or tent in the middle of the Strand, but a great number of us in this country have lived in Nairobi in huts, and I still am living in a hut in Nairobi which the Municipal authorities have condemned. I see no reason in the world why a lot of these martial young folk supposed to be rushing into war and their wives should not do the same thing as their predecessors. To say there is a housing shortage when they can get tents and put up huts is absurd, unless we become a purely suburban community instead of a colony.

Clause 12, which ought to be put on the wall here as a classic and clause 10 (2) are most remarkable. What it amounts to is this. Two ordinary citizens can freely enter into a contract among themselves; the one offers inducements to get into a house, and the other, once he has got in, turns round and says: "I repudiate this contract, and you fine this fellow £100 for entering into a contract which I

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have entered into myself". There cannot be a precedent for that, even in our local legislation! Also, there is no power whatever to deal with a contract definitely defined in terms of time. Supposing somebody went on leave and was prepared to let his house at a nominal rent for the term of his leave. That is being done constantly. Is it really suggested that in the case of a contract defined in terms of time the whole of the contract is going to be altered into one unlimited in terms of time and a person may not come back into his own house! It will lead in business to this, that if a person badly wants a house and the house is unoccupied, the landlord will refuse to lease it and insist on selling it, or keep it empty until sanity returns to the country.

I suggest in all earnestness that there is a great deal in what the hon. Member for Nairobi North suggested, that the proper way to deal with the matter is based on the same principle as the proper method of dealing with price fixation. It should be a negative method rather than a positive method, and that is in accordance with what they have found essential in Great Britain in price fixation, in respect of everything Government does not control the distribution of the negative method, the establishment of some court of appeal where anybody who pleads that a citizen is exploiting the war for his own improper purpose to the detriment of the community can lay a case, and the court can decide what is the equitable adjustment. I suggest seriously that if there is any attempt made to apply it that is the proper method.

MR. ISHER DASS: Your Excellency, I rise to support the Bill, and before I deal with the Bill clause by clause I would like to make one or two observations and also answer some criticisms made by hon. members.

First, dealing with the "Objects and Reasons", it is stated that:—

> "This Bill is the outcome of a recommendation made by the committee, which was appointed by His Excellency the Governor on the 23rd October, 1939, to investigate and report on the question of rent restriction".

I remember six months ago, during the budget debate, I made certain observations on the personnel of that committee, that it mostly consisted of people who were representing the landlord class and that there was no one to represent the tenant's point of view, and they created a great deal of laughter on this side of Council. Probably hon. members naturally expected that the people who were on that committee would give recommendations in accordance with their point of view, but to-day they have been deeply disappointed by the recommendations of the committee. Hence the objection that this Bill is based on those recommendations.

We often hear the eloquence of the hon. Member for Ukamba, who in his eloquent speech to-day made one or two observations, in which he agreed with the hon. member Mr. Pandya that since the 3rd September rents have been going down in Mombasa, Nairobi, and other centres. If this statement made by responsible members of the Council is true, then the landlords have nothing to fear by the introduction of this Bill, because it seeks to prevent any exploitation or increases of rent or interest on mortgages on buildings, whether dwelling-houses or commercial. Neither should they have any fear if the Bill remains permanently on the statute book, because most hon. members on this side of Council are well aware that whatever circumstances are created by the war to-day, those circumstances are likely to be worse after the war. We had experience of that in the last war from 1914 to 1918, and people had to suffer for the next ten or fifteen years, so if it has that effect there is some reason for the introduction of this Bill to prevent exploitation and increases in rent, and if those circumstances prevail after the war the Bill must remain permanently on the statute book.

There was one suggestion made by the hon. Member for Ukamba, that property, whether housing or commercial, has not been a successful investment in this country. I entirely disagree with that, and would point out for the information of members on this side of Council that whenever Government put up for sale plots in commercial or dwelling-house

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areas the plots have been sold for five or six times the upset price. It is a well known fact. Therefore, any suggestion that investments in housing property or property in commercial areas have not been successful is an argument which will not hold water at all. On the other hand, we have every reason to believe, and the fact can be proved, that people are anxious to invest and have invested money in property, and have made a good deal of profit out of it. Particularly in England, they have made 4 and 5 per cent return, and are satisfied if they only get 3 per cent, whereas in Kenya the rate of interest earned on properties is 10 to 15 per cent per annum. Any suggestion that such investment has not been successful is not a very reasonable suggestion.

Points in connexion with the Bill can be dealt with in select committee, but there are two points on which I must comment.

One is in connexion with clause 17. It has been suggested that the Governor in Council may by proclamation declare the Ordinance applied to any area or district, and so on. I think the hon. and learned mover must have received certain representations, or else Government has, from different institutions or bodies of individuals, that there is a necessity for this Bill to be applied to commercial areas as well as dwelling-houses. Therefore no time is to be lost in the matter.

The next point is one which the hon. Member for Nairobi North mentioned in his eloquent speech. Referring to clause 14, he gave the landlord's point of view, that any sum which had been paid to the landlord by the tenant on account of increased rent after the 3rd September might not be recoverable because it had been spent. My objection to that argument is that on the 3rd September the circumstances created by the war were not very happy or pleasant. We were all in a very sorry mood, and if any individual felt that in time of war and depression he had a certain moral responsibility towards his fellow beings and his own countrymen, he had no business to take advantage of that position and increase rents. If he had gone beyond that responsibility and still thought fit to exploit the position by increasing rents or interest, I see no reason why that man should not be made to pay through the nose, if he does not do it in the ordinary sense. That is my objection, and that is the tenant's point of view.

In conclusion, in clause 2 in the definition of dwelling-house the sum of £150 is suggested. But some houses fetch more than that in rent, and I agree with the hon. Member for Nairobi North that this amount should be increased to £200. There are many other things which can be dealt with, but I wholeheartedly support the measure, and I congratulate Government in introducing it. It is something for which I have been asking for the last four years to be introduced into this country for the protection of the tenant.

COL. MODERA (Nairobi South): Your Excellency, I would associate myself with the remarks of the hon. Member for Nairobi North. I would also agree with other hon. members on this side of Council with regard to the "Objects and Reasons" of the Bill, and would ask the hon. and learned mover when he replies to state whether the primary reason for this Bill is to prevent profiteering. If that is so, why should there be any limit to the amount? If, on the other hand, it is to protect a certain class of tenant, on what principle is the line going to be drawn in regard to the rent that the various tenants pay?

Finally, all matters of detail will be dealt with in select committee, but there is one point which I do not think has been touched on by any previous speaker. That is, in clause 14, power is given to the tenant arbitrarily to deduct or to recover without prejudice sums overpaid on account of rent or mortgage interest. The tenant is authorized to recover any sum overpaid to the landlord. May I give an example?

If a tenant is paying £20 a month and has for the last six months paid that £20, and that is found to be £5 in excess it means that he has overpaid £30. He is to be empowered, as I read the Bill, for the next month to pay his landlord nothing at all until that £30 is paid back. I suggest that that is a matter of principle

[Col. Modera]

which should not be accepted, and I trust the select committee when they go into this will devise some means by which that rent recoverable should be recoverable over a period of time comparative to the time in which the rent has been overpaid, unless there is a possibility of some tribunal such as was suggested by the hon. Member for Nairobi North being appointed to which any question of dispute may be referred.

MR. LOCKHART: Your Excellency, the noble lord, the hon. Member for Rift Valley, who opened the debate on the other side of Council, raised a question as to whether this Bill is necessary, or what the necessity for it is. Since then, we have heard the eloquent and lucid speech of the hon. Member for Nairobi North, and the hon. member has evidently made a close study of the question. He referred to unscrupulous increases of rents which have been made by landlords, and also to the dilatoriness of Your Excellency's Government in taking action to deal with this question. In view of the opportunities which the hon. Member for Nairobi North has of judging these matters, I trust that his speech alone will convince the noble lord as to the necessity of the measure, although I have no hope of carrying a similar conviction to the hon. Member for Ukamba!

I would like as chairman of the *ad hoc* committee referred to to say something about its appointment and, first of all, I must express my surprise at the astonishment and indignation expressed by the hon. Member for Ukamba that followed the appointment of the *ad hoc* committee . . .

MAJOR GROGAN: On a point of explanation, I expressed regret that we were called on to consider a Bill based on a report we were never allowed to see.

MR. LOCKHART: I withdraw any misinterpretation I might have made, but I certainly gathered his remarks that he regretted the fact that the Bill should have been founded on a report in themselves an objection. It is obvious he can have no objection to it because he has served a number of times on select committees which have produced recommendations from which Bills have resulted.

There was a good deal of criticism of the personnel of this committee when it was appointed in the Press by organized public bodies, and also in this Council. It was described in the Press as a committee of landlords. When that criticism was made in Council in the budget debate, I advised hon. members to await until the result of the recommendations were before them. We have the recommendations in this Bill, and I think the Bill in itself removes any ground for such criticism. Whether the unofficial members of the committee were landlords or not I have not myself the slightest idea, but in the course of discussion they showed no bias whatever in favour of landlords.

As far as their report is concerned, I must express regret that it has not been laid on the table, but it only consists of a short paragraph or two, and the attitude of the committee was simply this: They recognized that this problem did arise in Kenya in the last war. It arose in the United Kingdom in the last war. There was evidence that it was arising in this country in this war. They therefore considered that action should be taken to deal with the problem at once and on lines which have proved necessary and workable before. On these points of principles my hon. and learned friend the Attorney General was asked to produce the Bill which is before Council. That Bill was gone through by the committee who had no amendments to suggest. That does not mean in the least that a select committee of hon. members need be influenced by that view.

There is a point made by the hon. member Mr. Isher Dass. We have one hon. Member for Mombasa who says that rents are going up; if so, some legislation of this kind is necessary. We have another hon. member who says they are going down; in that case the enactment of the Bill cannot hurt anybody. That seems to me to be a perfectly logical and adequate answer to any criticisms of the principles of the measure which appears, incidentally, only to come from the hon. Member for Ukamba and received general support from hon. members who have spoken.

[Mr. Lockhart]

As far as points of detail are concerned, they can be examined in select committee and I hope dealt with by the hon. Attorney General.

I ought, I suppose, to deal with the point in regard to the principles of price fixation advanced by the hon. Member for Ukamba. The hon. member was as usual eloquent, but I am sorry he was once again wrong in his facts. The hon. member said that if it was necessary for the Supply Board to depart from the standstill order, the basic line of 26th August, and adopt the principle of replacement costs. That is in a modified degree the principle in dealing with the price of imported goods. But, in the case of the price of goods which are produced within the country, we have only departed from the basic line of 26th August where it can be shown that the cost of production has actually increased. It is obvious if a parallel is to be drawn with rents of property and prices of goods, that the parallel in regard to property in this country must be drawn by the prices of goods produced in this country, and there is provision in the Bill for increases in rent in connexion with expenditure on property.

The principle having been accepted, I think there is nothing more to say, except that as chairman of the committee and with regard to observations made by the hon. Member for Nairobi North, I would say that the Bill was not introduced on any suggestion by Colonial Office. If it had been, I could not understand myself how it would affect in any way the merits or necessity of the measure, because whatever one's ability is I think it is wise for all to avail ourselves of the experience of others.

MR. HARRAGIN: Your Excellency, as the last speaker has said, I take it that in general Council has accepted the principle of the Bill, and I am not going to delay hon. members by going into details such as were raised by the hon. Member for Mombasa at this stage. But I can promise him that each and all of the various points made by him will be examined by the select committee, and I may also say that all of them were raised in the various memoranda which I referred to earlier.

Some criticism has been advanced from the other side of Council because I chose to copy what I considered the best drafting in the world, namely the drafting of the draftsmen in England to-day. I could quite easily have chosen almost any colony or dominion in the Empire to get some sort of Rent Restriction Bill to put before Council, but one reason why I chose England was because I knew it had been revised as lately as September, 1939, that it had been in existence since December, 1915, and that therefore I could look on that statute which is now on the statute book in England as the last word that experience had shown necessary in a Bill of this description.

The hon. Member for Nairobi North, in his most excellent speech—and I would like to join with other members of Council in congratulating him upon it, certainly showed that he had taken a great deal more trouble to examine this Bill than some others—admitted the fact that I had followed precedent. I do not know what they do in commercial circles, but I would have thought it might be a wise thing to take advantage of the fact that others have tried to do the same thing before, they had amended their Bills half-a-dozen times, and had at last produced what they thought was the best thing possible. I do suggest to this Council that, as a general rule, it would be wiser to accept precedent of that description than rely on the recommendations of an *ad hoc* committee whom we have heard contemplated in this Council today.

The noble lord the Member for Rift Valley rather took me to task for not explaining more fully or at all in fact, why this Bill was necessary, and not giving details, shall we say, of the report of this *ad hoc* committee. In point of fact, I think that criticism is just. I only omitted to do so because I thought the Bill itself of which I was going into detail explained to hon. members exactly what the committee thought should be done. The report was very short, as the hon. Financial Secretary explained to you, and merely consisted of a paragraph or two recommending

[Mr. Harragin]
a Bill on the lines of the one you are now examining. Therefore you may take it that the committee were of opinion that it was necessary from whatever evidence they had—I do not know what it was—that a Bill of this description should be introduced.

I am not going to labour the point because generally hon. members agree that it is necessary but, as a matter of interest, I can mention a case that came to my own personal knowledge in quite a private way. About two weeks ago there was an advertisement in the paper that a house, I think near Muthaiga, was to be rented, and before 11 o'clock there were thirty applicants for the house. I happened to know the successful one, and I can tell you that the rent had gone up by £3 from the last rent. It had been let a month before at £12, the rent now is £15. Therefore, quite apart from anything the committee might or might not have heard, that is a little bit of evidence I personally happened to have come across.

The point was made by one hon. member that in clause 11, I think it was, the word "reasonably" had been put in. I think he called it the lawyer's delight. The only reason that was put in is because it is impossible to define it exactly, and each case must be taken on its merits, and will have to be examined in relation to all the facts of each particular case, and it is quite impossible to lay down any arbitrary rule. I am the first to admit that this is a very drastic Ordinance indeed. As a lawyer, one would object to it from start to finish in the same way that the hon. Member for Ukamba has objected, but unfortunately, in these days we are obliged to forsake the tenents in which we were brought up, and it has been proved all over the world that this type of legislation is now necessary. Although I agree we should make every effort to make it workable with as few hardships as possible, hon. members must know that if you begin making a bill of this sort elastic there is no end to the ramifications into which you will be led.

Suppose, for example, we were able to appoint committees all over the country or wherever this Bill was brought into force to examine each particular case, each committee naturally would take a different view: there would be no precedent to guide them, one committee would not be bound by another, and one landlord would get away with one thing in one district and not in another. The example given by the hon. Member for Ukamba was perfectly right, namely, that if a landlord happens to build or finish a house since the 3rd September he would be able to charge any rent, whereas the man who finished two months before and rented it would possibly get a smaller rent and would be bound to that small rent for the rest of the war period.

A point was made, a good point, by the noble lord, that this bill as it stands is not only for the war period. I do not think anybody would take exception to a limitation of the Bill, limiting the period, but I would point out that during the last war it was found, both in England and elsewhere, more necessary immediately after the war than it actually was necessary during the war period. Although Government has not the slightest objection to this Council reviewing the position in due course, the reason why it was not made for the war period is because we know that the Bill will probably be much more necessary immediately after the war than it is at the present moment.

I do not think it is necessary at this stage to go into the other details raised by the noble lord.

The hon. Member for Nairobi South made an extremely good point with regard to a person going on leave. That is an omission in the English Act, because the position does not arise in England as often as it does here, and I think we will in committee put in something with regard to that point.

I was asked a question by the hon. Member for Nairobi South, something to this effect: Is the primary reason for the Bill to prevent profiteering? The answer to that, as he well knew when he asked the question, is "Yes" and the reason why we hit on the 3rd September

[Mr. Harragin]
was that the profiteering we seek to prevent is profiteering arising directly out of the war. As an example of what I mean I will tell you what has happened in Nairobi up to the 3rd September. I am reliably informed that in fact rents did rise between the 1st January and the 3rd September, and it is alleged by my informant that this is in some way due to the influx of refugees who were taking these smaller houses. We are not seeking to interfere with that in any way, for that is an example of what the hon. Member for Nairobi North would call a fair business profit. Someone, let us say, foresaw there would be an influx of refugees to this country after what had happened in Europe, and built and rented his house at an increased rent.

I should like to say that I agree with the hon. Member for Ukamba that rents had been bed-rock not long ago. The evidence we have had was that they were probably at their lowest in 1935-6, and have been rising gradually, and with the influx of refugees up went the rents of smaller houses.

MAJOR GROGAN: On a point of explanation, I made no reference to commodities but asked, if it was a Bill for profiteering, why try to limit it to a certain sum?

MR. HARRAGIN: Profiteering. I should have qualified it by saying, among the poorer people of the country. If somebody has chosen to build a palace it will not prevent him getting any rent he can from anyone who wishes to live in it. It is to prevent profiteering at the expense of the poor man. I think that is a fair way to put it.

I am the first to realize there are bound to be many anomalies in a Bill like this. Already many have been pointed out, not only in this Council but in correspondence from outside. It is extremely difficult to draft any Bill which is going to be elastic and make provision for every difficulty. You have got to fix some stated date. You may not like the 3rd September, and I have heard it suggested that we should fix the 1st January. That is just as arbitrary.

MAJOR GROGAN: I only raised that point in connexion with the recovery of overdue rents and not in connexion with the fixation of the amount of the rental.

MR. HARRAGIN: I am quite prepared to accept the hon. member's correction, but there has been, I can assure him, in correspondence many people who have suggested the 1st January as a sort of happy date between 3rd September and the date of the passing of the Ordinance. All I know is that the date will come up for serious consideration in select committee, and I can in conclusion say that the anomalies put forward to-day will be examined, and I hope in due course we will be able to produce a Bill which will, at any rate in detail, be more acceptable to Council than it appears to be at the moment.

The question was put and carried.

MR. HARRAGIN moved that the Bill be referred to a select committee consisting of—

Attorney General (Chairman),
Director of Public Works,
Director of Education,
Elected Member for Nairobi South.
Elected Member for Trans Nzoia,
Elected Member for Coast.
Isher Dass (Central Indian Area),
Elected Member for Western Indian Area,
Mr. Montgomery.

MR. WILLAN seconded.

The question was put and carried.

LAND AND WATER PRESERVATION BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the Land and Water Preservation Bill be read a second time.

In paragraph 204 of the report by Dr. L. B. Pole-Evans there appears the following statement:

"When Kenya awakens to the fact that the health of her land, the health of her people and the health of her live stock depends on the preservation of her grasslands, and accords pastoral

[Mr. Willan]

science its rightful place in State policy, then progress will be made and an example set for the whole of Africa to follow."

This Bill is an attempt to awaken the people of Kenya to the fact that unless the land and water resources of the Colony are preserved, the agricultural outlook of Kenya is not encouraging. For the particular information of the hon. Member for Nairobi North, I would say that this Bill is not founded on precedent, but it is one of those cases where the law officers of the Crown have thought for themselves.

This Bill has received, I think, a very good reception in the Press. In fact, I cannot think of any important measure which has come before this Council during the last three years which has received such unanimous support. But, of course, the only reason for this Bill is that legislative sanctions is required to compel the people to take measures to preserve the water and land resources on their holdings when they will not take such measures voluntarily for one reason or another. As everybody knows, the Bill is an enabling measure. It covers the whole of the Colony, not only the settled areas but also the whole of the native reserves. Actually in the native reserves there has been legislation by means of local native council resolutions dealing with measures to prevent soil erosion, and these resolutions have been in force in various reserves for some little time. For instance, a standard resolution goes more or less on the following lines:

"That for the purpose of preventing soil erosion: (a) on steeply sloping land no person shall, except with the permission of the headman: (i) for the purpose of cultivating any land cut down or destroy in any manner whatsoever any trees, bush or other vegetation growing therein, or (ii) depasture cattle, sheep or goats; (b) no person shall, except with the permission of the headman, within 10 yards of the bank of any river or stream or within the bed of any natural watercourse or drainage line cultivate the land or depasture any cattle, sheep or goats or burn, cut down or destroy in any manner whatsoever any tree, bush or other vegetation."

A second resolution is that able-bodied men can be called out to take measures for dealing with the prevention of soil erosion. We have no such legislation in force in the settled areas, and so this Bill, for the first time, will compel people, when rules are made, in those settled areas to take measures to preserve the land and water resources of the Colony.

The only criticism which has been made, if it is criticism, of this Bill, is contained in an article which appeared in one of the local papers on the 8th March, 1940. In one paragraph of that article the writer states as follows:—

"Whilst I am all out for this Bill and sincerely hope it will be passed pretty well as it is, I must point out that it is one more instance of the modern tendency of passing either enabling Bills, or else Bills giving the Government very wide powers to enforce them by undefined rules. It is of course the negation of democracy, whether that matters or whether it does not, and not only in Kenya but all over the Empire to-day all legislation is tending more and more to depart from pure democratic principles and to put all power into the hands of bureaucracy."

Certainly this is an enabling Bill. I do not think it could have been anything else, because you have large areas of the Colony which have very different problems in regard to taking measures to prevent soil erosion, and either we were faced with having a series of Ordinances each one for a different area in the Colony, or else to have one enabling measure which would permit the Governor in Council to make different rules for different areas in the Colony. So when I saw this paragraph in this article I was somewhat surprised, and I immediately looked up the definition of democracy in the dictionary. In the dictionary to which I referred it is defined as a "system of government centralized in a graded series of officials responsible only to their chiefs and controlling every detail of public life." Since

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the responsibilities are vested in the Governor in Council under this Bill, I do not think—since Executive Council is composed of four officials and four unofficials—that it can be said to be bureaucratic, nor do I think the four unofficial members, the noble lord the hon. Member for Rift Valley, the hon. Member for Nairobi North, the hon. member, Mr. Pandya, and the hon. member Mr. Montgomery—would for one moment admit that they are a graded series of officials.

However, I cannot see that a measure which contains a clause such as clause 3 (3) of this Bill can in any way be said to be bureaucratic because the scheme under the Bill is this: Where it is necessary to make rules for the prevention of soil erosion in a particular area, those rules are drafted and sent to the local authority of that particular area. Local authority is defined in clause 2, it may be a municipal council or board, a district council or a local native council. The rules are deposited at the office of the local authority, which is responsible for giving notice to the people resident in that area, so that they are allowed to inspect the rules and then to make any objections or observations they please on the rules drafted. When all those objections have been collected, they are sent back to the Governor in Council, who decides, in the light of those objections and evidence supporting them, either to promulgate the rules as they stand or modify them in the light of the objections, or to decide whether the rules should be dropped altogether. That does give the local authority concerned and the people within the jurisdiction of the local authority full opportunity of scrutinizing these rules before they are finally promulgated and have the force of law.

Sir, although this is a very important measure, it only consists of six clauses, and there is nothing much more I can say about it.

Clause 3 sets out the lines on which rules can be made, and hon. members will see that they are for regulating and controlling certain matters or preventing them. Most of the rules will take the negative form, that you shall not do this or that and so on. There may be one or two under (D) and (E) of sub-clause (1) which will state that people resident in a particular area will have to do certain things, but generally they will be of a negative nature.

