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LEGISLATIVE ASSEMBLY.

Saturday, 20th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to inform the House of the unavoidable absence of Mr. President at to-day's meeting.

Mr. Deputy President then took the Chair.

QUESTIONS AND ANSWERS.

Appointments to Council of India.

195. ***Mr. K. C. Neogy:** (*a*) With reference to the observation of the Joint Select Committee on the Government of India Bill, 1919, while recommending the reduction of the period of service for Members of the Council of India to five years that it would " ensure a continuous flow of fresh experience " from India, will Government be pleased to obtain from the Secretary of State a statement as to whether this consideration has been kept in mind in making appointments to the Council of India?

(*b*) What are the respective dates of retirement from service in India of the Members of the said Council who are retired officials from India?

(*c*) In the case of members re-appointed to the Council of India after their first term, will Government be pleased to obtain from the Secretary of State, and publish a copy of the minute setting forth the reasons for the re-appointment, which the Secretary of State is required to lay before the Parliament in such cases under clause (5) of section 3 of the Government of India Act, 1919?

The Honourable Sir Malcolm Hailey: Appointments to the Council of India are made entirely at the discretion of the Secretary of State. The Government of India will however forward the question to the Secretary of State.

Mr. T. V. Seshagiri Aiyar: May I ask a question of the Honourable Member? Are the Government of India ever consulted upon these appointments and as to the qualifications of the person to be appointed?

The Honourable Sir Malcolm Hailey: The Government of India are not consulted on these points.

Mr. K. Ahmed: Will the Government of India be pleased to recommend the appointment of more members?

Union of Oriya-speaking Tracts.

196. ***Mr. B. N. Misra:** (1) With reference to the assurance given by the Honourable the Home Member on the Resolution dated 20th February

1920 brought by the Honourable S. Sinha and with reference to the reply given to my question last year will the Government be pleased to state if the reports of the several Local Governments have been received by them regarding the union of all the Oriya-speaking areas now under the Provincial Governments of Madras, Central Provinces, Bengal and Bihar and Orissa?

(2) If so will the Government be pleased to state the steps taken by them to effect the union of the said areas under one administration?

(3) If no steps have already been taken do the Government propose to take early steps for the said purpose?

(4) Is the Government aware of the Resolution of the Council of Bihar and Orissa recommending the union of the Oriya-speaking areas under one Administration?

The Honourable Sir Malcolm Hailey: (1), (2) and (3). Government have received the replies from local Governments referred to by the Honourable Member and the question is under consideration.

(4) Government have seen the resolution passed by the Bihar and Orissa Legislative Council referred to by the Honourable Member.

RESOLUTIONS PASSED BY THE NATIONAL LIBERAL FEDERATION.

197. ***Dr. H. S. Gour:** (*a*) Has the attention of Government been drawn to the Resolution of the National Liberal Federation passed at its last annual Conference at Nagpur?

(*b*) If so, is it aware that the Conference of that body have advised Government to accelerate the pace for the attainment of complete Self-Government by the immediate introduction of full responsible Government in the Provinces, and responsibility in the Central Government in all departments except the Military, Political and Foreign?

The Honourable Sir Malcolm Hailey: (*a*) and (*b*). Yes.

RECOMMENDATIONS OF THE MILITARY REQUIREMENTS COMMITTEE.

198. ***Dr. H. S. Gour:** Is the Government aware that the National Liberal Federation demand the Indianization of the Army and the introduction of other improvements and economies recommended by the Military Requirements Committee?

Mr. E. Burdon: The Honourable Member is presumably referring to the resolution reported as having been moved by Mr. B. S. Kamat, M.L.A., at a meeting of the National Liberal Federation held on the 28th December. This, the Government of India have seen.

OPPOSITION OF NATIONAL LIBERAL FEDERATION TO ROYAL COMMISSION ON THE PUBLIC SERVICES.

199. ***Dr. H. S. Gour:** (*a*) Is the Government aware that the National Liberal Federation have passed a Resolution strongly opposing the proposal to appoint a Commission to inquire into the alleged financial and other grievances of the Imperial services and to make further enhancements of their pay and allowances?

(*b*) If so, what action does Government propose to take thereon?

(*c*) Is it a fact as announced by Reuter in his wire from London on the 3rd instant that Lord Peel had already decided to appoint a Royal

Commission; and was consulting the Government of India respecting its details?