I should like to draw attention to clause 4, which makes the Water Board the final arbiter of what is considered as a watercourse or a body of water. The only reason for making the board the final arbiter is that it has similar powers under the Water Ordinance, 1929, and is a body fully representative of official and unofficial opinion.

Finally, I should like to say that this Bill has been considered by the Settlement and Production Board, and that board has unanimously approved the provisions of the Bill.

MR. HARRAGIN seconded.

LORD FRANCIS SCOTT: Sir, I rise to support the Bill.

In the debate on the previous Bill it was pointed out that it was a very arbitrary measure interfering with the liberty of the subject in the towns. Here we have a Bill which also definitely interferes with the liberty of the subject in the country districts. As a general rule, I dislike this interference with the liberty of a subject, especially in the country, but, on the other hand, if certain members of that public have disregarded and abused their privileges and in so doing have done detriment to the assets of this Colony—in other words, the land of the Colony, the forests, water supplies and all connected with it—then drastic steps have to be taken to deal with the situation. As I believe that this question is one of the most urgent necessity in the country at the moment, I support the Bill before us.

It is very difficult in this particular case, it is extremely difficult, to produce a Bill which is going to satisfy all sorts of opinion who are keen on this particular subject. I have recently been told that this Bill is much too drastic, and I have been told that it is not nearly drastic enough. Personally, I look on this as a very drastic Bill. It is one of those enabling Bills which, in the ordinary way,

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from the constitutional point of view, unofficial members are inclined to oppose in Legislative Council because it does take powers away from the Council and put them in the hands of the Governor in Council. But I do believe it is the best way of tackling this problem.

If, however, it is going to be effective and achieve the objects which I am quite satisfied myself Government have at heart, just as much as the unofficial community, it is essential that rules are at the very earliest moment produced so that the objects of the measure can be brought into operation. In fact, I hope those members who are not satisfied with this Bill because it does not give them all they would like, though they have the objects very much at heart, will not take the attitude of opposing it but rather the attitude of doing anything they can to improve it so that the objects aimed at can be achieved.

I should like to know if this Bill is passed, how Government intend to take the next step, which is to produce the rules necessary to carry out the objects enumerated in the Bill? I feel there is one thing which is most important, and that is that when these rules have been produced it should be the responsibility of local authorities to see that they are properly enforced.

Following on that, there is one thing in this Bill which I cannot agree with, and that is at the end of the very last paragraph on page 4, wherein it says:—

"No expenditure of public moneys will be involved if the provisions of this Bill become law."

Frankly, if the expenditure of no public moneys is involved, we might as well not pass the Bill at all because it will be perfectly worthless. To begin with, you, Sir, in your Communication from the Chair the other day stated that you felt it would be necessary to appoint some co-ordination officer to see that the objects were carried out. Apart from that, I do not think it possible that the present personnel available to district councils or district agricultural officers and so on are sufficient to see that the objects are carried out, for they have too much work to do now, and it will be necessary to appoint some people in each district rather on the basis of a locust officer or water bailiff who will be the servants of the local authorities to see that the rules are enforced and carried out. And that must entail some money.

Apart from that, the objects put forward here for which rules will be proposed have both a negative and a positive effect. On the negative side, to prevent people doing certain things no money will be involved. On the positive side, it is very likely that a certain amount of money will be involved, and I do not think Government will be able to insist on people carrying out afforestation and so on unless in some cases money is available for this purpose.

There is one point which I think is very essential, and that is, that this Bill, or the methods of carrying out the objects of the Bill, should not get into the hands of cranks. (Hear, hear.) We do not want a vast expenditure of money on purposes which really are not essential.

I want to ask a definite question. Under this Bill, is it possible for Government to insist on a certain measure of reafforestation in cases where forests are being destroyed? I understood that the Pyrethrum Board had asked if they could have powers to do so, and were told that powers would be given under this Ordinance. But I cannot see where that can be done, I suggest another clause will have to be put in. It is very essential to-day when, owing to the high price of pyrethrum, a good many people, the get-rich-quick growers, are doing a lot of damage to the country. I do not mean the genuine farmer who is growing pyrethrum on his farm as part of his farm operations, but people—and there are a good many recently and in my own constituency—who have bought some high land and, to get their pyrethrum in quickly and get their profits, have destroyed not only a good deal of forest but, what has done far more harm, brought in large numbers of squatters who are not controlled in any way, who are allowed to cultivate right down to streams and destroy forests and vegetation, and have done real damage. In fact, I was told only last week that certain

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streams in the Solai area have ceased to run altogether as a result of this, in spite of the heavy rains recently.

Drastic steps must be taken to prevent that sort of thing, and drastic steps must be taken to preserve the watersheds, and I do feel strongly that the repeated delay in bringing into operation the Resident Labourers Ordinance is really doing an enormous amount of harm. Until that comes into force, Government's hands are tied, and I do feel that after all these objections by the Secretary of State, one after the other, which we have done our very best to meet every time, Government should put up very strongly that we cannot wait any longer to bring the Ordinance into force. We have done everything he has asked: we have amended the Ordinance to meet his requirements, and found land available for the squatters, and the only thing now holding it up is getting the land surveyed. For that purpose I know that one surveyor was let out of the army specially for that purpose, yet he has not been put on that work but diverted to other work, which is entirely wrong.

I do wish to emphasize this point very much, and I do feel that in the interests of the natives and those very people taken out of the reserves to go as squatters, it is essential that the Ordinance should be put into active operation to-day. It is very largely mixed up with this particular measure, and I do not think this Bill will be able to be put into effective operation unless the other Ordinance is also brought into operation.

I believe I am going to be on the select committee which will deal with this Bill, so that I do not want to go into details now, but I do hope hon. members who are keen on this and feel strongly about it will do their best to help to improve it rather than scrap it because it does not produce exactly what they would like to see in the Bill.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 10 a.m. on Thursday, 21st March, 1940.

Thursday, 21st March, 1940

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Thursday, 21st March, 1940, His Excellency the Governor (Sir Henry Moore, K.C.M.G.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of 20th March, 1940, were confirmed.

ORAL ANSWERS TO QUESTIONS

No. 3—INDUSTRIAL SALVAGE

MR. NICOL asked:—

1. Will Government inform Council as to what steps, if any, have been taken to investigate the possibilities of "industrial salvage", as suggested in the budget debate?

2. If investigations have taken place, what has been the result, and what methods are being employed?

3. If no action has been taken, will Government please take action?

MR. LOCKHART: Information has been collected and transmitted to the Ministry of Supply regarding scrap metal available in Kenya and Uganda, and disposal of scrap metal is under constant action. The salvage of other forms of industrial material is being considered by the Supply Board and inquiries are being addressed to the authorities in the United Kingdom. No other action has been taken.

No. 5—MOMBASA CENSORS' STAFF

MR. COOKE (Coast) asked:—

Will Government state the number of whole-time and part-time censors employed at the Mombasa office, together with the respective salaries and other emoluments of each censor?

MR. HEDDEN (Postmaster General): The number of whole-time and part-time censors employed at the Mombasa office, the respective salaries and other emoluments paid are as follows:—

1 deputy censor, full-time, paid £480 per annum.

1 assistant postal censor, male, full-time, paid £440 per annum.

[Mr. Hebden]

1 assistant postal censor, female, full-time, paid £360 per annum.

7 assistant telegraph censors, female, paid Sh. 2 per hour for duty performed between 6 a.m. and midnight and Sh. 2/50 per hour for duty performed between midnight and 6 a.m.

In addition, the following are employed as assistant postal censors part-time, as required:—

4 European, females, paid Sh. 2/50 per hour.

3 Asians, paid from 60 cents to Sh. 1/25 per hour.

Full-time European censors who are employed away from their homes or normal place of residence are paid, in addition to salary, a subsistence allowance of Sh. 7/50 per day. At the present time two members of the Mombasa censorship staff are in receipt of this subsistence allowance.

In addition to the actual censoring staff, the following are also employed in the censorship department at Mombasa:—

4 decoding clerks, female, part-time, paid Sh. 2 per hour.

2 censorship sorters, male, paid—one at £360 per annum, one at £300 per annum.

1 typist, paid £180 per annum.

No. 9—Indian and Arab Company, Pay of

MR. ISHER DASS asked:—

Will Government please state the pay and allowances fixed for (*a*) sergeants, (*b*) corporals, (*c*) lance-corporals, and (*d*) privates of the Indian and Arab Company recently formed in Mombasa?

MR. RENNIE: The formation and administration of the Kenya Indian and Arab (Territorial) Company are the responsibility of the General Officer Commanding, who, Government is informed, has recently submitted recommendations to the War Office concerning the matters raised in the hon. member's question.

LAND AND WATER PRESERVATION BILL

Second Reading

The debate was resumed.

MR. WRIGHT (Aberdare): Your Excellency, the purpose of this Bill will meet with general approval throughout the Colony, but in its application there is a real need for some improvements. I agree with the noble lord the hon. Member for Rift Valley that the Bill will be largely inoperative in its positive parts unless a money vote is involved.

Reading recently the annual Colonial survey in that excellent journal, *The Crown Colonist*, I was much interested to note that large schemes of water development and conservation, taken together in some cases with control of grazing and contour bunding, were being applied vigorously in nine of our Colonial possessions. Now, at long last, Kenya wisely begins to take steps to follow suit. But it can be argued, and frequently is, that the application of rules to preserve vegetation can sometimes be overdone. In Malta, for instance, I read that no tree, no fruit bearing tree, no shrub or bush except prickly pear may be cut without special permission from the Director of Agriculture. And he will not give it without specifying that another three or shrub is planted somewhere else at the cost of the owner. How they reconcile such a ruthless enactment in an island where the goat population is numerous, it is difficult to understand, but here in Kenya, in this Bill, rules are in no way ruthless. They are, in fact, urgently necessary.

Their application is, however, the chief bone of my contention. I contend that the local authorities—and in doing so I support the noble lord—the district councils should have vested in them the powers to apply these rules and to impose restrictions. They have invested their all in the particular district that they represent, they are invariably public-spirited gentlemen who give a good deal of their time to the welfare of the Colony, and it is obvious that their zeal for the welfare and progress of the Colony is infinitely greater than those whom the Bill describes: any administrative officer in the main, any forest officer, or any other peripatetic expert, of whom we have several who specialize in subterranean studies.

[Mr. Wright]

A lot of people agree with me, and it is the common view that this Bill hardly goes far enough. There are certain instances where we can witness the appalling destruction which is going on, and has been for some time, and the feeling is that something must be done not only to stop it but to find remedial measures. The noble lord referred to the pyrethrum industry in critical vein, and I wish to follow on the same lines. There is no doubt that that industry means a good deal of immediate wealth accruing to the Colony of Kenya. But, taking the long range view—and that, I suggest, is the only permissible view for us to take—the probability is that it will represent at the end a lasting liability in the Kenya balance sheet.

This criticism of pyrethrum growers is not wholesale or general. I am well aware that among these growers are several who apply first principles in agriculture to their job, who by thorough contour terracing preserve their soil assets, and it is invariably these growers who take the lead in the establishment of forest areas to cope with the needs of that voracious crop and its destructive labour force in terms of fuel requirements. But I am afraid other growers, syndicalist growers, whose activities may be described as sheer land mining, do not take that view, and do not take notice of the ravages they are making on the fair face of Kenya and the devastation that will inevitably follow in their wake. It is to such as these that ruthless rules should be applied.

It seems, therefore, that in Kenya laws must be laid down which in ordinary circumstances need not be applied. The better planters and farmers of the country are aware of the problems, and apply afforestation conditions, and make provision for the development of their property coincident with the wealth of the Colony without compulsion, because it involves a simple principle which all good farmers of the country are aware of. Tea planters, for instance, accept as axiomatic the practice that one acre of woodland shall be laid down for every four acres established under tea, and it is fair to add that the tea bushes give an infinitely better protection to the soil against erosion, water and wind erosion, as also in protection from the sun, than the pyrethrum crop.

I would therefore like to see steps taken whereby it should be a definite obligation on such people as disregard such first principles to establish an area of trees proportionate to the area of pyrethrum laid down—I take pyrethrum as a special crop—whereby their own ends shall be ensured with the future of the country saved from the awful devastation which is going on.

Our clear duty is to take a long range view of the question. Forestation, reafforestation, coupled with schemes of controlled grazing, and improvement of grass lands applicable to both European and native areas, are the only means whereby we can save our land and the water resources of this Colony. In my own time I have seen awful destruction done to our woodlands in Kenya, and recently, there is very little doubt, the process of destruction has been accelerated. That we all know must be stopped, and I suggest that the local authorities, the district councils, are the people who, with the interests of their particular districts at heart, are the best qualified to deal with the problem confronting Kenya. After all, the Bill allows in one aspect the Water Board to be the final arbiter. District councils work with that board, and it is rarely found they are in grave disagreement about any issue affecting conservation or distribution of water. There seems to me no reason why a major issue could not be dealt with by a district council; that is, the preservation of the land and water assets taken together, and the same board be the final arbiter in both cases or, as an alternative, since land in the highlands is particularly involved, if the issue could not be spread over both the Water Board and the Highlands Board which Government has appointed to look after highlands' interests.

In conclusion, I am glad that Government has at long last taken the steps outlined in this Bill, and would just refer to a remark made by that great statesman and patriot, General Smuts, who some years ago, dealing in South Africa with the same menace that concerns Kenya to-day, said: "Preserve your

[Mr. Wright]

mountain vegetation, the forests are your reservoirs, and your salvation comes from them."

MR. COOKE (Coast): Your Excellency, in rising to oppose this Bill I regret that I find myself in opposition to the noble lord, but I am not opposing the Bill in principle; what I especially oppose is the clause which makes it mandatory to consult local authorities because, in my opinion, that will only lead to further vacillations and further delay.

I think it is a thoroughly vicious principle that local authorities, who must be people to a certain extent prejudiced, should be allowed to lay down the law over matters which concern the whole country in general, and not only concerns the whole country but concerns the generations which have yet to be born. We have been waiting for this Bill for a long time, and some us were led to believe that it was because, if I may borrow an expression from my hon. and learned friend Mr. Willan, the best brains of the country were employed in its drafting that we expected a drastic and comprehensive bill, and we receive this feeble and emasculated document which is hardly worth, in my opinion, the printers' ink expended on it. I know it will be argued that public opinion is lacking in this country on this important matter, and for that reason we must consult local authorities. Still, any Government that pretends to be a Government, where public opinion is so lacking, its function is to instruct and guide that public opinion.

For instance, in England in years gone by, we had the compulsory education acts, and a child was not allowed to say whether it wanted to go to school or not or a parent whether he would send his child to school. I think it is a vital matter as far as soil preservation is concerned, just as vital probably as any threat of war in this country, because what shall it profit us if we keep the Germans out and leave our descendants to inherit a desert? There are some of us who hoped to see a great and prosperous future built from the great natural assets of this country. Now we see those assets being wantonly and wickedly destroyed. And what action has been taken? Where there were great forests we now find the Mexican marigold, and where there were rich grasslands, the richest in Africa according to Dr. Pole Evans, there are now vast eroded areas, and where ran streams, as the noble lord said yesterday, there are now dry river beds, and water so polluted by factory effluent as to be quite useless for man or beast. To solve this tremendous problem we vacillate and delay by consulting local authorities.

Take the native areas. In Kiambu the local native council steadily and stubbornly refuses to pass anti-erosion measures. Now we propose to consult those people. I think it is a pure waste of time. Take areas I know in native reserves where little is being done in anti-erosion measures, and even in the forest areas of Uplands which were, I think, shamefully alienated and unnecessarily alienated, it was stated on good authority the other day that no efforts are being made with anti-erosion measures. How long is this defiance of Government's wishes and orders going to last? We claim to have the trusteeship of the native, but we are allowing our wards to dissipate and destroy their heritage, and I call that the negation not only of government but of trusteeship as well.

Take the European areas. We propose to consult local authorities. Supposing the district councils of Nakuru and Nairobi want different rules? There you have the absurd position of adjacent areas, living under practically the same conditions, with different rules. Supposing they are separated by a river: on one side of the river cultivation down to the river bank is prohibited, and the other side has other rules. I understand that the hon. and learned mover says it is difficult to apply this to the whole country in general. Am I right in saying that?

MR. WILLAN: What I said, on a point of explanation, was that if we did not have an enabling bill we should have to have a series of ordinances for the various districts in the country.

MR. COOKE: That I protest is wrong. Take the Penal Code. It is applicable to the whole of the country, but it is not applied in certain districts

[Mr. Cooke]

unless a crime has been committed. It is not necessary to have different laws for different districts. In one district you might have cattle thefts, and in another none, but that does not mean that in every district the penal laws are not applicable. I think we should have the law, but only apply it when necessity arises. Take the case which the hon. member for Aberdare mentioned, the case of planting trees where trees have been cut down. Supposing a farmer was ordered to plant an acre of trees, having cut down an acre of forest, and he says he cannot afford to do it? The obvious answer is that he must not cut down any virgin forest until he is in a position to plant another acre of trees!

I wonder what my farming friends will do in this matter? For many years we have been declaiming, and rightly so, against Government for its inaction in native reserves, but now the boot is on the other leg. I should like to read a pungent extract from the *East African Standard* of 8th March last:—

"There are parts of the White Highlands which resemble a native reserve, for squatter huts and squatter shambas are the main feature of the countryside. The size of squatter shambas grows year by year and the squatter's wages become a minor consideration in comparison with the wealth which is filched from the soil. Particularly where pyrethrum grows the wealth of the land quickens where squatters multiply, natural vegetation declines, and a sense of responsibility towards the land is quelled by the cheques which the daisies earn. In clubs and bars and at street corners farmers bemoan the evil things which are done to the land and feel the better for their words. But is there a single farmers' association in Kenya united in a determination that the evil be quashed and the land preserved for their children?"

It goes on to ask some unpleasant questions:—

"If these unpleasant questions cannot be answered in the affirmative let us cut out all this hypocritical cackle and admit that white settlement is an ephemeral thing which came to rob the soil of Africa and will end. By soil exhaustion. Let us admit that we are, in truth, exploiters of the soil; that it matters not one jot or tittle what be our tenure of the land for most of it will be worthless long before a 99 years lease has expired."

Those are strong, courageous words, and personally I feel bound to agree with them. Yet we allow all this shocking murder of the soil to go on, and not only by Europeans and Africans, and no doubt Indians would do the same if they possessed any soil to erode! I suggest that what we really want is a comprehensive enactment which will tell people in the plainest language what they shall do and what they shall not do, and I suggest that penalties be cited, and those penalties go as far as the law will permit. By these means I feel we will preserve this land for the future generations.

MR. MONTGOMERY (Native Interests): Your Excellency, from the point of view of management of the native land, I welcome this Bill. Actually, a number of local native councils have passed on the advice of administrative officers comprehensive rules dealing with soil erosion and water conservation, but there are one or two—and the hon. member for the Coast mentioned one, Kiambu—where rules have not yet been passed. Under this Bill when it becomes law action can be taken.

But I do want to say, in reply to the hon. Member for the Coast, that as far as my information goes the Kiambu natives have not absolutely refused to deal with this question, but there is some disagreement as to the scope of the proposed rules. Actually, there is a meeting shortly, and they will probably pass rules before this legislation comes into force.

I was surprised to hear the hon. member say what he did. I should have thought this legislation is very drastic already, but he wants to give the Governor in Council even more power, which would mean complete and autocratic control over farmers' lands, and possibly involve them in large expenditure, which is perhaps more than this Council can do.

I was not here yesterday when the debate opened, but I gathered the district councils were to be the authority, and it

[Mr. Montgomery]

was mentioned by the hon. Member for Aberdare to-day. I should be inclined to agree with that, but it would not be applicable in native lands. We could not entrust the local native councils entirely with that authority. However, that is a matter which can be threshed out in select committee.

I beg to support the Bill.

LADY SIDNEY FARRAR: Your Excellency, I rise to support the Bill. In doing so I should like to pay tribute to what we have heard described twice as the best brains of the country who have had the forming of this Bill, and not only those who actually formulated the provisions of the Bill but those who had the courage to scrap the first bill which was introduced—which was found to be too drastic and would not receive support in the country, or so people very correctly believed—in favour of spending a little more time before they introduced a bill which is one of the most revolutionary which this Council can ever have had before it.

I think perhaps the hon. Member for the Coast does not quite realize that the farming community, whether, white, black, or brown, is probably the most conservative in the world. It is an axiom most of us have heard a long time, and it is a fact, and one which I think those who drew up the Bill had in mind. It is, thanks to this conservatism—a conservatism which is at the present moment becoming less marked than it was unfortunately—that the need for this Bill has arisen at all. At the present moment I think there are signs that the farming community is becoming infected with the disease which undoubtedly is going through the commercial communities at the present time, and which was referred to by the noble lord in his speech on this measure: that of attempting to get rich quickly.

In the old days you stuck to the ways of your fathers, and changed from them very little indeed, even if you thought you saw means of getting rich quickly. Now we are inclined to throw them overboard at once in that endeavour. It is, thanks to that, that at the present time we have to bring in legislation of this kind.

There is one main point I should like to refer to, particularly in reference to the speech of the hon. member for the Coast. That is, his reference to local authorities. I am afraid that I cannot agree with him on this question at all, and shall refer to it again later. But I want to make it perfectly clear to start with that as an elected member representing a farming community I consider I am nothing more nor less than one with the local authorities, and naturally I cannot, or I do not think I have, the right to interfere in a matter on which I am speaking at the present time.

A certain amount of what I will say is, I am afraid repetition of what has been said by hon. members, but I do look on this Bill and the principles lying behind it as so vital to the country that it is necessary to make my own position perfectly clear. My own reasons for supporting the Bill in principle and suggesting modifications in practice are perfectly clear. What it really boils down to as far as I am personally concerned—and I know that in this I am voicing the feelings of a great many of the farming community in the country—is that I am having to move from an ingrained principle to adopt another principle, and that in itself makes it very difficult to be absolutely sure of one's ground.

We have already heard it said, and I shall repeat it, that particularly in the farming community there is the guiding English principle of ensuring and safeguarding the liberty of the subject from the rising tide of totalitarian bureaucracy which is increasing in our lives in the form of controlled industries and war control measures. In parenthesis, I heard a definition of bureaucracy yesterday, and I can add to the bureaucrats mentioned the persons who are not actually Government servants but are serving on some of these Government boards. I am not meaning it in a derogatory manner, but they are introducing bureaucratic measures. I endeavoured to make clear the meaning of the word totalitarianism according to the dictionary. I had not the time, and so I sent a message to the hon. Director of Education, but was too late!

On this side I think a great many of the colonists of this country undoubtedly

[Lady Sidney Farrar]

came out here to escape from this overwhelming bureaucracy as it is felt in farming in Great Britain. They thought that in this country at least they would be permitted to develop on their own lines and permitted to try out their own experiments, and would feel that the land they had bought was now their own and not merely a happy hunting ground for Government inspectors. On the other hand, we also have a deeply rooted love of the land, and the urgent need for cherishing its goodness, not only to ensure monetary returns and, if possible, returns that will allow of luxuries but, far more important, the need of ensuring a safe food supply for the family, the clan, the country and the empire.