(*d*) Was this Commission appointed after previous consultation with and with the previous concurrence of the Government of India?

(*e*) Will the Government be pleased to lay on the table for information of the Honourable Members all the correspondence between the Secretary of State and the Government of India on the subject?

(*f*) What are the terms of Reference to this Commission. What is its personnel?

The Honourable Sir Malcolm Hailey: The Honourable Member has no doubt seen the official communiqué which appeared in regard to the press announcements on the subject. For the present, Government is not prepared to make any further statement.

O'DONNELL CIRCULAR.

200. ***Dr. H. S. Gour:** (*a*) Has the Government received the replies of the Local Governments on the O'Donnell Circular?

(*b*) If so, will it lay them on the table for the information of members?

(*c*) Is it a fact that His Excellency the Viceroy is reported to have assured the European Association in Calcutta, that there was no truth in the rumour that his Government was opposed to restricted recruitment of Europeans in England for public services in India?

The Honourable Sir Malcolm Hailey: (*a*) All replies have not yet been received.

(*b*) Government do not at present intend to lay the correspondence on the table.

(*c*) None of the reports of His Excellency the Viceroy's speech which have come to the notice of the Government of India are to this effect. His Excellency's remarks merely contradicted, in general terms, the alleged opposition of the Government of India to recruitment in England for the Civil Service in India.

LOCOMOTIVES FOR INDIAN RAILWAYS.

201. ***Dr. H. S. Gour:** (*a*) Is it a fact that orders for 131 locomotives for use of the Railways in India have been placed in Great Britain?

(*b*) What is their aggregate value? Is it £750,000 at £7,000 apiece as stated in the *Financial News*?

(*c*) Were the requirements advertised, and tenders called for from all countries including Germany, Belgium, France and America?

(*d*) If so, will the Government please quote the lowest rate and the rate finally accepted?

Mr. C. D. M. Hindley: In the absence of particulars as to the period covered in paragraph (*a*) of the question it is regretted that the information asked for cannot be furnished.

APPOINTMENT OF 30 NEW I. M. S. OFFICERS.

202. ***Mr. J. N. Basu:** (*a*) Will the Government be pleased to state the total cost of the travelling expenses and their pay of the 30 new Indian Medical Service Officers appointed by the Secretary of State?

(*b*) Whether the amounts will be borne by the Indian or British Exchequer?

(*c*) Whether the Secretary of State consulted the Government of India beforehand and did the Government of India consent to such appointment?

(*d*) Whether equally qualified medical men were not obtainable in India?

(*e*) If not, what were their exceptional qualifications?

(*f*) In what provinces and how many of such officers will be stationed?

Mr. E. Burdon: (*a*) to (*e*) The attention of the Honourable Member is invited to the reply recently given to starred question No. 81 asked in this Assembly by Rai Bahadur Bakshi Sohan Lal.

(*f*) All the officers in question will in the first instance be employed on the military side.

MILITARY AND AMBULANCE CARS ON THE GREAT INDIAN PENINSULA RAILWAY.

208. ***Mr. N. M. Joshi:** (*a*) What is the number of military or ambulance cars on the Great Indian Peninsula Railway built or converted from other coaching stock?

(*b*) Is it a fact that these are reserved entirely for military traffic and are not used for ordinary traffic even when they are lying idle?

(*c*) If so, what charge is made to the Military Department when the stock is not in actual use?

Mr. E. Burdon: (*a*) During the cold weather 40 military cars are held at the disposal of the military authorities by the Great Indian Peninsula Railway. This number is reduced to 19 during the hot weather.

The number of ambulance cars provided by the Great Indian Peninsula Railway is 9.

Government are unable to say whether these cars have been built specially or have been converted from other coaching stock.

(*b*) According to the agreement, the cars are reserved entirely for military traffic when they are held at the disposal of the military authorities.

(*c*) In the case of military cars, Rs. 12 per day is paid for each car whether it is in use or not. The charge for the hire of the ambulance cars is still under consideration.

SALE OF UNCLAIMED COAL.

204. ***Mr. N. M. Joshi:** Is it a fact that about 20 wagon loads of unclaimed coal was recently sold by auction at Kalyan and if so:

(*a*) What was the freight charge leviable but unrecovered on the consignment?

(*b*) What was the amount actually realised by auction?

(*c*) Was the coal not fit to be retained for railway purposes?

Mr. C. D. M. Hindley: Government have no knowledge of the facts referred to. They think that the Agent can be trusted to have adopted the most suitable course in a matter of this kind.

FIRST, SECOND AND THIRD CLASS CARRIAGES ON RAILWAYS.

205. *Mr. N. M. Joshi: With reference to columns 66 and 67 of Appendix 13 to the Railway Administration Report for 1919-20, is it a fact that the stock of 1st and 2nd class carriages is unduly in excess of the requirements of the traffic carried or offering, whether relatively to the 3rd class carriages or absolutely, and if so, do Government propose to transfer the provision in the quinquennial programme for 1st and 2nd class carriages to that for 3rd class carriages.

Mr. C. D. M. Hindley: The items in the Administration Report for 1919-20 referred to have been omitted from subsequent reports because it was found that they were valueless as a practical guide to the facts of the position. As an illustration the Honourable Member will notice that the average load of 3rd class stock is considerably below the full capacity from which it might be argued that no overcrowding exists. Such figures cannot, therefore, be taken as a reliable guide in respect to provision necessary. Requirements in respect to stock on each railway are in fact governed by the actual necessities of the train services which are arranged to suit public convenience as far as possible. The requirements cannot be gauged from a study of general averages. Reports received from railway administrations do not support the idea that the supply of 1st and 2nd class carriages is in excess of requirements. The relative necessity for provision of stock of the various classes in the programme is being given very careful consideration and Government do not consider that the provision made for the first two classes is in excess of what the circumstances of traffic require.

Mr. N. M. Joshi: Will Government be pleased to put in somewhere in the report what are the actual requirements of the first and second class carriages and what are the third. If the figures given in the Report do not show the actual requirements I think it is due to the public that they should show what the actual requirements are.

Mr. C. D. M. Hindley: The figures referred to in this question are averages and not, as the Honourable Member seems to indicate, requirements at all. They are average figures and they are statistics. In regard to the request made that the requirements should be shown I think it is extremely difficult to make any promise with regard to that because the matter is a very complicated one depending on the time tables of all the different railways all over India and it is very difficult to lump the whole thing together and say that so many carriages are required. However the suggestion will be considered.

CAPITAL GRANT SPENT IN ENGLAND.

206. *Mr. N. M. Joshi: With reference to the answer given on 6th September 1922 to starred question No. 20, will Government kindly state why loss by exchange cannot properly be taken as expenditure in England?

The Honourable Sir Basil Blackett: The so-called losses by exchange represent the additional rupees required to meet the sterling expenditure of the Government of India as compared with the number of rupees which would be required at the standard rate of 2 shillings adopted in the accounts. They involve not an additional amount of sterling expenditure but the finding of a larger number of rupees to meet a given outgoing in sterling,

and are therefore correctly classed as rupee expenditure. Indeed they could not be brought to account in sterling at all.

PRINTING PRESSES ON RAILWAYS.

207. *Mr. N. M. Joshi: Will Government kindly state whether the Eastern Bengal, the East Indian the Bengal Nagpur, the Great Indian Peninsula and the Bombay, Baroda and Central India Railways have each a separate printing press where they get their printing done, or there are two combined presses, one at Calcutta for the Calcutta railways, and one at Bombay for the Bombay railways?

Mr. C. D. M. Hindley: The Eastern Bengal Railway, the East Indian Railway and the Great Indian Peninsula Railway each have their own Press. The Bengal Nagpur Railway and the Bombay, Baroda and Central India Railway get their printing done by private firms.

DEPRECIATION FUND ON THE GREAT INDIAN PENINSULA RAILWAY.

208. *Mr. N. M. Joshi: Will Government kindly state whether the Great Indian Peninsula Railway Company, during the period of its existence as a guaranteed railway Company was under its contract or otherwise, required to, and did, maintain out of revenue a depreciation fund and if so, how were the monies in that fund utilised when the line was purchased by the State?

Mr. C. D. M. Hindley: The Great Indian Peninsula Railway Company was not under the terms of its contract required to maintain out of revenue a depreciation fund but did as a matter of fact establish a reserve fund from 1868 to 1875 when that fund was closed.

The fund had disappeared long before the line was purchased by Government.

Mr. K. Ahmed: How were those monies in the depreciation fund utilized?