As I see it, there you have an angle with two sides to it. It is impossible for those two lines to run parallel, two lines that represent those two principles. You cannot have them running parallel continuously. The point is coming where we have got to be absolutely sure of the point of intersection, and whether that point is to come. Those two lines, I repeat again, are these two principles. As far as I am concerned I may, and definitely do and shall—I am again speaking for the ordinary farmer—bitterly resent interference with my farming operations when it comes to the actual moment, and you have to remember that. I may say what I like in this Council, and it sounds very nice theoretically, but when I am on the farm and the inspector says I must plant a tree here or turn off my squatters or do this and that, I shall feel very differently, and I shall be sorry for the inspector! (Laughter.) On the other hand, the farming operations of my next door neighbour may be causing me equal annoyance, because I may possibly wake up one morning to find the stream at which I watered my cattle and was dependent on for the success of my farming operations, possibly dairy operations, has dried up, thanks to the devastation of the hillsides caused by the carelessness of my next door neighbour.

We have to meet those two points of view. I would suggest that, not by purely bureaucratic and drastic legislation but only by genuine and sympathetic understanding of those underlying principles, can we evolve legislation adhering to true British democratic principles and representing the true trusteeship of the fundamental asset of the British Empire—the land. It has been an extension of this get-rich-quick policy—and although I am afraid as a pyrethrum grower I agree with what has been said already about pyrethrum growers, that they are particularly to blame at the moment, they are not the only sections to be blamed—but this wish to get rich quickly which has led so to the shortening of the side of the angle representing non-interference with the liberty of the subject and to lengthen the line of bureaucratic control for the protection of the land. The European who employs squatter labour to cut his forests or dig the river bank for a shilling a month less in wages and is too lazy to exercise proper control, the native who gets richer results from forest soil and easier results from digging hillsides, the European who puts money into the pyrethrum syndicate and demands returns without safeguarding the goodness of the land in which he owns a share by spending small sums on reafforestation and counter terracing, these men, white and black, are unfit to be trusted with the trusteeship of the land, and have to tolerate the interference of the State as guardian.

That is my own point of view. I am not going back on my own idea that you can have too much State control, but I am agreeing that the time may come when the trusteeship has to be taken out of the hands of the individual owner of the land, or at least he has to be guided with a firm hand. I believe that at the present time the Colony as a whole appreciates the need for this, and any difficulties affecting the Bill have only come up now. I think this is fortunate, because only last year the country as a whole began to appreciate the need for this legislation. Unless you get the country with you, the individual farmer with you, the provisions of the Ordinance, no matter how drastically enforced, will not be satisfactorily carried out in the long run.

I do urge that farmers should be kept well informed of the steps to be taken, and particularly—and this is the criticism

[Lady Sidney Farrar]

I have to make of the Bill—they must be better protected than I read it myself against a change of policy and a multitude of officials as is indicated in clause 3 (2), and they must be protected against fanatics and one track officials. As I read this clause, it appears to me that a very appreciable number of officers may require acts or things to be performed or done. In other words, you might see the position of one district commissioner who is an enthusiastic member of an arbour society insist on the whole of the river-banks in his district being planted with quick growing blue gum, followed a year later by an enthusiastic adherent to the Water Board who says that blue gum take far too much water out of the streams and must be cut down immediately. You may see your land planted up by forestry officers who spend several years of their fairly expensive lives in this work, and they will be followed by other specialists who consider it necessary to relieve congestion by alienating that forest land and handing it over to the Kikuyu tribe known for the damage they have done to forest land under their control, followed yet again by other officials who say we have no right to interfere in any way whatsoever with one of the sections of the Kikuyu tribe to enforce additional soil protection measures. These are the types we have got to guard against.

It is for this reason that I feel that instead of giving these powers, as they read at the present time, I hope the select committee, when they go into this question in this clause 3 (2), will see that the local councils, committees, farmers' associations, whatever you like to call them, should be far more consulted than they are according to these provisions of the Bill. It now allows for them to be consulted when certain measures have been decided upon. I would suggest that the local authorities should be consulted before the measures are decided upon and that they in consultation with the officers concerned should decide upon those measures.

I entirely disagree with the hon. Member for the Coast in his description of what a local authority represents. I feel that local authorities such as district councils and farmers' associations represent the ordinary man on the land in this country. They are truly representative, and they have a continuity such as is not to be found among Government officials. We hope, therefore, to see more continuity of purpose and of policy. I do not feel that in districts under the same conditions the district councils will differ very much in policy or method of application of policy. I think these district associations are representative of the agrarian population, and they are relatively hard to influence by fanatical specialists, and are most closely in touch with the financial circumstances of the districts they represent.

In conclusion, I should like to ask the question asked by the noble lord, and that is: what measures Government have in mind at the present time to adopt on this Bill, and whether it is in the immediate future or far distant future that these measures are to be taken?

Council adjourned for the usual interval.

On resuming:

COL. KIRKWOOD: Your Excellency, my first reaction on reading this Bill was to feel that it was a very arbitrary bill, and gave unlimited powers to Government that might be detrimental to individuals and interfere with general principles of the liberty of the subject. But on reading the objects and reasons of the Bill, I was somewhat mollified, as I found that the applicable local authorities were to be consulted, even in only an advisory capacity. I will say something more about that later. I notice also that the Water Board is the authority to define certain things but it still leaves power to the board under the Water Ordinance. In clause 6 it would be unwise if there were any conflict between the provisions of the Bill, including any rules made thereunder, and the provisions of the Water Ordinance. To my mind it follows that the rules made under this Ordinance will be an extension of the rules made under the Water Ordinance.

For those reasons I withdrew my objections and am supporting this Bill in principle.

I think the "Objects and Reasons" are wrong in stating that there will be no

[Col. Kirkwood]

financial commitments incurred if this Bill is passed. To my mind it is quite obvious that the rules will interfere with the liberty of the subject, and will compel a man to do things he is not in a financial position to do, and Government have got to find ways and means of finding that finance. I suggest at this stage that this is one of the items which Your Excellency or your Executive Council might well consider to be well up on the list for a grant from the Colonial Development Fund.

There are many authorities on conservation and soil erosion, etc., and afforestation, like Dr. Pole Evans. I think everybody on the Executive Council should know his report backwards, and there are many applicable paragraphs in the report of the Agricultural Commission which sat many years ago which should also be studied. They will find many valuable points in both of those reports.

I do not agree that the Bill should stop by only consulting local authorities. I suggest that they should be the executive authorities to carry out the rules passed under this Bill. Local authorities, such as the district councils, throughout the Colony are composed of men who have made their homes in this Colony, and I should say that 99 per cent intend remaining here. They have put the whole of their financial resources into the Colony, this is their home, and they are directly concerned with the success of their own districts and of the Colony in general. I should say they are the best bodies not only to consult but to give executive authority to carry out the rules which are eventually to be passed. I hope the select committee will give due consideration when they meet to that.

I should also like to ask Government to appoint the administrative officers in the reserves as the authority to carry out the rules. I have spoken of this before, and reiterate it to-day, that I think it advisable that administrative officers in the reserves should be given much greater powers and should be encouraged to use their knowledge and experience which they have gained in their reserves in preventing the terrible destruction going on there from month to month. I know that in Suk and Turkana many places have been deforested and year by year the desert conditions are increasing, and I am told that the officers who should have the power have not got the executive authority to prevent natives from destroying the forests and timbers and hillsides for the purpose of cultivation, and when soil erosion sets in they move to another spot along the slope and destroy that in its turn. If Your Excellency had the time I could indicate spots where you could get a practical illustration of what is going on at the present time, and I am sure that Suk and Turkana are not the only two native areas which are affected. We have had also a great deal of information thrown on the Ukamba Reserve by the Agricultural Commission, which went into it very thoroughly. Their chairman even took the trouble to safari along a great part of the area, and flew over the whole of it, and his remarks in that connexion are well worth reading. They are very instructive, and the report itself, on reafforestation, soil erosion and conservation, making it a very valuable document in the light of this Bill.

I should also like to go as far as to say I myself would be in favour of compulsory afforestation on an acreage basis, but that could not be done unless there is some provision for finance. There are hundreds of thousands of acres of waste land in the highlands which could be afforested, if it was only one acre a year say on a farm of 500 acres, and increase it in proportion. There is no reason why they should not all contribute even indirectly to the afforestation of the Colony. It would cost them very little. I admit that it is possible for the producer or farmer to grow his own trees at very small cost. It is only a question of seedling, and it would not cost a great deal. These things have got to be considered, and the more they are considered and the facilities for reafforestation the greater will reafforestation be.

I have also listened very carefully to the hon. Member for the Coast, who opposed the Bill because he does not think it drastic enough, but although he opposed the Bill everything he said in his speech showed the necessity for an ordinance of this type. I am sure the drafters of the Bill, who can be credited

[Col. Kirkwood]

with carrying more brains to the square inch under their cap, and can be complimented on drawing up the Bill, will be able to proceed now, with the slight alteration I have suggested, such as making the local authorities the authority for carrying out the rules and so on.

This Bill is one which I very much welcome. It has been long delayed, and I do hope when these rules have been promulgated and accepted that Government will see they are carried out. We are all aware that terrific destruction is going on from day to day in Kenya in forests and trees. They are being destroyed at a very greatly increased rate, especially by the pyrethrum growers. You cannot blame them in a way. They have the altitude and the soil, and the opportunity of getting out of the ruts they have been in financially for some years, and it is difficult to resist. But these people should be restrained from destroying the forests, and where they do destroy forests or trees they should be compelled for every acre destroyed to plant up two. The natives, again, are very great destroyers of trees. I know in my own area there are some 12,000 acres of Crown land held up, which is very regrettable, which should be opened for settlement. If the land were surveyed now, from the point of view of destruction, you would be astounded at the acres of trees cut down within the last 20 years. Hundreds and hundreds of acres around Kitale have been denuded of trees of any size by people who have no right to be on the land. The Director of Veterinary Services might take note, and the Chief Native Commissioner, that one boy has a herd of cattle there, and has been destroying these trees for years, and I maintain that under our laws and ordinances he has no right on this Crown land. He pays no rent, and because he is an employee in a Government department does not give him the right of free access to the Crown lands at Kitale. It may be considered a parochial matter, but it throws a light on the slackness of the administration of this Colony.

In conclusion, I would reiterate again that this Bill does give very drastic powers to Government. On any other subject I would probably oppose it intensely, but I consider this essential, and there is no other way of approaching the subject than by an ordinance of this type. I am sure that Government will not oppose the powers we are going to give them under the Bill and interfere unnecessarily with the liberty of the subject. We have got to trust Government. We have trusted them on a great many occasions, and I maintain that this is a bill where we have got to trust them to be fair, that the rules are fair rules, that they are fairly applied, and where they have to be arbitrarily applied and it is a question of finance, I definitely state that it is the duty of Government to see that finance is found.

MAJOR GROGAN: Sir, as a prelude to my remarks I charge my hon. friend the Member for the Coast with being guilty of an Irish bull. If I understood him correctly, he described this as an emasculated measure. I am no surgeon, but I am convinced that the hon. Director of Medical Services, if called on to emasculate a conception, would find it a difficult problem because this Bill, if I understand it aright, is nothing more or less than a conception. Whether it achieves adolescence depends entirely on the rules enforced or drawn under this measure.

This Bill is an enabling bill, and the powers it renders to an arbitrary authority are quite incredible. Probably in the whole history of British legislation it is almost without parallel, and yet I say I welcome entirely the purpose of the Bill. At the same time, I realize the enormous powers it does in effect convey to an arbitrary authority. As to the justification for such an incredible measure, I think there is full justification, because I had occasion the other day to investigate the Kamasia country, of which I had heard a lot from some gentlemen enthusiastic in these subjects and who were concerned with these problems.

I did go to satisfy myself as to whether the alleged erosion of Kamasia was in any way commensurate with the tales that had been told. I can assure you that I have seen quite a lot of erosion in my time, but I have never in my life seen anything comparable. By the simple expedient of examining the last vestige of

[Major Grogan]

vegetation, other than a few thorn trees, in the form of little plants with red flowers, the habits of which I am conversant with because I grow them from seeds, I found them not more than two years old standing on little mounds of soil not less than 14 inches high. I came to the conclusion that the sheet erosion in that area could not have been less than three inches a year. A very large proportion of the country I had the misfortune to traverse in the car was already finished, because it had got down to solid murrum and erosion could go no further except in respect of gullying.

There is no question about the intensity of this particular problem. At the same time I would enter a caveat. Erosion, after all, is a relative term, and as a result of considerable experience of this and other countries as soon as a term becomes popular intelligent gentlemen seize upon the term as the right occasion to put themselves into a comfortable and expensive job. Therefore we should be careful that we do not get stampeded by the term "erosion". I think my hon. friend the Commissioner for Mines will bear me out in the reminder that the basement complex of Africa upon which we sit is itself very largely the by-product of past erosion. Erosion, of course, is a thing we always have with us, like ticks and other undesirable things. It may be beneficial or, if exaggerated, it may be an enormous upheaval. We must therefore be very careful in considering drastic legislation of this kind that we do not give powers to people who may be of a fanatical or totalitarian frame of mind without the necessary protection to the general public.

This measure errs in this respect, that it does not classify as it ought to and as indicated by the noble lord the hon. Member for Rift Valley, that you must distinguish in the matter of rules between what one can describe as negative and positive rules. There is a vast difference between the State saying to a man "You shall not grow pyrethrum on your land unless you can conform with certain conditions"—that does not cost a man anything and there is ample precedent—and saying "You shall do such and such a thing regardless of cost or your having the money." It is highly undesirable to say to a man "You shall not grow tea on the best tea land in the world because some gentlemen in London may have dividends in a company in Ceylon or elsewhere"! That is a highly improper limitation of the use of land in a country like this, but when it is for the benefit of the community concerned of course restrictive conditions are justified.

There is a great deal of difference between telling a man what he shall not do unless he conforms with conditions, as distinct from going to a man and saying, "You shall do things which will cost you an enormous amount of money because the community will think it a good thing if you did" without providing funds to do it with. Therefore, as already pointed out by the hon. Member for Trans Nzoia, the explanation of the Bill at the end can only properly be described in parliamentary terms as bunk, the suggestion that there will be no expenditure of public moneys. It is quite obvious if this is going to pass beyond the stage of conception into anything like manhood, it will not only involve millions but Brewster's millions, and we must have some sort of protection of the community in the matter of this enormous amount. I suggest that all the rules involving expenditure by the individual, before they become operative should be laid upon the table of this Council and should not be allowed to become operative until Council has had an opportunity of expressing its opinion on them as a protective measure against the possible excitations of fanatical gentlemen without the necessary qualifications or knowledge, because we have had in quite recent times very striking examples in this country of quite disproportionate measures taken under the excitation of erosion and these various other words of the day.

I quote by example this erosion question, which has excited people, and properly so. Not very long ago the Department of Agriculture, in a moment of enthusiasm, in order to show the enormous merits of broad base terracing, tried their prentice hand in Kiambu. Just below the Boma they took a bit of land and turned it into a sort of gigantic set of steps down to the valley. One of my

[Major Grogan]

natives on an adjoining farm came to me and asked what the Sirkali was doing: "Are they angry with the land? Why are they killing this bit of land?" And kill it they did. I have watched it for the last four or five years, and until the last year or two it would never grow anything at all except a strip of elephant grass on the rich banks where all the surface soil had been deposited by these enthusiasts.

I had a similar opportunity the other day of going into the Machakos Reserve, where another enthusiast not only assisted by kerais, jembes and pangas as in this fantasy at Kiambu, but a R.D. tractor of 65 horse-power capacity and booster tackled the thing on a large scale. Speaking offhand, it was an area of 30 to 40 acres. There was standing up as a conspicuous feature of the country broad based terraces, and although after a few showers of rain there was an initial sprouting of indigenous weeds of the country, on this particular hill there was not a vestige of vegetation except a few roots and shoots of trees bumped off and the roots left behind. That started with an eroded area, and this earnest gentleman with the enormous mechanical equipment had scraped off whatever vestige of surface there was and deposited it at the base of the terraces.

Broad base terracing may be all very well and good. This sample, however, cost a fearful lot of money, which the Colonial Development Fund found, but it has mostly gone down into the drain with disproportionate result. I refer to that as an example of how easily the country can be stampeded by fanatics and monomaniacs who insert themselves into the inner conclaves of district councils into measures involving citizens in money which they have not got, unless the State is prepared to find funds on reasonable terms, and these measures should come under the supervision of people who can look at them from a more or less dispassionate point of view.

We have had a very good example given by the hon. Member for Aberdare of the extent to which this kind of legislation has been applied in Malta, where nobody is allowed even to disturb a tree except the prickly pear. I submit for the consideration of the authorities in this country that if we have any legislation of this kind the only thing to exclude from its operation is the prickly pear, and every encouragement should be given to everybody to plaster every bit of eroded land with it, because I have tried it myself on a considerable scale, and it is the only form of vegetation I have ever discovered that will defy the Kikuyu, the goat and even the destructive efforts of the minions of the conservator of forests!

MR. BLUNT (Director of Agriculture): Your Excellency, I have been away from this country for about seven years. I was in a position before I left it to have travelled in many settled areas and most of the native reserves. Since I have returned, I have not travelled very widely, but I have been through a number of native and settled areas, and I think this fact has enabled me to see very clearly what the position with regard to erosion is now and how it has altered since seven years ago.

I have been particularly struck in the settled areas by two things. The first is the general improvement in agricultural methods. The second is that whereas in the old days people were somewhat vague as to how they would carry on their farming operations in the future, the great majority now have a set plan and a sound plan in front of them which they are carrying out as far as their resources will enable them to do so. On the other side of the picture I was struck in those European areas, and even more so in certain native reserves, with the disastrous effects that erosion has committed during that period. There is no doubt in my mind that there are areas of land which, seven years ago, were in a reasonable state of fertility, but which now have gone back almost past the stage when they could be reclaimed.

I have pointed out that farming, and planting generally, is much more satisfactory, but in every case where a farmer has a sound plan he has not been able to carry it out owing possibly to lack of capital. There are other cases in which planting generally has been sound, but, in particular, dealing with soil erosion, it has not been so sound, and where measures have been carried out, possibly at

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considerable expense, these measures have proved of little use. We come then to two other types of farmer. There are those who, while they are prepared to talk about the evils of soil erosion, do not appear to observe the erosion that goes on on their own farms under their own noses, and I consider it is very essential that propaganda should be carried out to make it perfectly clear to these people exactly what is happening to their land. They have the will to carry out measures but they do not appreciate the need for them.

There is, unfortunately, a fourth class of what one must, I suppose, term farmer, which has been referred to by several speakers—the man who is out to make money out of the land as quickly as he can without any care of the result on the land. One finds that people are changing over more and more to mixed farming, better farming: they are introducing grass into their farming system in the term of long or short loans; they are carrying out terracing and planting on the contour, and many farms now are an object lesson in what may be done in the prevention of soil erosion. On the other hand, there are a few, and this Bill is designed to deal with them, who are equally an object lesson in the opposite direction.

Turning to the native areas, I find there that there has been a considerable improvement on the whole in methods of farming. This improvement is not spectacular, but I assert with every confidence that the improvement has taken place. Manuring was a thing unknown in the past, it is now a common practice. Mixed farming and small holdings have come in in certain areas to a small extent. Natives under direction are planting pasture and tending it; in certain areas there has even been a voluntary reduction of stock. There are in addition preventive measures such as contour planting, placing of loose trash on the contour, cultivation of live wash stops, and actually ridge terracing being undertaken by natives. I am prepared to admit that in some native areas the position is appalling. Particular reference has been made to two of those areas, Kamasia and Machakos. There is any amount to be done, but I deprecate the kind of criticism which suggests that little or nothing has yet been done in native reserves.

I do not wish to paint the picture blacker than is necessary, but I cannot help quoting an instance brought to my notice in my office last week. A farmer told me that he had recently met an individual who had taken over a lease of 5,000 acres in this country. This man proposed to plant pyrethrum, the land was suitable for it, and he proposed to plant as much as he could put in. He was asked what he was going to do about labour to deal with the pyrethrum. He said he was sending out to the Kikuyu Reserve the news that he had plenty of land, that he wanted squatters, that the squatters might bring with them their goats, cattle and sheep and families to any extent they desired. He was asked what effect he thought this might have on the land. His reply was that he hoped within a few years he would have made all he was likely to make out of pyrethrum on this land and he was not in the least concerned with the condition of the land after he had left. That may be an extreme example, I trust it is, but unfortunately I am afraid there are people who regard their land rather in that light, and I am glad to note that hon. members of Council are in complete agreement that that type of man should be controlled, and drastically controlled, by means if this Bill, and prevented from destroying the land.

Before I leave the question of what has been done in native reserves, I should like if I may to refer again to the legislation which is in force in these reserves. We had it mentioned by the hon. and learned mover and the hon. member Mr. Montgomery that a number of local native councils have passed resolutions, but I do not know if any hon. members are aware of the type of resolution that has been passed, and I would like to read this resolution of the Fort Hall Local Native Council, which was passed in 1939:—

"SOIL EROSION CONTROL

1. That for the purpose of preventing soil erosion:—

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(*a*) If in the opinion of the agricultural officer in consultation with headmen and members of the Local Native Council it is decided that any specified area is found to be suffering from soil erosion, the headman may forbid any person in any such specified area during a given period—

(i) for the purpose of cultivating any such area to cut down or destroy in any manner whatsoever, any tree, bush or other vegetation grown thereon, or,

(ii) to depasture cattle, sheep or goats thereon.

(*b*) No person shall, except with the permission of the headman, within five yards of the bank of any river or within one yard of the bank of any stream cultivate the land or destroy the grass cover.

(*c*) No person shall, except with the permission of the headman, set fire to any live grass, bush, undergrowth or forest.

2. That for the purpose of preventing soil erosion, the occupier of any sloping land, used or intended to be used for cultivation shall, if directed by the headman, carry out such measures with regard to terracing, stone walling, strip-cropping, contour ploughing, banking, lining with plant residues, planting and maintenance of grass or plants in strips or live washstops as such headman may on the advice of an agricultural officer direct.

3. That—

(*a*) measures dealing with soil erosion are hereby declared to be a minor communal service; and

(*b*) for the purpose of preventing soil erosion all able-bodied men shall carry out any of the measures specified in the schedule hereto, and headmen are hereby empowered to require such able-bodied men to take any of the said measures."

These rules, which have been accepted by the majority of local native councils, are very drastic. It is true they have only come into force comparatively recently. These rules are dated 1939, and there is no doubt that they have not yet, generally speaking, been very effective, but I think the mere fact of the existence of these rules passed by those councils who have considered the question and have agreed to submit themselves to such rules is an indication of the great change of heart in the native areas in matters conneced wih soil erosion.

Hon. members have inquired what is likely to be the next move if this Bill is passed into law. The present position is that a considerable number of surveys of particular areas have already been made. My department is at the present moment preparing a general review and summary of the measures that have been taken already, the measures that have already been contemplated, and the measures which it is thought should be taken. That review I propose, in the first place, to pass to the Settlement and Production Board which has called a special meeting early next month to discuss the various aspects of soil preservation arising out of this Bill and otherwise. I trust and hope the discusson likely to take place then will enable us to get perfectly clear in our minds any point as to what is required to be done and how it should be done that are at present in doubt, and I should like to assure the Council that, for my part and for the part of my department, we regard action under this legislation to be one of the most urgent functions, if not the most urgent function, of the department.