Mr. C. D. M. Hindley: I am not in a position to give a detailed answer to a question like that relating to a period between 1868 and 1875.

INTEREST ON UNPRODUCTIVE CAPITAL COST OF RAILWAYS.

209. *Mr. N. M. Joshi: Will Government kindly state whether any credit is received on account of interest on that portion of the capital cost of the railways which was left unproductive by dismantlement?

Mr. C. D. M. Hindley: Interest on that portion of the capital cost of a railway which is left unproductive by dismantlement and which is allowed to remain in the capital account is treated in the same manner as interest on the rest of the capital outlay, i.e., in the case of company-worked railways, for instance, the interest on such capital also is generally treated as a first charge on the net earnings of the railway prior to the calculation of surplus profits.

Mr. N. M. Joshi: May I ask whether this burden was not borne by the Indian revenues whereas it ought to have fallen on the English revenues?

Mr. C. D. M. Hindley: If the Honourable Member will specify any particular case we will have the matter looked into, but I am not able to reply to a general proposition.

Mr. N. M. Joshi: There is no particular case. I am asking whether the interest on the capital lying idle on account of railways materials sent to Mesopotamia and other war areas was borne by the Indian or English revenues. The particulars of railways from which materials were taken are best known to Government.

Mr. C. D. M. Hindley: I should like to have notice of that question.

RAILWAY COMPANIES' RESPONSIBILITIES AND OBLIGATIONS.

210. ***Mr. N. M. Joshi:** (*a*) Has the attention of Government been drawn to the following observation which, according to a telegram appearing in the *Pioneer* of the 7th December 1922, occurs in the judgment delivered on the 5th idem by Mr. Justice Coutts Trotter in the suit brought by Mr. E. Mack against the Madras and Southern Mahratta Railway Company claiming damages for personal injury sustained by him on the Nellore Railway platform on the night of the 29th August 1921 owing to his falling into an unprotected and unlighted pit:

> "I think the history of the whole case discloses lamentable failure on the part of the Company to realise their responsibilities and obligations."

(*b*) If so, will any portion of expenditure in connection with the suit fall on Government either directly or indirectly, and if so, why?

Mr. C. D. M. Hindley: (*a*) Yes.

(*b*) The expenditure incurred in connection with the case referred to will in accordance with the terms of the contract with the Madras and Southern Mahratta Railway Company, be charged against the working expenses of the railway in which Government are directly interested.

Sir Deva Prasad Sarvadhikary: Has Government taken any steps with regard to what has been pronounced in the judgment mentioned in the question with a view to bringing the obligations and responsibilities of the Company and their officers home to them?

Mr. C. D. M. Hindley: The Government of India have asked for a report from the Madras and Southern Mahratta Railway, in regard to this matter.

Sir Deva Prasad Sarvadhikary: And when the report is received will the Government lay it on the table here?

Mr. C. D. M. Hindley: I am not prepared to make any promise with regard to that.

UNSTARRED QUESTIONS AND ANSWERS.

FURLOUGH AND LEAVE REGULATIONS ON RAILWAYS.

88. **Mr. S. C. Shahani:** (1) Are the Government aware of the differences in the furlough and leave regulations between the European and Indian officers, still in force on some of the Company Railways in India?

(2) Is it not a fact that Government owns the largest share (nearly nine-tenths) of the capital invested in the Indian Railways?

(3) Will Government be pleased to state whether these Railways in question have been addressed in the matter.

(4) If not, do the Government propose to address these Companies re the elimination of all the differences between Europeans and Indians?

(5) Will the Government be pleased to lay on the table a copy of the leave regulations in force on the different Company Railways in India?

Mr. C. D. M. Hindley: 1 and 2. The answer is in the affirmative.

3 and 4. Certain fundamental leave rules were drawn up many years ago, within the provisions of which companies may prescribe their own leave rules. A modification of the fundamental leave rules for company-worked railways is now under consideration in connection with the Government Fundamental rules recently sanctioned. As the Honourable Member is no doubt aware these Government rules do not provide for absolute equality in leave rules for European-appointed and Indian-appointed staff.

5. Each railway has its own leave rules and copies are not available.

POSTAL AND TELEGRAPH DEPARTMENTS.

89. **Rai Bahadur G. C. Nag:** (*a*) What was the object of amalgamation of the postal and telegraph departments? Was there any surplus over expenditure in these departments at the time of this amalgamation? If so, what was the surplus of receipts over expenditure in each case?

(*b*) Will Government kindly furnish a statement showing the strength of the Directorate with salaries in each department, (1) in the pre-amalgamation days, (2) its strength three years after the amalgamation, (3) its strength six years after it, and its strength now?

(*c*) Is it not a fact that the postal department used to leave a large surplus year after year, and that its surpluses have vanished since the amalgamation?

(*d*) Will Government kindly furnish a comparative statement showing the travelling allowance paid to the telegraphic offices of the Directorate two years before the amalgamation, and the travelling allowance paid to the same offices during the past two years?

Colonel Sir Sydney Crookshank: The necessary information is being collected and will be supplied as soon as it is available.

PAY OF POSTAL DEPARTMENT.

90. **Rai Bahadur G. C. Nag:** When was increase of pay, if any, granted in recent years to the officers and subordinates of the postal department on account of economic distress? Was any increase granted then to the Deputy and Assistant Post Master Generals? If not, why not?

Colonel Sir Sydney Crookshank: With very few exceptions, the revisions of the scales of pay of officers and subordinates of the Postal Branch of the Post and Telegraph Department which have recently been sanctioned in recognition of the increase in the cost of living have been given effect to from the 1st December, 1919. No actual increase of pay has been sanctioned in the case of Deputy Postmasters-General, but they have now been placed on a time-scale. There is no such class of officials as Assistant Postmasters-General. If the Honourable Member is referring to Assistant Directors General of the Post Office the preceding remarks with regard to Deputy Postmasters-General apply also in their case.

JUVENILE COURTS.

91. **Mr. J. N. Basu:** Has the Government of India asked the local Governments in India and Burma to expedite the establishment of Juvenile Courts and if so, what steps have been taken by such Governments in the matter?

The Honourable Sir Malcolm Hailey: The Government of India are about to communicate their views on Chapter XV of the report of the Jails Committee which deals *inter alia* with the subject-matter of the Honourable Member's question. I will show the Honourable Member a copy of the letter when it has issued and if he or any other Honourable Member so desires, will place a copy on the table of the House.

RATES AND FARES ON E. I. RAILWAY.

92. **Mr. N. M. Joshi:** Will Government kindly state whether it was ever suggested during the pre-war period either by Government or by the Company, that in view of the very low ratio of working expenses to gross earnings which obtained on the East Indian Railway during that period, the rates and fares on that Railway should be reduced, and if so, what were the reasons for the suggestion not being adopted?

Mr. C. D. M. Hindley: Yes. The question was raised in 1912, by the Bengal Chamber of Commerce, but the Government of India decided that they would not depart from the policy which had obtained in the past, *viz.*, that uniform minimum mileage rates should be applicable to all important Indian Railways.

WORK AND COST OF COMMITTEES.

93. **Mr. N. M. Joshi:** With reference to page 39 of the Legislative Assembly Debates, Volume III, will Government lay on the table a copy of the final report of the Staff Selection Board Committee?

The Honourable Sir Malcolm Hailey: The report in question has not yet been submitted to Government.

AHMADPUR-KATWA RAILWAY.

94. **Mr. N. M. Joshi:** Will Government kindly state the circumstances which led to a reduction in the working expenses of the Ahmadpur-Katwa Railway from Rs. 1,17,709 in 1918-1919 to Rs. 75,726 in 1919-1920?

Mr. C. D. M. Hindley: The reduction was due chiefly to the transfer of interest charges on temporary loans from "working expenses" to "Net Revenue Account," and to a small extent to less expenditure on maintenance and on working expenses.

PRICES OF COAL.

95. **Mr. N. M. Joshi:** With reference to appendix 15 of the Railway Administration Report for 1920-21, will Government kindly state on what principle a differentiation is made in pricing coal as between the East Indian Railway on the one hand and the Great Indian Peninsula and the North Western Railways on the other and in what part of the railway budget the transactions of State Collieries are shown?

Mr. C. D. M. Hindley: The output of collieries on the North-Western Railway is priced at rate based on the calorific value of Bengal coal delivered in Quetta District, and the net results of working the collieries, whether profit or loss, are adjusted annually against the working expenses of the railway. Similarly the Great Indian Peninsula Railway charge actual working expenses and credit the output at estimated rate based on the value of the coal. The differences are charged against the working expenses of the railway. There is therefore no difference in principle as between the method employed on these lines and the East Indian Railway.