The noble lord the hon. Member for Rift Valley inquired what steps were going to be taken. I have explained them as far as I know them.

He raised the question of what funds were going to be available, and I shall leave the answering of that question to the hon. Chief Secretary. But I would point out that, as many hon. members know, an application was submitted some time ago to the Colonial Development Fund in order to provide aids for terracing in European areas.

That leads me to the whole question of the cost of measures which are required particularly in European farming areas. It has already been pointed out

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that the majority of the clauses in this Bill provide for restrictions rather than to compel action. In order to carry out those rules which may be made under these restrictive clauses, large sums of money will not be necessary, but I would point out to hon. members that even where clauses are not restrictive but call for measures to be taken, the measures which will be taken and which will be asked for are of as great or greater benefit to the individual occupier of that land than they are to the countryside at large. If a man contour ridges his land, he gets results from it at a fairly early stage, and if an application to the Colonial Development Fund is approved and he can get assistance to do such work at a cheap rate, I feel sure the majority of people of the country will take advantage of that offer.

I think that what I have already said disposes of the points raised by the hon. Member for Aberdare, that other countries have put into effect measures to combat soil erosion and that he was glad to see that Kenya was following suit. I suggest that although we have not had legislation of a general form until now, what I have said has indicated that we are not the laggards he suggested and that measures have, in fact, been taken in this Colony probably since last century.

The hon. Member for the Coast suggested that public opinion on this important question was lacking. From what I have heard in this Council this morning and conversations I have had with representative farmers in different areas, I am afraid I can hardly agree with that view.

MR. COOKE: On a point of explanation, what I actually said was, "I can well imagine it".

MR. BLUNT: The hon. member pointed out following that that it was the intention of Government to lead the way. I agree with that view entirely, but my own feeling with regard to the methods which will have to be adopted to carry the terms of this Bill into effect is that those on the Government side will wish and will have to make use to a considerable extent of local authorities. We shall have to get the actual information we require regarding districts from those local authorities.

The hon. Member for Nyanza suggested the need of protecting against changing policies due to different officials who may deal with this question. For my part, I hope Government will agree that this is a question of Government policy and that changes in individuals and in departments will therefore not be allowed to interfere with the general line of policy.

The hon. Member for Ukamba referred to his visit to the Machakos area where he saw the results of the tractor work, and he was apparently not satisfied that the work there being done was taking effect. I would like to suggest to him that at a later stage, if he has the opportunity, he investigates that work again and looks a little further. I myself was in the area not long ago and saw the results of the work of that tractor on certain areas carried out some months ago before the present crop was planted. It appeared to me then to have been effective, and the proof that the work was not ill-conceived lies in the fact that seven inches of rain was experienced in that area in a day recently and that the works done by the tractor on a particular area of land stood up entirely against that tremendous wash.

MAJOR GROGAN: On a ponit of explanation, I did not suggest it was an improper use of the land but that it was an entirely disproportionate application of moneys. I only instanced this with the object of showing how much a person could be compelled to pay.

MR. BLUNT: Your Excellency mentioned in your address from the chair that the time for action had now come. I think we all agree with that, and I trust there is no real opposition to this Bill and that it may be possible to put it into effect without delay. I believe that if and when this Bill is passed and the rules made under it are drafted and put into effect, it will have the greatest possible effect in arresting the destruction of land that is taking place and will protect the birthright of this country for generations to come.

MR. HOSKING (Chief Native Commissioner): Your Excellency, I have very little to add to what my hon. friend the Director of Agriculture has said on this Bill.

From the native point of view this Bill was almost unnecessary because, as he has pointed out, the standard resolution concerning soil erosion is almost all we can expect under the provisions of the Bill to be passed by way of rules. Sixteen of the twenty-two local native councils have passed that standard resolution more or less in identical terms, and I have every reason to believe that before the rules under the Ordinance become effective some of the councils which have not yet passed this resolution will have done so. The necessity for the Bill is to ensure that rules or resolutions are passed.

Reference has been made to Kiambu and the settlement areas which are being added to that district. We all know that the inaction of the local authorities in the immediate vicinity of Nairobi has caused grave alarm and is the subject of much adverse comment. But there has also been much adverse comment of other areas which have adopted the standard resolution, and I think people have deliberately closed their eyes to what has been done and concentrated on the failure to obtain spectacular results. As my hon. friend pointed out, we have made a beginning on the right lines and month by month are achieving results. I said that sixteen out of twenty-two councils had passed this resolution. I do not expect all twenty-two to do so. The hon. Provincial Commissioner for the Coast has pointed out that the Tana River Council are very opposed to it: They depend entirely on the silt washed down from the highlands for their cultivation on the mud banks of the Tana River. (Laughter.)

There seems some diversity of opinion as to the functions of local authorities—I am speaking of local authorities who spend 100 per cent of their time in Kenya and not 90 per cent. I am sure that the Provincial Commissioners will be pleased to pass on the eulogy to those local authorities who really do deserve it. There has been a great change of mind on the part of natives to allow them to adopt these measures, and I think every encouragement we can give them should be given them. From the native point of view . . .

MR. COOKE: On a point of explanation, would the hon. member before sitting down inform us what is being done to see that these resolutions are carried into effect? I do not know if I am in order to ask that?

MR. HOSKING: I will deal with that later in my reply.

From the point of view of natives, this legislation is almost superfluous, but I would remind hon. members of the times it has been stated in this Council that the value of natives going out to work lies in the education they obtained. It is necessary for their education that this drive to combat soil erosion should not be confined to native reserves but should be universal, if the natives who are going out to work are to receive the type of education we wish for them.

I think the hon. Member for Trans Nzoia was singularly unfortunate in singling out Suk, which he condemns. I think Mr. Chaundy's work in that area has won universal approbation, and is a model for all other areas, including the neighbouring highlands.

COL. KIRKWOOD: I never mentioned the agricultural officer. I complained without mentioning names that the district officers were not given sufficient authority to prevent what is being done by natives.

MR. HOSKING: Mr. Chaundy is an educational officer, and is backed up entirely by the district commissioner and district officers, and the work is most spectacular. But this is no time to apportion praise or blame. We want a universal drive throughout Kenya both in native areas and in the highlands. On the native side we are ready. The rules that we propose to submit to Your Excellency in Council are the standard resolutions and, in the areas where they have not been applied, if we cannot induce the natives to apply them of their own volition we have now authority to apply them by force of law.

[Mr. Hosking]

The general trend of the debate hitherto started in a somewhat Lenten atmosphere, of blaming ourselves, not other people, and admitting that we are all miserable sinners, but with the mental reservation that some of our neighbours were not as miserable as they should be, but we do know that all the community must make a universal drive to save this good land of Kenya from going almost literally down the drain.

MR. ROBBINS (Acting Commissioner of Lands and Settlement): Your Excellency, there is in the minds of Council, I am sure, no doubt generally of the necessity for this Bill, but I would like to deal with it for a moment from the point of view of land leases.

As hon. members are aware, there are included in all leases of land in this country implied covenants whereby the lessee must develop in an approved manner the land he holds. With regard to ninety-nine year leases, under the Crown Lands Ordinance, 1902, there is an implied covenant to the effect that the lessee must develop and improve the resources of the land in an approved and businesslike manner and abstain from undue destruction or exhaustion of any timber, trees, or plants. In regard to the 999 years leases of land, under the Crown Lands Ordinance, 1915, there is a similar, if different, method of enforcing development. There is a schedule attached to the Ordinance which prescribes that a certain amount of development shall be effected within three or five years from the beginning of the lease and that such development shall be maintained.

One would think that from the provisions of the Ordinances I have quoted, there would be no necessity for this Bill, but I would impress upon Council the absolute necessity for this Bill in view of the fact that it has always been a very difficult matter to enforce the covenants in leases of this nature, the reason being, of course, that the only remedy of the Crown in the event of non-fulfilment of the development conditions is the right of re-entry through the courts. That, as we have heard, is a very lengthy and difficult process, and although steps have been taken in the past by my department to see that such development conditions have been fulfilled there have been many difficulties, inasmuch as many years ago there were land rangers, whose duties were to inspect the land; since then, developments have been proved by means of affidavits, which I must confess is not an altogether satisfactory method. I would therefore strongly emphasize from the point of view of the land leases of the Colony the necessity and urgency for this Bill.

I would like to reply to the criticism made by the noble lord the Member for Rift Valley a few minutes before Council adjourned yesterday. He said, I think, that the operation of the Resident Labourers Ordinance had been delayed still further because the surveyor whose release had been obtained specially to go to the Mau and there lay out the boundaries of the areas required for the settlement of ex-squatters, had been diverted to other work. The facts are that this survey would have been facilitated by a preliminary aerial strip survey of the River Amara. Steps were taken to see if this could be done within the near future. Unfortunately, conditions during the past few months have not been altogether satisfactory from the point of taking aerial photographs and, in the meantime, although many efforts have been made to obtain these photographs, conditions have made it impossible. Meanwhile, the services of this surveyor have been utilized for a visit to the Fort Hall district in order to carry out an urgent survey, the necessity for which had only arisen at very short notice. I am, however, happy to be able to inform the noble lord that the surveyor in question is now in Nairobi and that at this very moment he is preparing his *safari* in order to go to the Mau for the purpose of carrying out this urgent survey.

MR. RENNIE: Your Excellency, my short acquaintance with conditions in this country and lack of first-hand knowledge of the conditions which this Bill seeks to improve or prevent, may preclude me from making as useful a contribution to this debate as I should like. There are a few points, however, dealing with the question of the policy which

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Government proposes to adopt about which I might say a few words.

Several hon. members have raised the question as to what is the next step Government proposes to take. That question has been answered to a certain extent by the hon. Director of Agriculture, and perhaps I might add a little to what he has said. Government has given consideration to the question, and has formulated a general plan of action but, in view of the fact that this Bill was going to be discussed here to-day and that a meeting of the Settlement and Production Board was going to be convened for the particular purpose of discussing this very subject, Government's mind naturally was somewhat fluid, and no definite plans were formulated.

The general idea Government had in mind, however, was that the task of implementing the conditions of this Bill and of seeing the rules which will have to be framed thereunder were carried out, should not be spread over a number of departments and have to depend on the voluntary co-operation of those departments. Government's idea is that this particular task is one of paramount importance to the country and requires the whole-time services of one particular individual, whose aim and object in life will be to give all the time and attention and ability he has to carrying out the purposes of this Bill and the rules to be framed under it. That officer will be a senior officer, who will probably require a small advisory and technical staff to implement his own knowledge of the matter.

Government hopes that in this way the necessary driving force and energy which are so necessary at the present time if we are going to do something really important in this matter, will be supplied.

A number of questions have been asked as regards local organizations, and a number of members have suggested that as much use as possible should be made of district councils in this matter. There Government have an open mind at present. The various suggestions made to-day have been most useful in that connexion, and no doubt those suggestions will be discussed further at the meeting of the Settlement and Production Board to be held on the 8th of next month.

The noble lord, the hon. Member for Rift Valley, took exception to the last clause in the statement of the "Objects and reasons", that no expenditure of public money would be involved if the provisions of the Bill become law. I concede the point. It is quite obvious that the legal draftsman had in mind when he drafted that particular statement, that the paramount consideration is that the individual on the land should do his utmost to carry out the actions which are required of him if his own land is going to be improved, or prevented from being destroyed, in the way it should be. As His Excellency mentioned in his address on Monday, however, it is obvious that some financial assistance will have to be given and, in view of the recent announcement of the Imperial Government that funds for colonial development may, we hope, be made available in the near future, those funds might well be used for this purpose.

The hon. Director of Agriculture mentioned that an application had been made to the Colonial Development Fund for assistance in carrying out anti-erosion measures in European areas. I am glad to be in the position to state that a dispatch was received yesterday from the Secretary of State in which he stated that a grant of approximately £39,000 had been approved for that purpose. One of the conditions of the grant, however, is that the work will not be put into operation on too extensive a scale until the initial work and the response that individual farmers make to the scheme are seen.

I think most of the questions I intended to deal with have been raised in connexion with the work that local authorities should do in this connexion. I have dealt with that particular point, and I would merely reiterate the statement already made by the hon. Director of Agriculture, that the time for words is now past, the time for action has now arrived, and Government is determined to do its utmost to see that action is taken.

MR. WILLAN: Your Excellency, in view of the length of the debate and the remarks made by hon. members on this side of Council, there is very little left for me to say. I will say this: it is a source of great satisfaction to Government to find the support accorded to this measure on the other side of Council.

Dealing with the comments which have been made, and questions asked by certain hon. members, I will first of all turn to the definite question put to me by the noble lord the hon. Member for Rift Valley. That question relates to the rule-making-power in clause 3 (1), and he asked the definite question as to whether those powers would enable rules to be made for the reafforestation of areas. The answer to the question is "Yes" and "No".

The answer is "No" if the noble lord is referring to areas which have already been denuded of trees. I think it is a point to be considered in select committee, because it is an important question, and we may have to include some provision in clause 3 (1) to deal with cases such as that. But when I actually drafted paragraphs (*b*) and (*c*), what I had in mind was this: that if persons cut down trees then we should be able to impose conditions such as were suggested by the hon. Member for Aberdare, that if they cut down one tree two trees must be planted to take its place. When I drafted (*b*) and (*c*) I had in mind denuded areas of trees in the future and not what had happened in the past.

I come to the remarkable speech of the hon. Member for the Coast. As far as I understood him, and I took a note of what he said, he requires a comprehensive Ordinance telling people what they can do and what they cannot do. It would be possible to produce a comprehensive Ordinance dealing with the whole Colony, but the clause which one would have to put in at the end of that Ordinance, which might possibly be somewhere about section 150 or 200, would have a marginal note "saving". That particular clause would be a very lengthy one, divided into several sub-clauses, and again divided into several paragraphs, and what we would have to do in that saving clause would be to say that the action with regard to area so and so enumerated in certain clauses would not apply because conditions would be very different to another area. If we produced the comprehensive Ordinance required by the hon. member it would tax anybody to be able to understand it, which is the reason why we have this enabling Bill, so as to be able to produce rules under it such as envisaged by the hon. Director of Agriculture. The first rule in each case will state that the provisions of those rules will apply to area so and so and the residents of that area will have to look at those rules only and not be worried by other rules applied to other areas.

The hon. member went on to make what I call a rather surprising statement. That is, there may be different rules for similar areas, and he instanced two cases, Nakuru and Nairobi. If conditions in Nakuru are similar to those in Nairobi district, the problems of the two are the same; then of course I cannot conceive the Governor in Council making different rules for these two similar areas. (Mr. Cooke: I can!)

The only other point I need deal with is the one made by the hon. Member for Trans Nzoia and, I think, the hon. Member for Nyanza, and that was criticism of clause 3 (2): that—

> "Any rule made under sub-section (1) of this section may require acts or things to be performed or done to the satisfaction of the Director, an administrative officer, a forest officer, or any other officer appointed by the Governor."

The suggestion made was that the local authority should be the body to carry out orders under the rules. Well, I do not think that is at all a practical way of administering the rules. For instance, an administrative officer or a forest officer or any other person administering the rules must travel around the country and see that the rules are properly carried out and give orders and serve notices with regard to carrying out certain rules. Are we to envisage members of a local authority, take a district council, which after all is purely a voluntary

[Mr. Willan]
body, touring around the country? Would they have the time to do it, and when they have the time they would have to call a meeting of the district council and pass a resolution as to what should be done on Farm A . . .

LADY SIDNEY FARRAR: On a point of explanation, as far as I am concerned, my point was that the local authority should be consulted before the rules were drawn up, not that the authority should be engaged in carrying out the rules.

MR. WILLAN: I accept the explanation, and will confine my remarks to answering the hon. Member for Trans Nzoia. Does one envisage the local authority meeting and passing resolutions, and for those resolutions to be put in files and signed, sealed and delivered, and only then can the orders be promulgated? I do think that the sub-clause as drafted is drafted in the most efficient way to get action instead of deliberation.

Those are the only remarks I have to make, Your Excellency.

The question was put and carried.

MR. HARRAGIN moved that the Bill be referred to a select committee consisting of—

Mr. Willan *(Chairman)*,
Director of Agriculture,
Director of Veterinary Services,
Conservator of Forests,
Lord Francis Scott,
Major Grogan,
Lady Sidney Farrar,
Mr. Shamsud-Deen,
Mr. Montgomery.

MR. WILLAN seconded.

The question was put and carried.

NOTARIES PUBLIC (AMENDMENT) BILL

SECOND READING

MR. HARRAGIN: Your Excellency, with your permission and the permission of Council, I would like to take one of the remaining bills on the order of the day out of its order, namely to immediately deal with the Notaries Public (Amendment) Bill, because I understand that hon. members on the other side of Council would like this Bill to go to a select committee. I have no objection, and I have Your Excellency's authority to say that Government will accept that suggestion.

HIS EXCELLENCY: If it meets with the convenience of hon. members we will take this Bill next.

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

As most hon. members realize, this is a matter dealing with a legal trades union, and few of the hon. members on the other side of Council will be interested in the result of it, but it will be interesting to them to know that the trades union, I understand, do not entirely see eye to eye on it.

The Bill has been put forward by Government at the request of the Law Society of Mombasa, when it was pointed out—or alleged, shall I say?—that there is an insufficient number of notaries public in Mombasa, and they wish one more appointed and, in order to do so, it is necessary to amend the law to remove the provision to the effect that it is necessary for an advocate who intends to become a notary public shall have been in practice in this country for five years. If it is true that there is an insufficient number of notaries public, it is Government's bounden duty to assist to this extent, by allowing them by an amendment of the law to have a sufficient number.

We will no doubt hear from the hon. members interested whether they consider there is a sufficient number or not. I may say that this matter was referred to the Chief Justice, who has a great deal to do with these matters, and he says he has no objection to the particular amendment, and I do not suppose many hon. members consider there is anything sacrosanct in the fact that an advocate of the Colony has actually been in practice in this Colony five years or one year.

The duties a notary public has to perform, though very honourable, are not onerous, nor do they require a deep

[Mr. Harragin]
knowledge of the law. However, it is a very ancient privilege, so to speak. There have been notaries public for centuries, and they deal to a large extent with matters that come from foreign countries. They are recognized all over the world, and foreign governments very often announce that they will only accept certain documents if sworn before a notary public. For that reason, I understand the opponents of this Bill are anxious to preserve the privilege to those advocates who have been in practice in this Colony for five years. There is a good deal to be said for that, and what we really have to consider is whether or not Mombasa can afford to do without this amendment or not.

MR. WILLAN seconded.

MR. NICOL: Your Excellency, the reason why we in Mombasa feel that something should be done about notaries public is this. When this question was raised, the position was that there were two notaries public in Mombasa. One then went on leave to England. He has as a matter of fact since returned to this country; but I understand only to square up his personal affairs, and intends to leave the country on retirement. That means there is only one notary public left to do this particular kind of business. Steamships arriving from overseas have the privilege, if they have encountered bad weather or other possible discomforts, of noting a protest on arrival, and I think I am correct in saying that the law demands that the protest shall be noted within 24 hours of entering port.

The position is this. Supposing the notary public who is available in Mombasa happens to be sick or happens to be away on a court of appeal in Dar es Salam or Zanzibar, or is not gettable for any other reason, the shipmaster or captain of the ship is seriously inconvenienced and the privilege is not available to him which should be.

Far be it from us, particularly myself, as laymen, to suggest that there should be any drastic alteration of the law to grant a privilege accorded to notaries public without sufficient qualifying residential qualification or practice qualification or whatever it is, the trades unions of lawyers like to impose. What would meet the case would be if the Chief Justice or Your Excellency in Council or anybody else approved, had the power or authority where necessary to appoint a temporary notary public. I do not know if that is possible. We do not want to upset in any way the practice accorded a notary public, but we do want to be in a position to have one available in Mombasa when required. I press it, because it is a port town, and ships come and go, and they cannot wait until a notary public gets well or comes back from a court of appeal. If something can be done on these lines we shall be very grateful.

COL. MODERA: Your Excellency, we are approaching the time usually designated for the adjournment and I hope not to detain the Council too long, particularly in view of the fact that the hon. and learned Attorney General has stated that the Bill will go to a select committee.

I do think, however, that I should represent what is the view of the Law Society of Kenya, which is considerably larger than that of Mombasa, which view is as follows.

Originally, under the 1906 Ordinance, before one could become a notary public in this Colony one had to have at all events 5 years experience as a lawyer or barrister or solicitor either in England or Ireland or elsewhere and, of course, one had to be a practising advocate in this Colony. In 1926, for some reason not known to me, that five years' experience was tightened up to the extent that it had to be five years' experience in this Colony. Whichever way one looks at it, for the last 34 years one has had to have 5 years' experience. If this amendment is past as it stands, it means that the five years' experience goes by the board altogether.

In England, a notary public is appointed by the Court of Faculties, and the appointment lies with the Master of Faculties and though it may be said the appointment here lies with Your Excellency on the recommendation of the Chief Justice, there are in both places certain qualifications which have to be observed. In order to become a notary public in England, a petition has to be

[Col. Modera]

presented, which is signed by other notaries, to the Court of Faculties, and testimonials from reputable residents of the neighbourhood are required.

It seems to me that one other answer to this problem is that for 34 years Mombasa has been contented with the position as it is. Admittedly due regard has to be had to the "accommodation", the expression used at home, namely that there is a proper number of notaries for the population and business of that population. The position in Mombasa has apparently been for the last 34 years satisfactory even up to this moment, and I feel sure that when this Bill goes to select committee it will be possible to find whether there is a real necessity for this amendment and, if there is, there will be some way of finding a *via media*. But what I am endeavouring to stress is that hard cases make bad law, and because there happens to be an occasion when the people of Mombasa are likely to be put to disadvantage we should not, in order to meet that, cancel a provision which has been in existence for many years and which should remain in the interests of an office which the hon. and learned mover has referred to as one of antiquity.

The only other reason I can find for this Bill is to bring the law into line with that in Uganda. Yesterday, we heard that on matters of this sort we should follow the best drafting in the world, and I suggest that we require more than Uganda as a precedent to necessarily agree to the passing of this Bill.

MR. HUNTER: Your Excellency, I believe it is fair to say that the sanctity of the courts is one of the greatest privileges we who live in the British Empire enjoy, and I am prepared to go so far as to say that what the hon. and learned mover so unashamedly referred to as the trades union of the legal profession is a profoundly active factor in preserving that sanctity. At the same time, I entirely agree with the remarks of the hon. Member for Mombasa, that if certain legislation and customs provide for the necessity of urgent business or other reasons that notaries public have to be employed, they must be available.

As a *via media* I should like to suggest for consideration by the select committee that this clause should not be deleted altogether, but there should be an amendment to the effect that the Chief Justice under certain circumstances and representations if made to him should have power to reduce the five years, providing he is satisfied that the candidate in question had had adequate experience elsewhere and provided the Law Society or other notaries public had the opportunity of making representations.

MR. HARRAGIN: Your Excellency, hon. members must realize that this is merely a matter of choice between theory and practice. The hon. Member for Nairobi South says that Mombasa has managed to get on for 34 years, and presumably there were more practising barristers with five years standing. At the moment they have not the number, and the position is put fairly by the hon. Member for Mombasa asking Government what they are going to do about it, because shipping companies and others are faced with the possibility of there being no notary public in the town when it is necessary to protest some document.

I am perfectly willing to consider in select committee any *via media* but, as we all know, *via media* are truly British but they are not always extremely sound. However, personally, I am certain something can be done, and whether it takes this particular form or another I do not think Government is particularly anxious.

The question was put and carried.

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

Mr. Harragin (*Chairman*),
Col. Modera,
Mr. Cooke,
Mr. Shamsud-Deen.

MR. WILLAN seconded.

The question was put and carried.

ADJOURNMENT

Council adjourned till 11 a.m. on Tuesday, 2nd April, 1940.

Tuesday, 2nd April, 1940

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, 2nd April, 1940, His Excellency the Governor (Sir Henry Moore, K.C.M.G.) presiding.

His Excellency opened the Council with prayer.

OATH OF ALLEGIANCE

The Oath of Allegiance was administered to:—

Ex Officio Member:

G. Beresford Stooke, Esq., Acting Financial Secretary.

MINUTES

The minutes of the meeting of 21st March, 1940, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

BY MR. HARRAGIN:

Select Committee Report on the Increase of Rent and of Mortgage (Restrictions) Bill.

BY MR. WILLAN:

Select Committee Report on the Income Tax Bill.

Select Committee Report on the Land and Water Preservation Bill.

ORAL ANSWERS TO QUESTIONS

No. 6—KENYA FARMERS' ASSOCIATION

MR. ISHER DASS asked:—

(*a*) Will Government please state if they have appointed the Kenya Farmers' Association as official agents in connexion with supplies of foodstuffs to the military?

(*b*) If the answer to the above is in the affirmative, what are the terms, duration of period and the rate of commission paid to them?

(*c*) What is the total amount of commission paid up to 29th February, 1940?

(*d*) Is Government aware that such an appointment has caused a very serious discontentment among the trading community in Kenya?

(*e*) Have any representations been made by the Nairobi Chamber of Commerce, East African Traders' Association, Nairobi Indian Merchants Chamber as to the cancellation of this appointment?

(*f*) If so, what action do Government intend to take in the matter?

(*g*) Will Government please state if two representatives from the Nairobi Chamber of Commerce had an interview with the hon. Financial Secretary on Monday, the 27th November, 1939, and in course of which very strong resentment was expressed and certain allegations of favouritism were made and the hon. Financial Secretary was asked to have a commission appointed to inquire into the whole affair?

(*h*) If the answer to the above is in the affirmative, will Government please appoint the committee to inquire into these allegations?

MR. BERESFORD STOOKE:—

(*a*) On the outbreak of war Government appointed the Kenya Farmers' Association, Ltd., sole buying agents for the supply of foodstuffs to military units and this arrangement has been confirmed and continued by the General Officer Commanding.

(*b*) Government is informed that no duration of this arrangement has been fixed nor has the rate of commission been decided. Government understands that the remuneration suggested is the reimbursement of actual out of pocket expenses with a commission on purchases of 1 per cent to cover overhead charges.

(*c*) Government understands that no commission or other remuneration has yet been paid to the Kenya Farmers' Association.

(*d*) Government is aware that objections to the arrangement have been voiced by certain sections of the trading community.

(*e*) Representations have been received from the bodies mentioned.

(*f*) Government does not propose to take any action in the matter. It is understood that the responsible military authorities regard the present arrangements as efficient and economical.

(*g*) Two representatives of the Nairobi Chamber of Commerce had an interview with the Financial Secretary on the 27th of November, 1939. One of these representatives criticized the appointment of

[Mr. Beresford Stooke]
the Kenya Farmers' Association. The other did not. No cases of favouritism were brought to the notice of the Financial Secretary and no commission of inquiry was asked for.

(*h*) Does not arise.

PERSONAL EXPLANATION

Re NOTARIES PUBLIC (AMENDMENT) BILL

MR. NICOL: Your Excellency, under Standing Rule and Order No. 50, I crave the indulgence of Council in order to enable me to make a personal statement.

When we were debating the motion for the second reading of the Notaries Public (Amendment) Bill, I said that at the present moment there were only two notaries public in Mombasa, Messrs. Atkinson and Christie. Subsequently I found that that was an entirely inaccurate statement, as there are three. I did not know until the other day that the hon. member Mr. Patel was appointed a notary public, I think in August or September last year.

I wish to apologize to Council for having misled them.

CATTLE CLEANSING (AMENDMENT) BILL

FIRST READING

On the motion of Mr. Harragin, seconded by Mr. Willan, the Cattle Cleansing (Amendment) Bill was read a first time.

Notice was given that subsequent readings would be moved at a later stage of the session.

OFFICIAL SECRETS BILL

SECOND READING

MR. HARRAGIN: Your Excellency, I beg to move that the Official Secrets Bill be read a second time.

This Bill, as hon. members will realize by glancing at the "Objects and Reasons", has been introduced for several reasons. The first is that the Official Secrets Act in England, which also applies to this Colony, does not apply to the protectorate. It is therefore necessary for us by specific legislation to apply the Official Secrets Act to the protectorate in Kenya. This is done by clause 3 of the Bill.

The amendments set out in clause 4 are being introduced at the suggestion of the Secretary of State, whose legal officers are not satisfied with the existing legislation, namely the Indian Telegraph Act, which applies here. It is not sufficiently specific for a time of war. We provide therefore that power be given to the Governor to order anyone transmitting a telegram to produce that telegram on his order. This is necessary for obvious reasons which I do not think hon. members will wish me to go into. In the committee stage I intend to move a further amendment, of which I gave hon. members as long a notice as possible, because I had distributed to them some ten days ago a copy of the amendment I intend to move.

Hon. members would be perfectly correct in the ordinary way in calling me to task for introducing entirely new matter by way of amendment in the committee stage, but I must crave their indulgence on this occasion for two reasons. One, because it is extremely urgent. The other is because as hon. members are well aware, Government has had power since the 3rd September of introducing any amendments they like under the Defence Regulations without referring them to this Council at all. In point of fact, as you know nearly all those amendments, except those referring entirely to military matters, are placed before this Council at the first suitable opportunity. It seems to me ridiculous that whereas we intend to make the amendment in the immediate future we should not seize the opportunity of a meeting of Legislative Council in order that it might be discussed here. I therefore crave indulgence and will explain at this stage what the amendment proposes to do.

This amendment has been found necessary in England, and was sent to us here for immediate introduction. It gives rights to the Commissioner of Police under certain circumstances: namely, if he suspects an offence has been committed under section 1 of the (Imperial) Official Secrets Act, 1911 (that I may tell you in a nutshell is the spying section), if he suspects some person of spying, to apply to the Governor for leave to interrogate any person he believes with reasonable cause is able to give him

[Mr. Harragin]
information which may lead to the discovery of the spy. Power will be taken in this amendment for the Commissioner of Police—or, incidentally any officer specially placed in charge of this work—to apply to the Governor for such permission.

The second sub-clause deals with occasions where it is possible that such delay will be caused by waiting to apply to the Governor that the Commissioner has to act on his own and at once, in which case it is provided that he shall immediately report the matter to the Governor.

Those are the only provisions of any importance in this amending Bill.

MR. WILLAN seconded.

The question was put and carried.

ADMINISTRATION OF ESTATES BY CONSULAR OFFICERS BILL

SECOND READING

MR. HARRAGIN: Your Excellency, I beg to move the second reading of the Administration of Estates by Consular Officers Bill.

This enabling Bill is introduced as the result of a commercial treaty. Shortly, it provides that where the usual persons who apply for the administration of estates happen to be away from this Colony for any reason—when I say persons I am referring to foreigners—the consul representing the country of the deceased in this Colony shall be entitled to apply for administration. At present application can only be made by such people as a near relation, the executor named in the will, a creditor, and various others. We are adding to that list the consular officer who represents the deceased's nation in the Colony, and this Bill applies to those countries named in the schedule who have signed the treaty.

MR. WILLAN seconded.

The question was put and carried.

LAND AND AGRICULTURAL BANK (AMENDMENT No. 2) BILL

SECOND READING

MR. HARRAGIN: Your Excellency, I beg to move that the Land and Agricultural Bank (Amendment No. 2) Bill be read a second time.

There are two reasons for introducing this Bill. The first is, I regret to say, that for some considerable time in the past, owing to a misunderstanding, shall I say, of the meaning of the present law, those responsible for paying the members of the Land Bank Board have been paying a sum in excess of that permitted under the existing law. It was thought when the principal ordinance was introduced that it would be most convenient if members of the board were paid for the number of attendances at meetings. The difficulty that arises there, I am informed, is that although it is true the board meet on Tuesday, let us say, all the work has in fact been done on the Monday or days preceding. When members are sent their papers they go to the estate in question and investigate the security or whatever it may be. In any event I am assured by the chairman of the board that the real work done by the board is done long before they ever enter the board room. It is therefore manifestly undesirable to pay them for signing their name on the dotted line if the work is done outside, and it is the intention of Government, if this Bill is passed, with approval and consent of the board, to lay down a stated amount which members will be paid every month.

That is the first object of this amendment. Later, in the committee stage, an amendment will be moved to justify the back payments made by the Treasury. It has been found that the rather lengthy section which appears in the original ordinance is very difficult to follow, and it is suggested by the board that it would be far better to adopt the simple expedient of accepting the clause now before you which permits the Governor to specify suitable remuneration from time to time.

MR. WILLAN seconded.

LADY SIDNEY FARRAR: Your Excellency, I should like to suggest, particularly in view of the fact that we are accepting what is the principle of paying a stipend to members of such a board, that there should be some addition to the principal ordinance whereby provision is made for the periodical retirement of members of the board. At the present moment the position is that one practic-

[Lady Sidney Farrar]
ally takes on a full time job; a salaried job, that is what it comes down to, possibly not a full time job. At the same time, in this country where we are a small community, with the privilege of entering into the working operations of such a board as this, I would suggest that it would increase the confidence of the people very much if they felt that there was a regular time limit when members of a board should retire, unless their services are definitely reappointed by the Governor.

MR. HARRAGIN: Your Excellency, as hon. members probably realize, this is an entirely new point and it has never arisen in any discussions in which I took part before this particular Bill was placed before Council. It may be perfectly correct, as the hon. member has said, that at the present moment unless you, Sir, exercise your powers of cancelling an appointment, that a member of the board does not retire by rotation. I think that is what the hon. member wishes, and the suggestion that if Your Excellency considered he should carry on as a member he should be reappointed. I do not think it can be done by amendment to this particular section we are amending; we should have to amend the section which deals with the appointments.

I can give this guarantee to the hon. member: that when Government is considering an amendment to the Land Bank Ordinance again, that point will be borne in mind, and a decision taken by Government as to whether or not we can accept it. Actually, at this stage I think it would be wrong to further amend this section we are talking about because it has nothing to do with appointments, which is in another section altogether.

My hon. friend the Chief Secretary has just handed me the section of the principal ordinance which I was suggesting should be amended, if it wanted to be amended at all. It reads:—

"4. (1) The operations of the bank shall be controlled by a board, hereinafter referred to as the board, consisting of five members, each of whom shall be appointed by the Governor.

(2) Of the five members of the board, first appointed under this Ordinance, one, except the chairman, shall retire annually in rotation. The dates of the retirement shall be the first day of January, 1932, and in every year thereafter until all such members have retired. The members so retiring shall, unless they agree amongst themselves who shall retire, be determined by lot immediately after their first appointment and the place of the member retiring shall be filled by the appointment of another member in his place by the Governor. Thereafter, one member of the board, not being the chairman, shall retire annually in rotation, the order of retirement being determined by the date of appointment. A retiring member may be reappointed as a member of the board unless removed or disqualified as hereinafter provided."

So that it would appear that the hon. member's question was considered when the Bill was originally passed in 1931. (Laughter.)

The question was put and carried.

AGRICULTURAL MORTGAGORS RELIEF (AMENDMENT) BILL

SECOND READING

MR. HARRAGIN: Your Excellency, I beg to move that the Agricultural Mortgagors Relief (Amendment) Bill be read a second time.

This is a very short measure, and makes provision for further relief in the event of a mortgagor seeking to get further relief from the courts. The position at the moment is that a person can only apply to the courts once for relief with the result, in other words, that he gets a respite for one year and no more. It is suggested in this Bill that this may be extended to three years, by three different applications to the courts, who will have to consider the case each year as it comes up. Hon. members need not be alarmed that this Ordinance will affect the securities for all time because, as you know, the whole Ordinance comes up periodically before Council, who may extend its life or not at all. At the moment the Ordinance is extended until next year, so that if on a motion next year to extend it further any hon. member finds this particular clause bears too

[Mr. Harragin]
harshly on mortgagees they will be able to move any amendment to have this clause deleted.

MR. WILLAN seconded.

The question was put and carried.

STAMP (AMENDMENT) BILL

SECOND READING

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

This Bill is necessary on account of the military whom we have in our midst, and exempt from stamp duty for cheques drawn upon and payable out of any public account for any pay or allowance of His Majesty's Regular or Local Forces or for any other expenditure connected therewith. It is clearly a formal matter and should have been done before.

MR. WILLAN seconded.

The question was put and carried.

IN COMMITTEE

MR. HARRAGIN moved that Council resolve itself into committee of the whole Council to consider clause by clause the following Bills:—

The Official Secrets Bill.

The Administration of Estates by Consular Officers Bill.

The Land and Agricultural Bank (Amendment No. 2) Bill.

The Agricultural Mortgagors Relief (Amendment) Bill.

The Stamp (Amendment) Bill.

MR. WILLAN seconded.

The question was put and carried.

Council went into commitee.

His Excellency moved into the chair.

The Official Secrets Bill was considered clause by clause.

Clause 1.

MR. HARRAGIN moved that clause 1 be amended by the deletion of the word and figures "section 4" which occur in the second line of sub-clause 2 and the substitution therefor of the words and figures "sections 4 and 5".

The question was put and carried.

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

Clause 5.

MR. HARRAGIN moved that clause 5 be renumbered as clause 6 and that there be inserted the following as clause 5:—

"5. (1) Where the Commissioner of Police is satisfied that there is reasonable ground for suspecting that an offence under section 1 of the (Imperial) Official Secrets Act, 1911, has been committed and for believing that any person is able to furnish information as to the offence or suspected offence, he may apply to the Governor for permission to exercise the powers conferred by this subsection and, if such permission is granted, he may authorize a superior police officer to require the person believed to be able to furnish information to give any information in his power relating to the offence or suspected offence, and, if so required and on tender of his reasonable expenses, to attend at such reasonable time and place as may be specified by the superior police officer; and if a person required in pursuance of such an authorization to give information, or to attend as aforesaid, fails to comply with any such requirement or knowingly gives false information he shall be guilty of a misdemeanour.

(2) Where the Commissioner of Police has reasonable grounds to believe that the case is one of great emergency and that in the interest of the Colony immediate action is necessary, he may exercise the powers conferred by the last foregoing sub-section without applying for or being granted the permission of the Governor, but if he does so shall forthwith report the circumstances to the Govenor.

(3) References in this section to the Commissioner of Police shall be construed as including references to any other officer of police expressly authorized by the Commissioner of Police to act on his behalf for the purposes of this section when by reason of illness, absence, or any other cause he is unable to do so."

The question was put and carried.

The Administration of Estates by Consular Officers Bill was considered clause by clause.

The Land and Agricultural Bank (Amendment No. 2) Bill was considered clause by clause.

Clause 2.

MR. HARRAGIN moved that clause 2 be amended by inserting after the full stop in the first line of new section 11 the brackets and figure "(1)", and by adding the following new sub-section:—"(2) Any remuneration paid before the coming into force of this section in pursuance of any such power as is mentioned in sub-section (1) of this section, and which would have been lawfully paid if this section had come into force on the first day of November, 1931, shall be deemed to have been lawfully paid."

The question was put and carried.

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

The Agricultural Mortgagors Relief (Amendment) Bill was considered clause by clause.

The Stamp (Amendment) Bill was considered clause by clause.

MR. HARRAGIN moved that the Administration of Estates by Consular Officers Bill, the Agricultural Mortgagors Relief (Amendment) Bill, and the Stamp (Amendment) Bill be reported without amendment, and the Official Secrets Bill and the Land and Agricultural Bank (Amendment No. 2) Bill with amendment.

The question was put and carried.

Council resumed its sitting.

His Excellency reported the Bills accordingly.

THIRD READINGS

MR. HARRAGIN moved that each of the five Bills be read the third time and passed.

MR. WILLAN 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 April, 1940.

Wednesday, 3rd April, 1940

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, 3rd April, 1940, His Excellency the Governor (Sir Henry Moore, K.C.M.G.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of 2nd April, 1940, were confirmed.

ORAL ANSWERS TO QUESTIONS

No. 10—PURCHASE OF LAND BY ENEMY SUBJECTS

LADY SIDNEY FARRAR asked:—

1. Will Government state whether it is permissible for enemy subjects to purchase land in Kenya at the present time?

2. If the answer to 1 is in the affirmative, what steps are Government taking in this matter in view of the unfortunate impression that such transactions would cause both amongst the European and native sections of the population?

3. Will Government give the assurance that in the event of German internees being moved to an internment camp outside this Colony, those Germans other than refugees who have been temporarily released under the bond of British subjects in this country will also be sent out of the country?

4. In the event of it being ascertained that German subjects temporarily released under the bond of British subjects have been engaged in anti-British propaganda amongst natives, or other harmful activities, what action will be taken as regards the British subjects who have guaranteed them?

MR. RENNIE: 1. There is no legal objection to an enemy subject purchasing land in Kenya.

2. While not necessarily agreeing with the hon. member's assumption that an unfortunate impression would result among the European and native sections of the population from such transactions, the Government is considering whether it is desirable to impose any restriction on such purchases.

[Mr. Rennie]

3. No enemy alien subjects have been released on bonds in a legal sense. Fifty male Aryan Germans who have furnished satisfactory proof that they are hostile to the Nazi regime have been released and are now residing in Kenya subject to restrictive orders as to place of residence and movements, and it is considered that they can safely be left at large. It is not the intention of the Government to remove them from the Colony so long as their conduct is correct.

4. As no enemy alien subjects have been released under formal bonds furnished by British subjects, the question does not appear to arise. Even if it did, however, it would, being a hypothetical question, be ruled out under Standing Rule and Order No. 22 (v).

LORD FRANCIS SCOTT: Sir, arising out of the answer to the first part of the question, is not all enemy property vested in the Custodian of Enemy Property?

MR. RENNIE: The answer is in the negative.

LORD FRANCIS SCOTT: It is in Tanganyika.

No. 11—COLONIAL DEVELOPMENT FUND

LORD FRANCIS SCOTT asked:—

Will Government inform Council—

1. What steps it is taking to put forward the claims of Kenya for assistance for essential development from funds provided in the new £50,000,000 grant for colonial development?

2. Who is to be responsible for the preparation of such proposals?

MR. RENNIE: With the noble lord's permission, I will answer the two parts of his question together.

As regards the £50,000,000 grant, he will appreciate that legislation will be required by Parliament before the proposals can take effect and the necessary vote be approved, and this Government is awaiting a further communication which the Secretary of State for the Colonies has promised on the subject. In the meantime, the existing Colonial Development Fund remains in being, and applications can be made for assistance from it as heretofore.

The Secretary of State has further suggested that consideration should be given to the preparation of provisional programmes for submission once the necessary legislation has been passed by Parliament, regard being had to the difficulties that may arise during the war in respect of men and material. Such provisional programmes will as a general rule be prepared in the first instance by the departments concerned, and the Government has under consideration the question of appointing an officer whose duty it will be to co-ordinate all such proposals before their submission, via the appropriate statutory boards, standing committees and in some cases local authorities, to the Executive Council.

In the case of such provisional programmes, His Excellency has already indicated that, in his opinion, pride of place should be given to an application for financial assistance to enable anti-erosion and soil conservation measures to be undertaken in a comprehensive way. The Agricultural Department is already preparing a review of the situation, and the whole question is also to be discussed at a special meeting of the Settlement and Production Board. In order that the closest co-operation may be obtained, not only from the different Government departments concerned, but also from the general public, it is intended to detail an officer or officers to co-ordinate all such proposals before their submission to Executive Council.

SCHEDULES OF ADDITIONAL PROVISION

No 3 OF 1939

MR. RENNIE: Your Excellency, I beg to move that the Standing Finance Committee Report on Schedule of Additional Provision No. 3 of 1939 be adopted.

This Schedule covers the period from 1st July to 30th September, 1939, and has received careful examination by the Standing Finance Committee. The total amount involved, as the note on the first page of the Schedule indicates, is £93,879. Of this sum, £15,728 is in respect of emergency defence measures and, as regards the balance, the sum of £3,126 is off-set by savings and a sum of £41,769 is recoverable in the form of reimburse-

[Mr. Rennie]
ments. It is also anticipated that a sum of approximately £13,584 will be recovered by a consequential increase in revenue.

MR. HARRAGIN seconded.

The question was put and carried.

NO. 4 OF 1939

MR. BERESFORD STOOKE (Acting Financial Secretary): Your Excellency, I beg to move that Schedule of Additional Provision No. 4 of 1939 be referred to the Standing Finance Committee.

This Schedule covers the period from 1st October to 31st December, 1939, and the total additional expenditure concerned is £53,120. Of this, £11,942 is off-set by savings, about £102 is recoverable from reimbursements, and approximately £8,238 is consequential on increased revenue, bringing the net additional expenditure to £32,838. As the Schedule is being referred to the Standing Finance Committee, which will consider the items in detail, I do not propose to take up the time of Council now in discussing individual items.

MR. HARRAGIN seconded.

The question was put and carried.

LAND AND AGRICULTURAL BANK

ADVANCE FROM SURPLUS BALANCES

MR. BERESFORD STOOKE: Your Excellency, I beg to move:—

"Be it resolved, this Council approves, pending the raising of loan funds by the Secretary of State for the Colonies, the advance of £10,000 to the Land and Agricultural Bank from the Colony's surplus balances."

In 1936 Council passed the Specific Loan Ordinance providing for the borrowing of a total of £625,000, of which £500,000 was for the Land Bank. In 1937, under the powers given in that Ordinance, £375,000 was raised, of which £250,000 went to the Land Bank. Council has approved therefore of a total borrowing which would allow us to raise another quarter of a million pounds for the Land Bank. Towards the end of last year, the Land Bank came to the end of its capital funds, but owing to the outbreak of war there were difficulties in arranging an immediate further loan under the Ordinance. There is still likely to be some delay, but in order to avoid any interruption in Land Bank activities and to enable it to carry on with advances to farmers, it is proposed to advance to the Land Bank from the surplus balances of the Colony £10,000, to be repaid on the raising of the loan.

MR. HARRAGIN seconded.

LORD FRANCIS SCOTT: Sir, in rising to support this motion I should like to ask what has happened about the legislation which passed through Council last January, to enable the Land Bank to make advances under different conditions to what had been their methods in the past? It appeared as a Government measure, having been duly considered and approved by Executive Council and it passed Legislative Council. It was an urgent matter, because it was to enable certain farmers to carry on their farming operations. I understand that at the present moment it is held up by Treasury interference in England, and I should like very much to know what is the actual position with regard to that measure at the present time, because these Bills are passed for definite reasons and time is a very important factor. If the money is not being made available for the purposes which Your Excellency's Government and Council considered were right, if it is not being done, then a very strong protest should be made to Whitehall at their interference in what is decided here.