The transactions of State collieries are included in the figures for stores transactions given in the budget of individual railways.

DEPARTURES FROM RAILWAY RATES AND FARES.

96. **Mr. N. M. Joshi:** Will Government kindly lay on the table a statement showing sanctioned departures from the railway rates and fares shown in public tariffs?

Mr. C. D. M. Hindley: A statement showing the information so far as Government are aware, is being sent to the Honourable Member.

RETIREMENTS ON RAILWAYS.

97. **Mr. N. M. Joshi:** Will Government kindly lay on the table a statement showing by railways the number of officers in the superior grades of the different departments due to retire under the age rule or otherwise on or before 31st December 1923?

Mr. C. D. M. Hindley: A statement is placed on the table giving the information desired by the Honourable Member so far as State Railways are concerned.

Railway Companies do not adopt uniform age rules for the retirement of their officers and Government have no information regarding impending retirements of Companies' staff.

Statement showing the number of officers in the superior grades of the different departments on State Railways due to retire under the age rule or otherwise on or before 31st December 1923.

Railway.	Engineering.	Stores.	Other Departments.
North Western Railway	1	*Nil.*	*Nil.*
Eastern Bengal Railway	1	2	*Nil.*
Oudh and Rohilkhand Railway	1	*Nil.*	*Nil.*
Unattached officers	5	*Nil.*	*Nil.*

CARRIAGE OF COAL.

98. **Mr. N. M. Joshi:** With reference to the answer given on 6th September 1922 to starred question No. 25, will Government kindly lay on

the table a comparative statement showing the rates charged for the carriage of public coal and railway coal; and state:

(*a*) Whether any actual calculations have been made to show that the *net* effect of adopting tariff rates for railway coal will not bring in an increased share of surplus profit to the State?

(*b*) Whether the favourable rate applies only to State-owned railways, or also to railways owned by Indian States, Private Companies, District Boards, etc.?

Mr. C. D. M. Hindley: The Honourable Member is referred to the East Indian Railway Coal Tariff in which the schedule of rates for public and railway coal on that railway will be found and also full information about the rates charged on other principal railways.

(*a*) Such calculations would be extremely complicated owing to the varying proportions in which the surplus profits are divided between Government and the Companies under their contracts and Government do not consider that the results of such calculations would be a conclusive guide to policy in this matter in view of the reasons given in the answer to the Honourable Member's question on 6th September.

(*b*) The Honourable Member is referred to the first portion of the reply.

MEANS OF COMMUNICATION ON RAILWAYS.

99. **Mr. N. M. Joshi:** (*a*) With reference to appendix 19 of the Railway Administration Report for 1920-21, will Government kindly state whether they have relaxed the limit of two years fixed in paragraph 5 of appendix 42 to the Railway Administration Report, 1906, for the provision of all carriages with means of communication between passengers and railway servants, and if so, lay a copy of the orders on the table?

(*b*) Is the cost of this provision paid out of revenue or out of capital funds and in the former case what steps, if any, are proposed to be taken with reference to the adjustment of arrears on the East Indian and the Great Indian Peninsula Railways whose contracts expire during the next few years?

Mr. C. D. M. Hindley: (*a*) Yes. The procedure suggested by the Honourable Member involves printing the orders in the Council proceedings and with a view to avoid extra printing charges I am arranging to furnish him with a copy of the orders.

(*b*) The provision of intercommunication apparatus is a charge to Capital funds.

ANNUITIES IN PURCHASE.

100. **Mr. N. M. Joshi:** With reference to page 146 of the Government of India Finance and Revenue Accounts for 1919-20, will Government kindly state what the item "contribution towards management, etc.", under Annuities in Purchase exactly represents?

Mr. C. D. M. Hindley: Government having purchased a portion of the annuities of some railways, is liable to contribute rateably with other annuitants towards the management, etc., of the annuity fund. The item referred to by the Honourable Member represents the expenditure relating to this liability.

HAULAGE OF POSTAL VANS.

101. **Mr. N. M. Joshi:** With reference to page 29 of the Railway Administration Report for 1913-14, will Government kindly state what increase, if any, has since been made in the haulage charge of postal vans?