MR. RENNIE: Your Excellency, in reply to the noble lord, I may explain that the Ordinance was sent home to the Secretary of State in the ordinary manner. Since some of the provisions of the Ordinance were revolutionary in the sense that they were a considerable departure from the provisions of the original Ordinance—the provisions, in other words, were no longer on a long-range basis—the Secretary of State has in telegraphic correspondence raised certain questions. He is anxious to satisfy himself about certain points. Government has replied to the various points raised by him, and hope to receive a telegraphic communication from the Secretary of State in the very near future indicating his views on the matter.

MR. SHAMSUD-DEEN: Your Excellency, I have not got much to say on this

[Mr. Shamsud-Deen]
motion, but I do not find myself in agreement with the proposal for the reasons that, first of all, although British Indian subjects are theoretically not excluded from the benefits of these funds—they have received a small and infinitesimal amount—the money is for one section only of the community. The general impression is that the funds at the disposal of the Land Bank are not being administered in the same way as any other commercial bank would administer them. For instance, my information is—and I am subject to correction, of course—that no less than £2,500 was advanced by the Bank to a German subject who is the owner of the Wali Estates at Kilifi, that the borrower left the Colony, that he was then insolvent, and that another German who has since left Kenya arranged a composition with the creditors and the offer to the Bank was £200.

That, I say, is subject to correction, and probably the hon. mover will not be able to reply straight away and, if he likes, I will put it in form of a question later on. But if this is the way that the funds of the Land Bank are being squandered, I do not think a very good case has been made out for a further £10,000 being placed at the disposal of the Bank.

MR. BERESFORD STOOKE: Your Excellency, I think the hon. member is mistaken if he considers the Land Bank is entirely for one section of the community. There is nothing in the Ordinance to stop Indian agriculturists applying for and obtaining a loan if they can produce the requisite security.

As regards the remarks of the hon. gentleman about a German or enemy subject at Kilifi who was supposed to have had an advance, he was right in his assumption that I am not able to deal with the question without notice.

But I must take exception to the allegation that funds are squandered. The Land Bank Board takes particular care to keep these loans within the bounds of reasonable security on the land in the possession of the borrower, and although land values over a period of years are subject to fluctuation that is a thing no board or anybody can foresee.

The question was put and carried.

REALLOCATION OF LOAN FUNDS

MR. BERESFORD STOOKE: Your Excellency, I beg to move:—

"That this Council approves the expenditure of a sum of £3,500 upon the purposes specified in the First Schedule hereto as a charge against Loan Account, and further approves that the provision therefor be found by reallocation from the items of Loan Account specified in the Second Schedule hereto.

First Schedule

Public Buildings: Educational Buildings—

Kitale European School.

Second Schedule

Savings available under the Colony's share of the 1930 Loan:—	£	£
Housing, etc.—		
Malindi (Kilifi)	77	
Other Buildings—		
Nairobi, K.A.R. Lines ..	367	
Nanyuki, K.A.R. Lines	133	
Unallocated	62	
Water Supplies—		
Mombasa	243	
Communications—		
Road Survey of Colony	119	
Makupa Causeway ..	20	
Road Plant	61	
Telegraphs: Lugari-Bungoma	90	
Trunk Telephone: Nakuru-Eldoret ..	223	
Telegraphs: Nakuru-Eldoret	213	
		1,608
Savings under the 1933 Loan:—		
Such further items, etc. ..		766
Savings under the 1936 Loan:—		
Loans to Local Authorities—		
Nairobi Corporation ..		748
Such further items, etc. ..		378
		£3,500"

[Mr. Beresford Stooke]

The question of accommodation at Kitale School is one of some urgency and one which, I think, has been raised on one or more occasions in this Council already. The position is that the school, which was originally built to house 40 pupils, is now asked to house some 60 pupils as boarders, which it cannot do. A certain number are housed in the hospital wing and the remainder are boarded out in the town. There are various serious objections to that state of affairs. It is therefore proposed to build a new wing to the school which will accommodate another 20 pupils as boarders, together with two members of the teaching staff, for whom at present there is no adequate accommodation on the premises.

This recommendation was referred to the Standing Finance Committee, who considered that the construction of such a wing to cost £3,500 should proceed, and that the necessary funds should be found if possible from available loan balances. We have been fortunate in managing to find a number of odd unspent balances and savings on a number of miscellaneous items which are given in the Second Schedule to the motion, but before these can be reallocated to the Kitale European School the approval of Council is necessary.

MR. HARRAGIN seconded.

The question was put and carried.

INCOME TAX BILL

SELECT COMMITTEE REPORT

MR. WILLAN: Your Excellency, I beg to move that the select committee report on the Income Tax Bill be adopted.

Most of the amendments contained in this report relate to drafting and the correction of typographical errors, and I need only refer to six portions of the report.

The first is contained in paragraph 6 (*e*), which hon. members will find on page 3. This paragraph deals with clause 10 (1) (*f*) of the Bill relating to exemptions with regard to profits of non-resident shipowners, and although this clause has been redrafted it makes no change in the law as it stood since the inception of income tax in 1937. Briefly, the object of the clause is that the United Kingdom enters into a reciprocal arrangement to avoid double taxation of shipping profits in foreign countries and the United Kingdom, and the reciprocal arrangement provides that the profits made by such shipowners shall be taxed only in such countries as the shipowners are resident. We have here provided similar relief, and it is obviously to the advantage of the United Kingdom and the British Empire as a whole, with its large merchant fleet, to extend these arrangements throughout the world. British shipping, of course, pays Kenya income tax, but it is able to recover the tax paid in the United Kingdom, so that Kenya loses nothing.

I go on to paragraph 6 (*f*), still on page 3. As I stated when moving the second reading of the Bill, clause 10 (1) (*x*) has been redrafted to make it quite clear that when a person resident in Kenya has income from one or more of the adjoining territories and remits that income to Kenya, he will not be able to claim exemption from the tax here because it is chargeable with the tax in the other three territories on a non-resident basis.

Turning to paragraph 7 (*e*), on page 4 of the report, as hon. members are aware negotiations are proceeding between Government and the mining community on the question of royalty, and those negotiations have not yet been concluded. What the outcome of the negotiations will be I am unable to say, but if, however, it is eventually decided in the light of the decision taken on those negotiations that it is fair and equitable that certain allowances of a capital nature should be allowed the mining community under the Income Tax Bill, similar to the allowances given in the Rhodesias, then this clause 13 (1) (*n*) will empower the Governor in Council to make appropriate rules. That is all I can say now, that there is power to make rules.

Paragraph 9 of the report deals with the troublesome clause 27. The reason for the total redraft of this clause—and here I must express thanks to the hon. Member for Nairobi North for pointing it out in select committee—is that in the Bill we provided that companies resident in Kenya with branches in the other three

[Mr. Willan]

territories can set off losses in one territory against profits in another, and we have got to provide a similar set off regarding companies who are not resident in East Africa. This total redraft of clause 27 rectifies that omission. In other words, we shall deal with these non-resident companies in this clause 27 as well as resident companies.

Sub-clauses (1) and (2) of the clause remain entirely unchanged, and a new sub-clause (3) is added which deals with the tax chargeable on the income of non-resident companies and individuals. In order to explain this (3) I hope hon. members will bear with me if I give another example, particularly the hon. member Mr. Shamsud-Deen, but in order to fully explain the new sub-clause it is essential to give an example.

New sub-clause (3) deals with the tax on chargeable income of any person, which includes company, not resident in the Colony, with this proviso:—

> "Provided that where any such person has other income accruing in, derived from or received in, another East African territory the amount of tax to be charged upon his chargeable income shall be the amount resulting from the last of the following calculations."

That sounds rather involved, and I am afraid it is, but it is easy when one gives an example, because you only have to work out three sums under (*a*), (*b*) and (*c*) of the clause and the tax on the chargeable income is finally arrived at under (*d*).

Take the case of a non-resident company at home with branches in Kenya, Uganda, Tanganyika and Zanzibar. Suppose in any one particular year that company makes a profit of £1,000 in Kenya, a loss of £500 in Tanganyika, a profit of £1,000 in Uganda, and a profit of £500 in Zanzibar. Coming to paragraph (*a*), "the amount of such person's whole income accruing in, derived from, or received in the Colony", from the four territories would be a total of £2,000 —£2,500 profit and £500 loss. So that we arrive at the answer under (*a*). Under (*b*), "the amount of tax which would be charged if such whole income were chargeable with tax under this Ordinance"—if the tax is Sh. 3 in the £ and the whole income is £2,000, the tax would be Sh. 3,000. Paragraph (*c*) says: "the aggregate of the amount of such person's total income in the Colony, the Tanganyika Territory, the Uganda Protectorate and the Zanzibar Protectorate, but excluding any amount as upon the calculation of the total income in any such territory results in a loss." That means you do not take into account any losses, such as the loss of £500 made in Tanganyika, so that you arrive at the answer under (*c*) as £2,500.

Coming finally to (*d*), which works out the income tax payable by a person in Kenya, it says:—

> "the amount which results by multiplying the amount of tax arrived at under paragraph (*b*) of this sub-section by such person's total income and dividing the product by the amount arrived at under paragraph (*c*) of this sub-section."

So that if you multiply the Sh. 6,000 by the Kenya income of £1,000 and divide the total income less the loss of £500 in Tanganyika, which is £2,500, you arrive at Sh. 2,400 as the tax in Kenya; similarly, the tax in Uganda is Sh. 2,400; in Zanzibar, Sh. 1,200, making a total of Sh. 6,000. That is what that sub-clause means.

I will now deal with the proviso. Having provided that losses in one territory can be set off against profits in another territory in computing the whole East African income, we ensure that they are not set off against the total income in one territory. That disposes of this troublesome clause 27.

The next paragraph to which I will refer is 13 on page 7 of the report. This adds a new sub-clause to clause 38 of the Bill. Hon. members will remember that that clause gives the Commissioner power to appoint agents for non-resident persons. The new sub-clause affords a right of appeal to a local committee and to the Supreme Court in case any person appointed by the Commissioner to be an agent considers that he has been wrongly appointed.

Paragraph 20, at the bottom of page 8 of the report, adds a new clause 79 to

[Mr. Willan]
the Bill, relating to the division between the four territories of the increased amount of the tax which will be collected here on account of income tax being on an East African basis.

Finally, I want to refer to the difficult question of passage allowances. As hon. members will have already seen from this report, the select committee was equally divided on this difficult question. I am authorized by Your Excellency to state that, while it is Government's intention that free passages granted by employers to employees should not be taxed, every effort will be made to frame rules under the Bill, with retrospective effect to 1st January, 1940, which will grant relief to other persons who actually go on leave at periodic intervals. If I understood correctly the remarks made by the hon. Member for Rift Valley on the second reading of the Bill, that method of attacking the problem is one which he suggested should receive the consideration of this Government.

The Commissioner of Income Tax has pointed out that it will be a very difficult matter to devise rules which will be fair and equitable and not give rise to anomalies, but we now know that the Uganda Government is attempting to solve the problem on the same lines, and I trust it will not be beyond the ingenuity of the law officers of the Colony and the Commissioner of Income Tax to frame such rules.

MR. HARRAGIN seconded.

MR. HUNTER: Your Excellency, dealing first with the question of mining operations, I am glad to see that provision is included for the depreciation of a mine under this Bill. I must, however, protest against the principle whereby on the one hand Government admits the equity of such a provision by including provision for making rules—in effect, it admits a mine does depreciate; but, on the other hand, it says that the introduction of the rules will depend on the bargaining with the mining community on another subject. To my mind, the purpose of an Ordinance for raising a tax on incomes should be directed solely towards finding what in fact someone's income is after allowing as fair and reasonable deductions as possible.

Turning to clause 27, I recognize that the Bills which have been considered in the other East African territories do not come under the direct purview of this Council. It would appear, however, that in the case of a non-resident company it is important for this Council to know that the other territories are making similar provision. I should also like to ask the hon. and learned mover whether it is clear as to which authority a non-resident company trading in East African territories submits his returns? It seems to me it might be difficult if the legislation in all territories is not identical on that point.

Coming to the question of passages, I am very glad to hear what the hon. mover said, and I accept that as a satisfactory solution. I have, however, always understood that it was not possible to make rules which are repugnant to the provisions of an Ordinance. In clause 14 as it stands it says:—

> "For the purpose of ascertaining the total income of any person no deduction shall be allowed in respect of—
>
> (*b*) any item of expenditure or of charge except as far as it is attributable to, and incurred for, the purpose of acquiring the income."

It appears to me that, in the case of a farmer for example, a passage cannot possibly be regarded as being "attributable to, and incurred for, the purpose of" acquiring his income. I should therefore like to be assured either that the law officers of the Crown are satisfied that such a rule may be made or, alternatively, it appears to me that some such words should be included in clause 13 (1) (*n*), such as "including passages" after the word "deductions".

LADY SIDNEY FARRAR: Your Excellency, I rise to support the remarks of the hon. Member for Nairobi North as regards the provision in clause 14, the new suggested provision concerning the mining community. To my mind, it is introducing an entirely wrong principle that the provisions of this Ordinance or the rules to be made thereunder should hinge on another committee or whatever

[Lady Sidney Farrar]
you like to call it; at any rate, an argument going on with other bodies. It is a wrong principle, and I cannot support it in any way whatsoever. I appreciate that the members of the select committee, in presenting their report, have endeavoured to meet the question of assistance to the mining community, but I submit that they have met it in a very doubtful manner.

The question at issue between the mining community and the financial advisers to Government as regards the introduction of a royalty has, to my mind, nothing whatever to do with the provisions of the Income Tax Ordinance and it has nothing to do with the provisions of this Bill. I suggest that we are treading on very dangerous ground if we introduce provisions into this Bill which hinge on other legislation which may or may not be brought into force in this Colony.

MR. COOKE: Your Excellency, I merely rise to protest in the strongest terms against what I understand is the invidious distinction between allowances for Government servants and allowances for employees of firms. I hope when the hon. and learned mover replies he will justify this on the grounds of equity.

MAJOR GROGAN: Your Excellency, there is only one point which I want to refer to. That is the suggestion made by the minority report that the title of the Bill should be changed. I lay stress on that, and for this reason—although I do not suppose anybody will pay any attention to it—that Your Excellency the other day in connexion with this Bill gave us an assurance of sorts, of which I venture to say was a diminution of the assurance we already had from the Secretary of State. I have dug out a letter relevant to that particular issue which was written by me to the various papers of the country and was submitted to the then Governor for his approval before it was published. It arose over the question as to whether or not there should be a dog-fight over income tax at the last general election, and in order to avoid such a dog-fight it was arranged that the noble lord, the hon. Member for Rift Valley, and myself should go and see the Governor in this particular matter, with the prospect of, perhaps, having an interview with the Secretary of State, which eventually happened. The letter reads:—

> "His Excellency entrusted me with a letter to the Secretary of State. The Secretary of State favoured me with a long personal interview. On my return I reported my impressions of that interview to His Excellency. I cannot, of course, pretend in any way to commit either His Excellency or the Secretary of State. I can, however, state that I personally am convinced that so long as His Excellency and the present Secretary of State continue to control our destinies the question of whether or not income tax shall be retained as a permanent factor in the East African fiscal system will have *de novo* impartial consideration, and I intend to base my political actions on that assumption".

That letter was submitted to His Excellency before it was published and approved by him for publication. The other part of it was confirmed later on by a communication from the Secretary of State himself, giving his version which he recorded at the time of the interview I had with him. There is no question whatsoever that the Secretary of State did agree there should be an impartial consideration of the issue as to whether or not income tax should be made a permanent feature of the fiscal system of the country.

I therefore suggest, Sir, that your words the other day brought in certain qualifications that are in effect a diminution of that undertaking, and I think we are entitled to stand by that undertaking, which I do not think is sufficiently recognized unless the change is made, as we suggest, in the title of the Bill.

MR. WILLAN: Your Excellency, with regard to the remarks of the hon. Member for Nairobi North and reiterated by the hon. Member for Nyanza on this question of the power to make rules under clause 13 with regard to the mining community, as hon. members well know the great argument for getting relief from royalty is that there are no allowances under the Income Tax Ordinance such as in North and South Rhodesia. Therefore I think it quite reasonable, if royalty is to be kept on, that there should be some provision in the Bill which will enable

[Mr. Willan]

appropriate rules to be made. Therefore I see no reason why we should not put in this new paragraph (*n*) providing for this, so that we will have the power to make these deductions of a capital nature by rules when we hear what the result of the negotiations is to be. I see no reason why we should not do it this way.

The hon. Member for Nairobi North, referring to clause 27, asked whether this clause was identical in the Ordinances of the four territories. I can say this: In Uganda—and I think Uganda passed their Ordinance on Monday—their clause 27 is identical with the clause 27 of our Bill, and I have no reason to doubt that in Zanzibar and Tanganyika their clause will also be identical with ours, and therefore it will not matter to which territory reference is made.

The hon. member referred to the question of making rules with regard to the passage allowance, whether there would not be a conflict with clause 14. There will be no conflict. I am perfectly satisfied in my own mind, and so is the Attorney General of Uganda.

The hon. Member for the Coast made a remark I did not understand; that is, we are making an invidious distinction between Government servants and commercial employees on the one hand and farmers on the other . . .

MR. COOKE: Of employees of merchant houses.

MR. WILLAN: No, we have provided for employees, whether Government or commercial, that their free passages will not be taxed. That is why in the Bill itself we are dealing with a totally different problem regarding other people who pay for their passages out of their own pocket, but we will provide for relief, if we can, by means of rules.

The question was put and carried.

Council adjourned for the usual interval.

On resuming:

INCREASE OF RENT AND OF MORTGAGE (RESTRICTIONS) BILL

SELECT COMMITTEE REPORT

MR. HARRAGIN: Your Excellency, I beg to move that the select committee report on the Increase of Rent and of Mortgage (Restrictions) Bill be adopted.

While we were considering this Bill I happened to come across in the *Law Journal* dated 24th February of this year, the following quotation, dealing with the Consolidation Rent Restriction Act of England:

> "The Rent Restriction Acts form, as is generally admitted, a specially difficult and confused body of legislation. They have been frequently amended so as to explain doubtful points, and also to alter from time to time their sphere of operation. The last Act—the Act of 1939—has greatly extended them and has added to their complication . . ."

That was the Bill which the select committee was asked to consider by this Council last week. Complicated though it is, I can assure hon. members that it is not nearly as complicated as clause 27 of the last Bill they were considering this morning.

The select committee sat on two occasions for a considerable time, and we heard a number of witnesses, with the usual result: the landlords thought the Bill went too far in one direction, and those interested in tenants thought it did not go far enough. We hope in the amendments submitted to-day to have struck the happy medium between the two. The principal amendments with which I will deal as shortly as possible, are as follows.

Clause 1 is to be amended by deleting the last two lines and really substituting, if hon. members will turn to the end of the report, new clauses 18 and 19. This is the important part of the amendment, that the Ordinance shall only continue in force during the period of the war and for one year after. Provision is then made for the Governor in Council to extend this Ordinance—which now, if this report is accepted, will only apply immediately to Nairobi and Mombasa—to any town or district or area in the country that the Governor in Council considers necessary, and also to prescribe in the schedule for the prescribed date. The effect really of these amendments is that it is only expected that Nairobi and Mombasa will have to be dealt with immediately, but that if a case is made out by any authority to the Governor in Council that some other part of the country should be included, it can be done by notice in the Gazette with the power to prescribe the date.

[Mr. Harragin]

The next amendment is with regard to the definition of the word "court". There we have extended it to mean a magistrate of the first class who has been specially appointed by the Chief Justice as being suitable for trying this type of cases. This is done in the interests of economy, for it is far less expensive, as hon. members are aware, to bring a case before a magistrate's court rather than the Supreme Court.

The definition of "standard rent" has been altered slightly, but it is only to sub-paragraph (ii) that hon. members need pay special attention. There is an amendment in sub-paragraph (i), the words "the prescribed date" being substituted for "the 3rd September". "The prescribed date" you will find occurs the whole way through the Bill in lieu of 3rd September, because now, as I have explained, the Governor in Council will apply the Bill to other areas, from time to time, so that we cannot leave in 3rd September.

With regard to sub-paragraph (ii), the point is slightly different. As hon. members will remember, the old sub-paragraph (ii) read as follows:—

> "standard rent means—
>
> (ii) where the dwelling-house was not let on the 3rd day of September, 1939, the rent at which it was last let before that date".

Taken literally, that might mean in certain cases that if a man did not happen to have his house rented on the 3rd September and had been living in it himself for ten years, he would have to have as his standard rent the rent at which he had actually rented it ten years before, which everyone will agree would be absurd. We have therefore drafted a new sub-paragraph which in effect means that a landlord will be allowed to get 10 per cent of the market value, from which he will have to make the deductions in the calculation as set out in the proviso. I am told that that will mean in effect that a man will be able to get between 6 per cent and 8 per cent on his investment, probably in the vicinity of 7 per cent.

We have also increased the amount of the standard rent which will be included in this Bill from £150 to £200.

We have added two definitions: a definition of "net annual value" and naturally one with regard to the "prescribed date" which I have mentioned. There are various amendments throughout the Bill substituting prescribed date for 3rd September.

There is a new sub-clause (3) to clause 8, where we deal with the question of alternative accommodation. In clause 8 in certain cases the landlord has to find alternative accommodation for the tenant, and then it sets out in (1) certain cases where this will not be necessary. It was pointed out that we had made no provision for the landlord who wanted to go on leave, so we have introduced a sub-clause which permits the landlord when going on leave to give up the occupation of the house and to specifically enter into a contract with the tenant to lease the house to him for not more than one year and then to reoccupy it immediately upon the termination of the contract. This will permit landlords to make a firm contract when going on leave and to be able to reoccupy the house when they come back without finding alternative accommodation for the tenant.

In clause 9 we have extended the time from twenty-one to twenty-eight days within which the mortgagor shall pay the interest due.

Clause 14 is amended in several respects. The first is with regard to the monthly deductions, and it deals with the case where a landlord has overcharged the tenant by whatever the amount might be. As the Bill reads at present, the tenant is able to deduct this amount in one full swoop, being able to take from the rent he pays the whole of the amount he has overpaid in one lot. Now we have laid it down that this shall be done in three monthly instalments, and that there shall be no deduction made with regard to rent alleged to have been overpaid between September and January. We had a good deal of evidence with regard to that. Landlords thought it extremely unfair, that whereas they had made a perfectly legal contract say on the 3rd September to rent their houses at

[Mr. Harragin]

whatever the rate might be but a rent exceeding what we now declare to be the standard rent, they had to pay back the whole amount. Tenants naturally thought otherwise, and in a truly British manner we solved it by fixing the date as the 1st January from which overpayments can be recovered.

In paragraph (*b*) of sub-clause (2) of clause 14 there is a slight drafting amendment: the last five lines from 17 to 21 have got to be brought further into the body of the page in order to show that those five lines qualify both sub-clauses (*a*) and (*b*).

Clause 16 is altered because we have now agreed to give certain magistrates appointed by the Chief Justice power to hear these cases, and we have to introduce the word "Supreme" before the word "Court" in order that that Court will make the rules and not the magistrates.