Mr. C. D. M. Hindley: No increase has since been made but a proposal for an increase is under consideration.

COMPENSATION FOR INCOME-TAX ON E. I. RAILWAY.

102. **Mr. N. M. Joshi:** Will Government state the circumstances which led to compensation for income-tax being paid to deferred annuitants in the East Indian Railway and the basis of the division of surplus profits being altered with effect from 1st January 1920?

Mr. C. D. M. Hindley: Provision was made for payment of compensation to the Deferred Annuitants on account of income-tax in certain eventualities with a view to protecting them from loss which they might sustain during the currency of the revised contract owing to non-receipt of the abatement of income-tax which is allowed to Ordinary Annuitants on portion of their annuity representing instalment in repayment of capital.

The alteration in the basis of the division of surplus profits was made in order to secure more favourable terms to the Secretary of State than under the old contract, in view of the renewal of the contract for a further period of 5 years with effect from 1st January 1920.

SUPERIOR POSTS ON RAILWAYS.

103. **Mr. N. M. Joshi:** Will Government kindly lay on the table a statement showing the names of the non-Indians appointed on railways to vacancies or to new posts in the superior service since 1st April 1922, and which of the appointments were made by public advertisement?

Mr. C. D. M. Hindley: A statement is laid on the table. The information regarding Companies' Lines is not available.

Names.	Appointment.	Remarks.
R. J. Earle	Assistant Executive Engineer.	Appointed by Secretary of State.
J. D. Michael	Ditto	Ditto.
T. G. Creighton	Assistant Locomotive Superintendent.	Ditto.
G. W. Browne	Ditto	Ditto.
O. R. Tucker	Ditto	Ditto.
T. H. B. Jones	Ditto	Ditto.
W. Leach	Works Manager, Carriage and Wagon Shops.	Ditto.
C. E. Dickins	Assistant Signal Engineer	Ditto.
C. H. Griffiths	Ditto	Ditto.
H. B. Adams	Assistant Electrical Engineer.	Appointed by Railway Board in India
A. R. Hewlett	Assistant Locomotive Superintendent.	Promoted from the Subordinate to Establishment.
H. A. Tuck	Assistant Signal Engineer	Ditto.

Note.—Appointments by the Secretary of State are made on the advice of a Selection Committee or of the Consulting Engineers to the Secretary of State, who consider applications called for by advertisement ordinarily.

SURPLUS PROFITS ON RAILWAYS.

104. **Mr. N. M. Joshi:** With reference to column 2 of the statement of surplus profits paid to railway companies accompanying the Budget for 1922-23, will Government kindly state why the "actuals for 1920-21" do not appear against that year in the "History of Indian Railways"?

Mr. C. D. M. Hindley: The matter can best be explained by an illustration. In 1919-20 the Bengal Nagpur Railway Company's share of the surplus profits of that year was Rs. 14,63,387 and the Company showed that amount in its accounts. This amount therefore was quite correctly shown as the Company's share of surplus profits in the year 1919-20. But the Company's share was actually paid in 1920-21 and the payment therefore was shown in the budget against that year.

PURCHASE OF G. I. P. RAILWAY BY STATE.

105. **Mr. N. M. Joshi:** With reference to the answer given on 8th September 1922 to unstarred question No. 159:

(*a*) Is it a fact that the purchase of the Great Indian Peninsula Railway was fixed exclusively on the basis of the market value of the Great Indian Peninsula Railway Company's capital stock and that the cost of land was not a factor which had any influence in determining the price;

(*b*) What were the names of the old guaranteed Companies who were provided with lands free of cost;

(*c*) Was not a separate account of the cost of lands maintained such as is now done in connection with lands provided for Branch line Companies?

Mr. C. D. M. Hindley: (*a*) The answer is in the affirmative. The cost of land was not therefore a factor affecting the price.

(*b*) The old Guaranteed Railway Companies provided with land free of cost were as follows:

(1) East Indian Railway.
(2) Eastern Bengal Railway.
(3) Scindhe Punjab and Delhi Railway.
(4) Oudh and Rohilkhand Railway.
(5) South Indian Railway.
(6) Great Indian Peninsula Railway.
(7) Bombay, Baroda and Central India Railway.
(8) Madras Railway.