Clause 17 has been amended by increasing the annual amount of the standard rent from £250 to £500. Our reason for doing that was because we were assured that the shops in Government Road, Nairobi, all rent at over £250, so that this Ordinance would not have applied to them, and there appeared no reason why, if it were necessary to bring in that section, that rents up to £500 should not be included.

Those are all the amendments in this Bill, and I do not think anyone can allege that they have not received the greatest care from the select committee appointed to go into this matter. Difficult though the problem is, I think we have made as good a job as can be expected of it.

MR. WILLAN seconded.

MAJOR GROGAN: Your Excellency, I would ask the hon. and learned Attorney General in his reply to define exactly what is meant in law "for the period of the war", because in the last war a friend of mine made an enormous fortune by ensuring himself against the termination of the war. The people who insured him naturally thought that meant the 11th November, 1918, but it was held in law that the end of the war was not until the conclusion of the peace treaty, and my friend made £50,000 out of that fact. It may be that gentlemen interested in this may also make money, for "the period of the war" is a loose term requiring special determination.

I am going to vote against the Bill on three grounds: one, there is no case for the Bill; two, there is no principle in the Bill; and three, there is no equality of treatment.

In so far as the theory of the Bill is concerned, it is an economic and financial theory as far as I understand from the remarks made by the hon. and learned Attorney General. The thesis is a 6 per cent basis of net return on house property. I think he stretched it a little bit to 7 per cent. But, speaking with a wider knowledge of maintaining house property than the hon. member, I can assure him that that particular clause which specifies 10 per cent subject to certain deductions will never amount to anything like 6 per cent. By way of courtesy I will assume that the theory at the back of our heads is 6 per cent. What sort of a theory is 6 per cent in a country where we pay the bank 6½ per cent? The idea of any country run on a basis of land and building development paying a person less than the current bank rate shows a lack of ordinary business principles which is quite lamentable. There is no doubt that everybody who knows anything about these matters will agree that returns on buildings, which is a very difficult form of investment, should be very very substantially in excess of the local basic money rate, which is the bank rate of the country.

No provision is made in the Bill either for the inevitable rise in costs due to the monetary inflation of the war. Therefore there is no equity in the thing and, as I said before, no case for the simple reason that this is admittedly a mere plagarism of what is going on at home. There is no comparison at all. Mombasa is more or less in a special category but, taking Nairobi, here there is an enormous area of land sparsely populated, with enormous open spaces. In London a man cannot pitch a tent or put up a temporary hut in the middle of the Strand or Fleet Street; he must, owing to climatic conditions and so on, live in some kind of a house. Here we have nothing of the sort at all. We have only to modify the

[Major Grogan]

municipal regulations for the period of the war so that people could put up *bandas* or tents just as those gentlemen who are learning to handle rifles have done, and I see no reason why those people who are pouring into Nairobi and creating a congestion cannot do the same thing. The congestion is largely due to an alien invasion, and I see no particular reason why an alien refugee coming to Nairobi should be put in a special position to appropriate somebody's property for less than its market value.

What it in effect amounts to is a war tax on individuals foolish enough to do something for the general benefit in the form of providing accommodation. There is no principle, no case, in the Bill, and I therefore propose to vote against it.

MR. HARRAGIN: Your Excellency, when I proposed this motion I told you that in the course of our investigations we had put before us very strongly and emphatically the views of the landlord and the tenant, and the speech we have listened to by the hon. Member for Ukamba is, as everyone probably realizes, the point of view of the landlord.

MAJOR GROGAN: On a point of explanation, I am not a landlord and own no house at all except one concrete hut!

MR. HARRAGIN: If the hon. member had listened to me, I never suggested, that he was: I said he was putting forward the point of view of the landlord. If he is not a landlord himself he obviously has been briefed by someone who is a landlord.

MAJOR GROGAN: On a point of explanation, I was putting forward the point of view of a person actuated by the ordinary principles of equity.

MR. HARRAGIN: The first question which the hon. member asked was with regard to the period of the war. I am not going to pretend to be a prophet and state a definite date in this Ordinance when war will end. I can only say that in due course there will be a proclamation issued at home declaring that a state of war no longer exists between the United Kingdom, however it is worded, and the enemy, which will be taken as the date upon which the war ceases.

The only other point made by the hon. member was with regard to the percentage that we were allowing a landlord to obtain. Naturally, as he well knows, I know nothing about this question of percentage at all but I can only tell him that we took evidence from those who should know, and the general opinion was that this definition would allow a landlord in an unfortunate case 6 per cent, in a fortunate case, 8 per cent, which would probably average 7 per cent. It was thought that that was a fair percentage for the landlord to receive. Whether that is so or not presumably is a matter of opinion, but it is in keeping, I think, with legislation elsewhere, and it was suggested to us by someone who had had enormous experience and I should guess one more interested in landlord's interests than tenants'—(Major Grogan: Where?) —in Kenya.

Those are the only points raised. I should like to point out in conclusion that the hon. member has now for the first time told us that he is going to vote against the principle of the Bill. There is no amendment that we have proposed that has altered the principle in any way. If anything, we have been kinder to the landlord than the original Bill was, so that if the reason the hon. member is voting against the suggested amendments is because he is objecting to the principle, I suggest he is voting on the wrong tack.

MAJOR GROGAN: I propose to vote against the Bill: I spoke against the principles on the second reading.

The question was put and carried, Major Grogan objecting.

LAND AND WATER PRESERVATION BILL

SELECT COMMITTEE REPORT

MR. WILLAN: Your Excellency, I beg to move that the select committee report on the Land and Water Preservation Bill be adopted.

Referring in detail to the report itself, the first amendment recommended is in paragraph 1 which deals with the definition of a local authority. Under the Bill as it stands at present, where there is no municipal council or board or district

[Mr. Willan]

council or local native council, the local authority is the District Commissioner. The select committee felt it would be better to appoint a committee instead of making one particular individual the local authority.

Paragraph 2 deals with clause 3 of the Bill, and the first amendment suggested is in clause 3 (1) (A) (iii) by deleting the reference to ravines and torrents and substituting the word "gullies". This amendment was suggested to the committee by the hon. Member for Ukamba, who pointed out that the word gullies is a more appropriate term. Actually, he pointed out as only he could, that a ravine is something which people go in char-a-bancs to see, and what we wanted to do was to stop the formation of gullies.

The next amendment is at the top of page 2, where a new paragraph is inserted to (1) of clause 3, as (C), providing for the making of rules regarding afforestation or reafforestation of land, which meets the point raised by the noble lord, the hon. Member for Rift Valley, on the second reading of the Bill.

I come to (g) of paragraph 2 of the report. Here we have made a redraft of sub-clause 3 of clause 3, empowering the Director or any person appointed by him to issue orders under any rules promulgated under the clause. The new parts are (b) and (c), and (b) says:—

> "Any such order may be issued verbally or, if so demanded by the person to whom it is issued, shall be in writing".

We felt that since there are penal provisions for disobeying orders it is necessary to prevent misunderstanding that the person to whom orders are given may demand that they shall be in writing. By paragraph (c) we provide that an appeal shall lie against any order in the manner provided in sub-sections (4) and (5) of this clause.

This Bill has been criticised as being somewhat drastic, and in the Press this morning there appears the following statement, in commenting on the select committee report:—

> "What was a reasonably workmanlike and courageous measure is in danger of being turned into a complicated, time-wasting, responsibility-shifting piece of legal jargon".

This Bill, as hon. members know, is to prevent soil erosion, but at the same time we must safeguard the rights and liberties of the people of the Colony. Speaking for myself, I prefer to steer a course which will ensure the co-operation of the people of the Colony rather than adopt a policy which may lead to the people labouring under a sense of grievance or injustice. It was for those reasons that the select committee felt it advisable and, in fact, necessary, to provide for these appeals. What happens? If the Director or agricultural officer acting under his instructions gives any order under any rule to a person, and that person feels that order is unnecessary or unreasonable, we provide for him the right of appeal first from the agricultural officer to the Director, and if the order is given by the Director an appeal to a board, and the board will be appointed under the new clause 5 which is shown at the top of page 3 of the report.

The same writer of this article in the Press, commenting on the provisions of the Bill, asks this question:—

> "We may be permitted to inquire what powers the State will have, in the ultimate public interest, to deal with a position which may arise if these boards should dismiss rules and instructions as so much stuff and nonsense".

I think the writer of that article has misread this report, because it is quite impossible for any board to dismiss any rule made as stuff and nonsense. The right of appeal to these boards is only provided for when orders are given under the rules. If you make rules and say that nobody shall not cut down trees or cultivate land within a certain distance of a river or stream, there is a rule, and there is no right of appeal to any board against that rule, but if the Director or an agricultural officer gives orders under any rule it is only in respect of those orders that the right of appeal arises. So it is impossible for any of these boards to dismiss the rules as stuff and nonsense.

By paragraph 3 of this report a new clause 4 is inserted in the Bill which will empower the Governor in Council to

[Mr. Willan]

make regulations relating to advances. Sub-clause (1) of that clause reads as follows:—

> "The Governor in Council may make regulations providing for the making of advances whenever any person is required to do any act or thing under any rule made under section 3 of this Ordinance or any order issued under or by virtue of such rule which involves such person in the expenditure of money".

I am authorized by Your Excellency to state that rules which involve expenditure of money will not be promulgated under clause 3 of the Bill until the regulations are promulgated under clause 4. That does not mean that no rules will be promulgated under clause 3, because rules which involve no expenditure of money, such as the prohibition of the cutting down of trees or vegetation or cultivating within a certain distance of a river or stream, etc., can be proceeded with. Of course, it is impossible for me to say now what form these regulations will take, but I myself think that one regulation should be that the only people who will get an advance under these regulations will be those who have not sufficient money to carry out rules which involve expenditure. If a person has sufficient means I should say myself he ought to be prohibited from getting an advance.

In sub-clause (4) it is provided that these regulations shall be laid before Legislative Council, and if Council agrees and resolves that they shall be annulled or amended that can be done without prejudice to anything which may have been done under the regulations.

In new clause 5 at the bottom of page 4 of the report, we provide for the right of a lessee to compensation for certain work done. The reason why that was put in was that a man may have a lease which expires in three or four years' time. He is required by rules to spend money on improving the land to prevent soil erosion, and it is not right that he should have to bear the whole of the expenditure, so we have provided that at the termination of his lease he is entitled to claim compensation from the lessor.

MR. HARRAGIN seconded.

MR. COOKE: Your Excellency, on the second reading of this Bill my hon. friend the Member for Ukamba, in his amusing witty manner, twitted me with having made an Irish bull. As a matter of fact, I did not make an Irish bull. The hon. member had temporarily, I am sure, forgotten that two years ago a Bill was published and circulated for comment in this Colony. It was a very drastic Bill. It was dropped like a hot brick by Government owing to the clamour of certain reactionary people in this country.

Whether the hon. member will agree with me or not, I think most of the community will agree with me that a major operation has been performed in select committee, and we have received this child entirely deprived of any vitality. What I particularly criticize is the clause enabling appeals from the orders of the Director of Agriculture. I am afraid this will lead to further vacillation and further delay, and while this correspondence is going on between Government and various boards with still more delay and they are playing this game of battledore and shuttlecock millions of tons of the best soil of Kenya will be dumped in the Indian Ocean.

My noble friend the hon. Member for Rift Valley accused, and rightly accused, many of the pyrethrum growers as being get-rich-quick gentlemen, and the hon. Director of Agriculture gave us a very remarkable example of what is happening at the present moment. What a golden opportunity during this time of lag between now and the passing of the rules there will be for those gentlemen to cut down more forest and plough up more hillside!

I also rather regret that the Executive Council has been retained as the body to whom objections should be sent. I do not like to criticize such a very important Council, but it does seem to me that they have sufficient work to deal with at the present moment, and most of the members are members of every possible board. I should much prefer to have seen a board, I suggested it to the select committee, to be called the Land and Soil Preservation Board, to deal with any such objections, and I should have preferred that the board should not be composed of any members of either Executive

[Mr. Cooke]
Council or Legislative Council members, because it is a great mistake to suppose that this Council is the repository of all wisdom in this country; there must be many other people who could be made members.

But it is quite useless for me to make any protest because the Bill is going through, but there are one or two points I should like to raise.

One is, there is a feeling in this country that this Ordinance is going to become a dead letter. I have here letters from two very prominent settlers in this country in which they voice that fear, so I do hope Government will bring in these rules as quickly as possible. It applies especially, I think, to native reserves. My hon. friend the Chief Native Commissioner told us that in the native reserves standard rules have been passed, but it is not much use passing standard rules if they do not see how they are going to enforce them.

Certainly it will require a good deal of drive to enforce them.

If I may be permitted to quote a couplet from the poet Pope:—

"For forms of Government let fools contest,
Whate'er is best administered is best".

I do hope as far as the native reserves are concerned that there will be a drive in favour, and a strong drive in favour, of anti-erosion measures.

The next point is the protection from criticism of the officers who are going to carry out this very unpopular Bill. We are told it is an unpopular Bill, we are told there will be bitter resentment at the inspections which will have to be made. In most of the townships native boys inspect premises on anti-malarial work and I have never heard any strong objection expressed to those inspections. In this case, officers of Government, who are responsible people, will go around, and I should like to make it clear that I do not agree with any of the terms used that they are meddlesome or officious, or anything like that, because agricultural and forest officers carry out their work with the maximum of tact, and possibly are not severe enough on belligerent people who resent their presence.

We should really be in a state of war in this country so far as the carrying out of this measure is concerned, and that is one reason why it should be drastic, and that is one reason why I am not opposed to the principle of the Bill but am strongly opposed to the way it is proposed to carry it out, because I feel it will not get very much further in this very important work.

LADY SIDNEY FARRAR: Your Excellency, speaking in favour of the motion before Council, and also speaking as a member of the select committee, which has been castigated in the article referred to by the hon. and learned member Mr. Willan, I should like to make it perfectly plain where I stand in the matter.

I feel perfectly certain that in years to come the provisions of the Ordinance may lead to a certain amount of difficulty and controversy, although I entirely disagree with the last speaker, who said that we are almost at a state of war in this country over the introduction of this Bill. I think the good sense of the people of the country has shown itself in the almost unanimous desire to have a Bill of some kind, something of this type, introduced, and which has been asked for by the people throughout the country in the last two years. The fact that it is necessary has been faced, the fact that the need is still urgent we all know, the fact that there are backsliders among us we understand, but it does not mean there is serious opposition in the country to bringing in the Bill. I personally have had no opportunity of hearing any serious opposition whatsoever throughout the country.

The fact of the case remains that we have recently passed astonishingly drastic regulations of various kinds as war emergency measures of the same nature as the Official Secrets Ordinance yesterday, export and import regulations and all other regulations since the war, which are drastic and bureaucratic, and we have passed them without comment at all as war emergency measures. Here we are not discussing war measures but the good land we live in, and in as careful and dispassionate a manner as possible I think we ought to use every endeavour to

[Lady Sidney Farrar]
ensure not only the unanimous approval but active support of all people of every colour and creed in carrying out the regulations promulgated under the Bill. That is the thing to bear in mind the whole time.

Those of us who work on the land know perfectly well that the rules, unless they have the active support of and are really believed in by people as a whole, no matter how forcibly or drastically they are enforced by the officials, will be rendered null and void by passive resistance unless the people are with us, whether natives or Europeans. And we have to guard against that. At the same time we also, I maintain, have got to guard against reckless interference. We have said that *ad nauseam* already, and I say it again, and the first person to support me in this matter will be the Director of Agriculture. We are faced at the present moment with an urgent need, we are prepared to use the weapons we know of to face that urgent need, but I think we all realize that we are only just emerging, if we are even doing that, from a period of trial and error, and we have got to guard in every possible way against the trial being made positive without facing the possibility that there may be an error present as well.

For that reason the select committee unanimously supported, as shown in their report, the realization of the need for using all possible knowledge in the best possible way to ensure that the rules promulgated and the means taken to enforce those rules are as sound as possible. You first of all have the rules referred to local bodies for their comments and advice, and then there is the right of appeal to boards throughout the Colony against action taken under those rules, as it is realized that with the best will in the world at times valour may run away with discretion, and an enthusiastic officer of Government may enforce certain rules in a manner not really intended by Government as a whole.

MR. HOSKING: Your Excellency, I am grateful to the hon. Member for the Coast for raising the question as to the effecting of the resolutions of local native councils, for I, too, have been castigated in the Press by a gentleman deeply hidden under the name of Nauticus. I trust that no one in this Council is so misinformed or unintelligent as not to realize that a resolution of a local native council when accepted by the Governor in Council has the effect of law. The Native Authority Ordinance of 1937 has an enabling section, 23, which allows these councils to pass resolutions dealing with soil erosion, and also for communal services, and under section 25: "Every resolution passed shall be submitted to the Governor in Council together with a copy of the minutes relating thereto", and when such resolution has been approved any native affected by it "who refuses, neglects or fails to comply" with it is liable on conviction to imprisonment or a fine and in default of payment of the fine to imprisonment. My point was and is that there is no object in superseding one law by another law unless there is the weight of public opinion, and unless there is in every instance instruction and supervision behind that law.

I have not unfortunately in the time afforded me been able to get figures showing the work achieved by these resolutions or the number of convictions obtained under this section, but I can affirm that there are hundreds of miles of wash stops throughout native reserves which have been put in under the resolutions passed by local native councils. I am ready to admit there are thousands of miles of land to be improved, but I do claim that a start has been made under these resolutions. Other steps have been taken, by way of closing certain areas to grazing; in other areas we have closed areas to agriculture, and some areas have been completely rested as regards agriculture and occupation generally. Several square miles in the Suk area have been fenced around and allowed to rejuvenate by natural process, and the experiment has been successful. Some hon. members will remember the red ridge, a notorious feature of the Kisumu-Kakamega road. They will look for it to-day and will not be able to find it because it is a green ridge. That is a small example of what has been achieved under local native council resolutions which are law.

As I said before, the essential thing is that whether the law is under the Native

[Mr. Hosking]
Authority Ordinance or this new Bill, there shall be the weight of public opinion behind the law, and public conscience shall be aroused to the necessity of seeing that we elderly gentlemen do not sit around a table and make pious resolutions which we forthwith forget.

MR. LA FONTAINE (Provincial Commissioner, Central Province): Your Excellency, I should like to amplify what the hon. Chief Native Commissioner has said about the steps taken in native reserves to prevent soil erosion and what effect has been given to local native council resolutions in the Central Province of which I am at present in charge.

The work, I may explain, has taken the form of putting trash along the contours and wash stops.

In the Nyeri reserve, 2,234 acres have been planted with wash stops and 3,000 acres treated with trash; in Meru, 3,846 acres planted with wash stops, and 10,000 with trash; Fort Hall, 8,500 acres with wash stops and 15,000 with trash; Embu, 6,000 acres with wash stops and 15,000 with trash on contours; in Machakos, 21,000 acres have been dealt with by both these methods but I cannot give the exact figures of each. The total area so dealt with amounts to 85,567 acres.

I submit that these figures indicate that the natives are making an effort to deal with this question of soil erosion, and though the figures are really small in comparison with the enormous area of the native reserves they do show that something is being done.

LORD FRANCIS SCOTT: Sir, to return to the motion before Council (laughter), I should like to deal with a few of the remarks of my hon. friend the hon. Member for the Coast.

He calls it an unpopular Bill. As far as I can make out, the only people it is unpopular with is a certain band of people who apparently are great admirers of totalitarian methods of legislation, and the writer of an article in the paper this morning seemed to think that because there has been a certain amount of damage done to the country in the way of erosion and so on all rights of the individual should be taken away and he should be fined £100 or six months' imprisonment with no form of appeal whatsoever. I think that is entirely wrong. I think you must have some form of appeal. It will be noticed in the select committee report that an appeal does not go to the courts, it only goes to a body to be appointed by Your Excellency.

To begin with, I think from the point of view of the Director of Agriculture it puts him in a very difficult position if there is no appeal from what he has done, because he will then be much more likely to be too lenient than otherwise, whereas if he knows the action he has taken still has to be approved by some other body it leaves him a completely free hand. Anybody who lives on the land, as opposed to those who live in towns, and has to deal with district bodies of settlers, knows that in matters like this the ordinary settler on district councils and so on is far more severe in dealing with his fellow settlers than officials of Government are. That is definitely my experience and certainly it will be so with regard to this law. I maintain that the action we are taking now has the country behind it.

Nor do I admit that these amendments have deprived the Bill of all vitality. As it stands, the Bill is a very drastic Bill which allows very drastic action, and all that has been done is to make it fair and reasonable.

I agree with the hon. Member for the Coast that there must be no time lag. I do agree with him wholeheartedly there. We have got this Ordinance which will be passed to-day, and I trust Government will immediately get busy framing rules, and also regulations dealing with many difficulties, so that there will be no excuse for delay in carrying out what is the intention of the Bill because rules and regulations have not been promulgated. I support him very strongly there.

There is one point I want to refer to on page 2 of the report, dealing with the new sub-clause 3 (3) (a). When speaking on the second reading of the Bill, I put up the point of view that it was very important that local authorities, district councils, and so on, should be closely associated with the carrying out of the intentions of the Ordinance. I rather hoped they might actually be mentioned in the Bill.

[Lord Francis Scott]
That, however, was not agreed to, but I was informed that the word "person" in line 4 of the sub-clause does include any body of persons, and therefore would include district councils. Therefore, the Director of Agriculture if he so wishes will be able to get district councils or sub-committees of those councils to assist him in seeing that the rules under the Ordinance are properly carried out.

I personally have great confidence that the Director of Agriculture will be very wise and sensible in the operation of this, and will get the people of the country with him. I know that that is his intention, and I am quite sure he will succeed. I do say definitely, from my knowledge after living among the farmers in this Colony, that if they can be got to work with the Director, which I am sure will happen in practice, the results of the Bill which we are discussing now will be far more effective than if we have the alternative method of introducing a totalitarian measure which might have got the backs up of a great many people and therefore cause opposition to the act.

I beg to support the motion.

MR. BLUNT: Your Excellency, I should like first to express my thanks to the noble lord, the hon. Member for Rift Valley, for his remarks regarding the support likely to be forthcoming in any action which I may have to take in getting the rules under the Bill carried out. It has been my feeling, from discussions I have had with people in the country, that I should receive that support he has promised.

I should like to refer to one remark made by the hon. Member for the Coast, in which he suggested that this Bill was being deprived by the report of the select committee of its vitality. I suggest to him that that is really not so at all. The select committee has proposed two amendments which actually call for things to be done which were not demanded in the original Bill. They enable rules to be made for afforestation or reafforestation, and for repairs to gullies. Moreover, the clause which enabled regulations to be made for the purpose of making advances open up possibilities which were absent in the original Bill.

For example, one may take the case of a farmer who has badly eroded land, who has been unsuccessful in his farming operations; he is to all intents and purposes broke. Under the terms of the Bill as it stood it might have been possible under a rule made under the Bill to call on him to carry out certain works, which he could not possibly have done because he had no money to do them with, and the rule would have become a dead letter as far as that individual is concerned. I suggest, therefore, that if provision is made as is envisaged in clauses 3 and 4 it enlarges the scope of the rules to deal with cases that could not possibly have been otherwise dealt with.

MR. WILLAN: Your Excellency, there are only two points with which I need deal, and both were raised by the hon. Member for the Coast.

He criticises the appeal clauses because he said they will lead to delay on account of correspondence between the boards and Government. I fail to see what correspondence can come about between boards and Government, because all that happens will be that a landowner, if he receives an order from the Director or an agricultural officer which he thinks unreasonable, straightway appeals to one of the boards.

His second point was a criticism of clause 3 (3) (c), under which the Governor in Council is the body to consider objections, and the evidence supporting them, to the rules. As the Governor in Council in (1) are the rule-making body, I fail to see how those objections will go to any other body.

The question was put and carried.

CATTLE CLEANSING (AMENDMENT) BILL

SECOND READING

MR. DAUBNEY (Director of Veterinary Services): Your Excellency, I beg to move that the Cattle Cleansing (Amendment) Bill be read a second time.

Hon. members will be aware that the Cattle Cleansing Ordinance of 1929 was brought into operation in April, 1937, and the amendments now put forward are based upon the experience gained in nearly three years' working of the principal Ordinance.

[*Mr. Daubney*]

The only changes of any consequence in the amending Bill now before you are those that relate to the statutory meeting that must be held whenever a district elects to come under the provisions of the Ordinance. As prescribed in the principal Ordinance, the statutory meeting was a meeting of landowners and cattle owners in a district which was convened by the serving of written notices either by hand or by registered post, and at the meeting all landowners and cattle owners were entitled to vote, and any absentee landowner or cattle owner who failed to express himself in writing as opposed to the application of the measure was assumed to be in favour of it and his vote was so recorded.

The first proclamation under the Ordinance was carried through quite successfully, but when farmers in a second district expressed a desire to come under the Ordinance difficulties arose in connexion with the procedure to be followed at the statutory meeting. Questions were raised as to whether one individual had one vote as a cattle owner and another as a landowner, whether the owner of two or three farms had two or three votes instead of one vote, whether a partnership of cattle owners had one or more votes, whether the children of a family of a cattle owner were entitled to vote in respect of any cattle they might own, and even whether resident labourers who possessed cattle were not entitled to vote at a statutory meeting. Most of the difficulties were settled by agreement in that particular case. The statutory meeting was duly held, with the result that the district elected to come under the provisions of the Ordinance, but the whole of the proceedings were nullified when it was found a little later that one or two cattle owners had not received notice of the meeting.

The amending Ordinance is designed to eliminate those difficulties, and the objective is attained by limiting the voting power at statutory meetings to landowners or lessees of land of not less than fifty acres in extent, by altering the method of convening the meeting to the publication of a notice in the Gazette and newspapers circulating in the district, and by leaving entirely out of consideration any assumed votes from absentee landowners who are unable to attend the meeting or who are not sufficiently interested in the Ordinance to register a vote.

Turning to the Bill itself, clause 2 (*a*) amends the definition of landowner by extending it to cover a lessee occupying land of not less than fifty acres in extent. This will cover all cattle owners who can reasonably be expected to be accorded a vote at a statutory meeting but will exclude from voting owners of purely residential or urban plots of land.

Clause 2 (*b*) amends the definition of tick infestation in the corresponding section of the principal Ordinance. Under the latter infestation with bont-legged ticks, *Hyalomma ægyptium*, was excluded from the definition. That exclusion is now withdrawn because members of the genus *Hyalomma* have been found in experimental work at Kabete to be capable of transmitting East Coast fever.

Clause 3 refers to the procedure at a statutory meeting and makes amendments in the sense I have just explained. Cattle-owners are excluded from participation in the meeting, and the procedure with regard to the convening of the meeting is altered to the publication of a notice in two consecutive issues of the Gazette and in two issues of a newspaper circulating in the district seven days apart and not more than thirty and not less than fourteen days before the meeting shall be regarded as sufficient notice. It will be realized that under the old procedure it was impossible to be perfectly certain that every cattle and landowner had received a written notice by registered post. That was the particular proviso which got us into trouble on the last occasion.

Clause 3 (*c*) (i) deals with the method of recording votes, and as I stated under (*c*) (ii) provision is made for recording votes in writing but there is no provision for an assumed vote. Clause (*c*) (iii) limits a landowner to one vote and gets over the difficulty of plurality of voting. As already pointed out, it does away with any assumed vote on the part of an absentee landowner.

The remaining provisions of clause 3, including the one requiring a two-thirds majority for the acceptance of the Ordinance, will stand.

The next amendment is to section 3 (*f*) (i). In the original Ordinance it is pro-

[*Mr. Daubney*]

vided that a group of adjoining landowners not less than fifteen in number can apply to be brought under the provisions of the Ordinance. The amendment deletes the reference to the number fifteen, and states that the Senior Commissioner may forward an application from such a group of landowners after having received from the Chief Veterinary Officer a written statement that in his opinion the area is one which may with advantage be brought under the provisions of the Ordinance. This, as well as the original section, is designed to make provision for a group of farmers residing in a dirty area who may wish to regularize and intensify their tick destruction measures and bring them under official supervision, and the changes made in the amending Ordinance are changes approved by the Board of Agriculture as long ago as 1936, after very careful examination of suggestions put forward by farmers' associations.

Clause 4 makes certain alterations with reference to the manner in which a register shall be kept. Under the wording of the original Ordinance there was some doubt as to whether, under section 9 (*c*), I was not entitled to order the cleansing of the cattle owner as well as the cattle, and in spite of assurances that I could be relied on to use that power with discretion it has been taken away from me!

The only other amendment to which I would refer is in clause 6, which alters the date by which a dip must have been constructed to bring it under the provisions for the receipt of an advance, the date being altered to the date on which the Ordinance was brought into force, that is, April, 1937.

This measure is not a controversial one, and it is merely an attempt to rectify imperfections in the principal Ordinance. Its passing will enable my department to carry out its work more efficiently, and will also enable at least three districts that are desirous of exercising their option to come under the provisions of the Ordinance to make the necessary application.

MR. HARRAGIN seconded.

COL. KIRKWOOD: Your Excellency, I rise to support the measure, and I should like to congratulate the hon. Director of Veterinary Services on bringing it before Council.

We have had a good deal of difficulty, as everybody realizes, in implementing the original Ordinance, for various reasons which he has explained. This measure will simplify the procedure of taking votes and allowing progressive farmers who wish to turn over to mixed farming to get on with their ideas. It will, I think, intensify the progress of mixed farming, which also means dairying, erection of dips, in many cases fencing, and declared cleansing areas in an endeavour to clean the Colony as a whole in time.

There is one paragraph that I am not satisfied with, the two-thirds majority at meetings, and I propose to move an amendment in committee to the following effect: that in clause 3 (*d*) the words "two-thirds of the landowners and cattle owners" be deleted and the words "the landowners" be substituted.

I again wish to thank Government for introducing this measure, and hope when it comes to the appropriate stage my amendment will be agreed to.

LORD FRANCIS SCOTT: Your Excellency, I rise to support the motion. My particular part of the country which I represent has been frustrated on two occasions from coming under the Ordinance by technicalities taken advantage of by one or two people, so I welcome this as I hope it will enable the district now to come under the Ordinance.

There is one point to which I should like an answer. Formerly, anybody who did not vote was considered to be in favour, and it was by a two-thirds of the total number of landowners and cattle owners. That has been altered and whether it is two-thirds in the Bill or a bare majority as proposed by the hon. Member for Trans Nzoia, of which I am in favour, whichever it is, is it two-thirds or a majority of those registered or of those who voted?

MR. DAUBNEY: Your Excellency, I have your permission to say that Government will accept the amendment which is to be put forward by the hon. Member for Trans Nzoia.

With regard to the question asked by the noble lord the hon. Member for Rift

[Mr. Daubney]

The only changes of any consequence in the amending Bill now before you are those that relate to the statutory meeting that must be held whenever a district elects to come under the provisions of the Ordinance. As prescribed in the principal Ordinance, the statutory meeting was a meeting of landowners and cattle owners in a district which was convened by the serving of written notices either by hand or by registered post, and at the meeting all landowners and cattle owners were entitled to vote, and any absentee landowner or cattle owner who failed to express himself in writing as opposed to the application of the measure was assumed to be in favour of it and his vote was so recorded.

The first proclamation under the Ordinance was carried through quite successfully, but when farmers in a second district expressed a desire to come under the Ordinance difficulties arose in connexion with the procedure to be followed at the statutory meeting. Questions were raised as to whether one individual had one vote as a cattle owner and another as a landowner, whether the owner of two or three farms had two or three votes instead of one vote, whether a partnership of cattle owners had one or more votes, whether the children of a family of a cattle owner were entitled to vote in respect of any cattle they might own, and even whether resident labourers who possessed cattle were not entitled to vote at a statutory meeting. Most of the difficulties were settled by agreement in that particular case. The statutory meeting was duly held, with the result that the district elected to come under the provisions of the Ordinance, but the whole of the proceedings were nullified when it was found a little later that one or two cattle owners had not received notice of the meeting.

The amending Ordinance is designed to eliminate those difficulties, and the objective is attained by limiting the voting power at statutory meetings to landowners or lessees of land of not less than fifty acres in extent, by altering the method of convening the meeting to the publication of a notice in the Gazette and newspapers circulating in the district, and by leaving entirely out of consideration any assumed votes from absentee landowners who are unable to attend the meeting or who are not sufficiently interested in the Ordinance to register a vote.

Turning to the Bill itself, clause 2 (*a*) amends the definition of landowner by extending it to cover a lessee occupying land of not less than fifty acres in extent. This will cover all cattle owners who can reasonably be expected to be accorded a vote at a statutory meeting but will exclude from voting owners of purely residential or urban plots of land.

Clause 2 (*b*) amends the definition of tick infestation in the corresponding section of the principal Ordinance. Under the latter infestation with bont-legged ticks, *Hyalomma ægyptium*, was excluded from the definition. That exclusion is now withdrawn because members of the genus *Hyalomma* have been found in experimental work at Kabete to be capable of transmitting East Coast fever.

Clause 3 refers to the procedure at a statutory meeting and makes amendments in the sense I have just explained. Cattle-owners are excluded from participation in the meeting, and the procedure with regard to the convening of the meeting is altered to the publication of a notice in two consecutive issues of the Gazette and in two issues of a newspaper circulating in the district seven days apart and not more than thirty and not less than fourteen days before the meeting shall be regarded as sufficient notice. It will be realized that under the old procedure it was impossible to be perfectly certain that every cattle and landowner had received a written notice by registered post. That was the particular proviso which got us into trouble on the last occasion.

Clause 3 (*c*) (i) deals with the method of recording votes, and as I stated under (*c*) (ii) provision is made for recording votes in writing but there is no provision for an assumed vote. Clause (*c*) (iii) limits a landowner to one vote and gets over the difficulty of plurality of voting. As already pointed out, it does away with any assumed vote on the part of an absentee landowner.

The remaining provisions of clause 3, including the one requiring a two-thirds majority for the acceptance of the Ordinance, will stand.

The next amendment is to section 3 (*f*) (i). In the original Ordinance it is provided that a group of adjoining landowners not less than fifteen in number can apply to be brought under the provisions of the Ordinance. The amendment deletes the reference to the number fifteen, and states that the Senior Commissioner may forward an application from such a group of landowners after having received from the Chief Veterinary Officer a written statement that in his opinion the area is one which may with advantage be brought under the provisions of the Ordinance. This, as well as the original section, is designed to make provision for a group of farmers residing in a dirty area who may wish to regularize and intensify their tick destruction measures and bring them under official supervision, and the changes made in the amending Ordinance are changes approved by the Board of Agriculture as long ago as 1936, after very careful examination of suggestions put forward by farmers' associations.

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LORD FRANCIS SCOTT: Your Excellency, I rise to support the motion. My particular part of the country which I represent has been frustrated on two occasions from coming under the Ordinance by technicalities taken advantage of by one or two people, so I welcome this as I hope it will enable the district now to come under the Ordinance.

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MR. DAUBNEY: Your Excellency, I have your permission to say that Government will accept the amendment which is to be put forward by the hon. Member for Trans Nzoia.

With regard to the question asked by the noble lord the hon. Member for Rift

[Mr. Daubney]

Valley, under the amending Bill, the majority, whether two-thirds or a bare majority, is the majority of the votes actually recorded at the meeting, either by the people who attend the meeting or by people who send their votes in writing to the chairman of the meeting. No account is now taken of absentee landowners who, under the principal Ordinance, were assumed to have voted in favour if they did not register any vote at all. The main reason for that change is that we now shall not send out notices to individuals in the district, the method of convening a meeting being by publication of notices, and the procedure will naturally be that the chairman will have a list of landowners entitled to vote which he has compiled from Government records before the meeting, and he will scrutinize the people who do vote. But there can be no question of bringing in votes of people who do not attend a meeting.

The question was put and carried.

MR. HARRAGIN moved that Council resolve itself into committee of the whole Council to consider clause by clause the Cattle Cleansing (Amendment) Bill.

MR. WILLAN seconded.

The question was put and carried.

Council went into Committee.

His Excellency moved into the chair.

The Bill was considered clause by clause.

Clause 3.

COL. KIRKWOOD moved that clause 3 be amended by deleting paragraph (*d*) therefrom and substituting therefor the following paragraph: "(*d*) by deleting from paragraph (*d*) the words 'two-thirds of the landowners and cattle owners which occur in the first and second lines thereof and by substituting therefor the words 'the landowners' ".

The question was put and carried.

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

MR. HARRAGIN moved that the Bill be reported with amendment.

The question was put and carried.

Council resumed its sitting.

His Excellency reported the Bill accordingly.

BILLS

THIRD READINGS

MR. HARRAGIN moved that the following Bills be read the third time and passed:—

The Income Tax Bill.
The Increase of Rent and of Mortgage (Restrictions) Bill.
The Land and Water Preservation Bill.
The Cattle Cleansing (Amendment) Bill.

MR. WILLAN seconded.

The question was put and carried.

The Bills were each read the third time and passed.

ADJOURNMENT

Council adjourned *sine die*.

Written Answers to Questions

1939

No. 50—KENYA DEFENCE FORCE ROLE

BY COL. MODERA:

Will Government state definitely what is the role of the Kenya Defence Force and what are to be the functions of the Force during the war?

Reply:

The primary role of the Kenya Defence Force is to assist the Civil Authority in the maintenance of internal security and, in the event of internal strife, it is chiefly concerned with—

(*a*) the defence of European women and children by collecting them in suitable places that can be defended by a few rifles;

(*b*) the protection of vital points for which purpose Government has compulsory powers to call out such men as are necessary.

In addition, in wartime or in case of emergency, members of the Kenya Defence Force are liable to be called up for special duties in aid of or in connexion with the defence of the Colony.

1940

No. 1—SOIL EROSION REPORTS

BY MR. COOKE:

Is it the intention of Government to publish the reports of Mr. C. Maher on soil erosion in the reserves and, if not, why not?

Reply:

It was not considered necessary to print copies of the reports made in 1939 by Mr. Maher on soil erosion in several

reserves, but a number of copies were roneod for the use of Government departments and officers in those particular reserves. If the hon. Member for the Coast or any other person wishes to see any of these reports, copies will be lent to them.

No. 4—CLAIMS AGAINST ENEMY ALIENS

BY MR. NICOL:

1. Will Government inform Council when the Custodian of Enemy Property proposes to pay approved claims against enemy aliens?

2. Will Government explain the reason for the delay to date?

Reply:

1. With regard to the first part of the question, this Government is communicating with the Secretary of State regarding the payment by the Custodian of Enemy Property of approved claims made against enemy subjects.

2. With regard to the second part of the question, the answer given to the first part explains the reason for any delay which may have arisen.

No. 7—MILITARY FOODSTUFFS TENDERS

BY MR. ISHER DASS:

(*a*) Will Government please state if tenders for foodstuffs for the military for three months ending 31st March, 1940, were called by the Central Tender Board?

(*b*) What was the composition of the Tender Board which considered such tenders?

(*c*) Is it a fact that certain firms and individuals were allowed to tender after the expiry of the time fixed for submission of tenders?

(*d*) Is it a usual practice with the Tender Board to allow individuals or firms to submit tenders as a mark of favouritism?

(*e*) Were all the successful and unsuccessful tenderers intimated as to the acceptance or rejection of their tenders?

Reply:

(*a*) The answer is in the affirmative.

(*b*) The tenders in question were not considered by the Central Tender Board but were transmitted to the military authorities.

(*c*) Several late tenders were received by the Central Tender Board and forwarded to the military authorities. The Government is informed that these tenders were not considered.

(*d*) The answer to this part of the question is emphatically in the negative.

(*e*) The Government is informed that the answer to this part of the question is in the affirmative.

No. 12—REGISTRATION OF DOMESTIC SERVANTS ORDINANCE, 1929

BY EARL OF ERROLL:

Will Government please state when the Domestic Servants Registration Ordinance committee's report is to be expected?

Reply:

It is understood that the report of the committee appointed to consider the working of the Registration of Domestic Servants Ordinance is now in draft, and that it will be submitted to Government at an early date.

No. 14—LAND BANK LOANS

BY MR. SHAMSUD-DEEN:

1. Will Government please state:—

(*a*) If it is a fact that a sum of £2,500 was advanced by the Land Bank to the owner of the Wall Harbor Estates at Kilifi?

(*b*) If the borrower was a German subject who has now left Kenya?

(*c*) If the borrower was an insolvent just prior to the raising of the loan?

(*d*) If the Custodian of Enemy Property realized the crops on the Wall Harbor Estates for 1940?

(*e*) What is the value of the Estate to-day?

(*f*) If it is true that the Land Bank have been offered Sh. 2,000 for mortgage?

(*g*) What is the amount of the estimated loss in such an event and if this Hon. Council shall be called upon to vote a sum to make up the deficit?

2. Will Government please state the total amount advanced up to date by the Land Bank to—

(1) European British subjects in the Colony;
(2) Indian British subjects;
(3) Foreign subjects—(*a*) German, (*b*) others;
(4) The total amount which has been written off up to date as unrecoverable by the Land Bank;
(5) The amount which is considered to be a bad debt by the Land Bank and which the Government may be asked to write off in the near future?

Reply:

1. It is considered that the publication of details of individual transactions with the Land Bank would be contrary to the public interest. It can, however, be said that in 1934 an advance of an amount less than that mentioned in the question was made to a German subject on the security of land at Kilifi. The management of the estate is now in the hands of the Custodian of Enemy Property, and the Land Bank does not at present anticipate any loss in connexion with this advance since all instalments due have been paid up to date.

2. It is regretted that an accurate reply to the first three parts of this question cannot be given without a special investigation for which additional financial provision would be required. An approximate estimate of the amounts advanced on mortgages, excluding short term loans, is—

(1) European British subjects £852,300
(2) Indian British subjects 5,800
(3) Foreign subjects:
  (*a*) Germans 9,400
  (*b*) Others 24,700
(4) The total amount which has been written off up to date as irrecoverable by the Land Bank is £3,990.
(5) It is not expected that the Government will be asked by the Land Bank to write off in the near future any portion of the loan funds re-lent by the Government to the Bank.

No. 15—Voi Drift

BY MR. NICOL:

(1) Are effective steps being taken to prevent gully erosion on those portions of old roads which have been abandoned when re-alignment has taken place?

(2) Is Government aware of the inconvenience and danger caused to the public by the present state of the Voi drift? And which, if any, of the following alternatives do they propose to adopt:—

(*a*) Build a bridge at a suitable site?
(*b*) Take over the present railway bridge when the proposed realignment of the railway takes place?
(*c*) Build a low level bridge at the present site? It may be mentioned that this alternative would not commend itself to the public.

Reply:

(1) Steps are taken by the utilization of road maintenance funds to deal with erosion on abandoned roads when the Public Works Department is informed that erosion is taking place. In many cases no erosion occurs, while in other cases funds available are not sufficient to deal with the problem adequately. The Public Works Department is keeping in close touch with the Agricultural Department and district officers in respect of soil erosion due to run-off of storm water not only on abandoned roads or tracks but on existing roads. It is possible that special funds may have to be provided to deal adequately with the problem.

(2) Government is aware of the inconvenience to the public, but not of any danger if the travelling public carefully peruse the notices on either side of the drift pointing out the danger of use when the water on the gauge posts has risen above a particular level, and also if they make use of the facilities that are provided at the drift where a small gang is stationed to manipulate winches and wire ropes to assist any vehicles across that are hindered by an excess of silt.

With regard to (*a*), provision was included in the Director of Public Works draft estimates under Public Works Extraordinary for a bridge, but, owing to financial stringency, this item, together with many other items of extraordinary expenditure, was deleted by the Government.

(*b*) It is the intention to take over the present railway bridge when the railway is realigned in view of the fact that the waterway is insufficient, causing the embankment to be washed away.

(*c*) The decision to build a high or a low level bridge must depend on the amount of funds that the Colony can afford to provide, coupled with the traffic that the bridge is called upon to carry. It is possible that no more than a low level bridge that would be out of action only for short periods during exceptionally heavy rain storms could be justified, and the provision mentioned under (*a*) did in fact provide only for such a bridge.

ADDENDUM

Omitted from 2nd April, 1940, Column 147, after Question No. 6

No. 13—Telephone Complaints

MR. ISHER DASS asked:—

1. Will the hon. Postmaster General inform Council if the subscriber of telephone 3312 in Nairobi area reported on or about the 5th of March, 1940, as to his telephone being out of order?

2. That reminders were sent subsequently?

3. That no action was taken for 16 days, until the 21st March, 1940, the day on which the necessary repairs were carried out?

4. What were the reasons for this deliberate delay?

5. Is the hon. Postmaster General aware of the fact that during these 16 days the subscriber and his family suffered great hardship and inconvenience on account of serious illness for the want of a telephone?

6. Will the hon. Postmaster General inform Council the reason for this regrettable state of affairs in the Telegraph Department, and what action, if any, has been taken against those responsible, or intends to take?

7. Will the hon. Postmaster General give assurance to the Council that there will be no unnecessary delay in future to carry out the necessary repairs immediately on receipt of the complaints?

MR. HEBDEN: 1. A letter was received on 6-3-40 from the subscriber of telephone 3312 in Nairobi stating that his telephone was generally out of order because lorries carrying charcoal continually broke the wires across the street. The circuit was inspected on the following day and was then in order. There was only one joint in the wire, so that it could not have been continually broken, and moreover it was at its lowest point two feet higher than the legally permitted loading of charcoal lorries.

2. One reminder was received on 18th March.

3. Action was taken on the 7th and 19th of March, the days following the receipt of the only two complaints.

4. There was no delay, deliberate or otherwise.

5. The answer to this part of the question is in the negative.

6. No regrettable state of affairs has been shown to exist, so that no action such as that suggested would be justified.

7. The assurance desired is readily given, as it represents the studied policy of the Department.

Index to the Legislative Council Debates

OFFICIAL REPORT

SECOND SERIES — **VOLUME IX**

First Session, 1940: 18th March to 3rd April

EXPLANATION OF ABBREVIATIONS

Bills: 1R, 2R, 3R=Read First, Second or Third time; Com.=In Committee; SC.=Referred to Select Committee; SCR.=Select Committee Report; Re.Cl.=Recommitted to Council.

KENYA NATIONAL ARCHIVES

PHOTOGRAPHIC SERVICE

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