(*c*) Separate subsidiary accounts of the cost of lands made over to each Guaranteed Railway Company free of cost were maintained during the existence of these railways as such. With the purchase of each Guaranteed Railway, however, the maintenance of the subsidiary accounts was discontinued.

Mr. Deputy President: The House will now proceed with the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act of 1870, as passed by the Council of State.

The amendment moved is:

"To clause 19, add the following clause:

'(*iii*) Clause (*f*) shall be omitted'."

The Honourable Sir Malcolm Hailey (Home Member): Munshi Iswar Saran proposes to exclude from our Code the provision which lays down that if a man is so desperate and dangerous as to render his being at large without security a hazard to the community, then he may be placed upon security. The House will remember that in arguing his case he placed considerable reliance upon the judgment of Mr. Justice Straight. Now, I may tell the House at once that that judgment was not applicable at all to the Code as it now stands. This particular provision of law, namely, section 110 (*f*) was originally in our Code in 1872. It did not appear in our Code of 1882, but its absence was felt to be so disastrous that it was re-included in 1898. Mr. Justice Straight's judgment refers to the Code of 1882, in which this particular section did not then find a place. The only provision of the Code at that time was as follows:

"Whenever a Presidency Magistrate, a District Magistrate or Sub-divisional Magistrate or Magistrate of the first class specially empowered in this behalf by the Local Government receives information that any person within the local limits of his jurisdiction is an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing the same to be stolen, or habitually commits extortion or, in order to commit extortion, puts or attempts to put anybody in fear of injury,"

then security could be taken from him.

The Honourable Member quoted the remarks of the District Magistrate and the facts do not seem to have been seriously in dispute, that Babua was a notorious *badmash*, an extortionist, a concocter of false cases as a means of extorting money and altogether a terror to the town of Mirzapur. Well, if those remarks prove anything at all, they prove, as I have said, that it was very unfortunate that a provision corresponding to 110 (*f*) did not find a place in the Code of 1882. If it had stood in the Code at the time then Babua could have been held to security: and everyone will admit that the whole tenour of the judgment which Mr. Iswar Saran read out to us proves that it was highly desirable that Babua should have been held to security. If therefore the judgment that Mr. Iswar Saran read out to us proves anything, it proves that the case he put before the Assembly for the exclusion of this section is an exceedingly bad one. I do not go into the further technical grounds argued in that judgment, because, as I have said before, it is quite inapplicable to our present Code.

Now, as to the question of substance Mr. Iswar Saran says that we have extended the scope of section 110. How far have we done so? We have included the forger; we have included the abettor, though there were certain Members of the Assembly who thought that the abettor should be protected; we have included the abductor, whose presence in the Code now we owe to the kindly offices of Mr. Agnihotri; and we have included the kidnapper, in spite of the tender solicitude of Mr. Kabir-ud-Din Ahmed. That is the extent to which we have extended the section, and I defy Mr. Iswar Saran to argue with any show of truth that by this restricted

extension of the section we have made it possible for a Magistrate to place on security a man who is dangerous and hazardous to the community, without some specific provision and law to this effect. In any case I claim that the limited extension that we have now given to the section is not a matter so important that it should be used to our prejudice and quoted as an argument for the exclusion of this particular kind of character from the provisions of section 110. For what is the kind of man of which the Code is thinking? He is known to consort with robbers and dacoits. And yet you cannot prove under sub-section (*a*) that he is himself by habit a housebreaker. He is well known to have desperate associates, men engaged in crimes against life and property, and yet you cannot prove under sub-section (*b*) that he is himself a habitual receiver of stolen property or that he habitually harbours thieves. But every respectable person in the village is in perpetual terror lest he should bring his associates down upon them. He is a man who seduces women or corrupts the morality of children, yet that does not make him either a kidnapper or abettor within the terms of our law, and you cannot bring him within the provisions of clause (*d*). A violent character of this type, well known as such in the neighbourhood, and a standing terror to his neighbours, he can trespass on their lands, he can raise forced loans, damage their crops, and yet nobody can complain against him, for they are afraid to do so, and you cannot therefore prove under clause (*c*) that he habitually commits or abets the commission of offences involving a breach of the peace. That is not a fancy picture. Everybody knows the man who is the terror of the village or his quarter, the man whom you would prosecute if you could under a particular charge, whom the whole community would be glad to see away from the place, and yet whom you cannot hold under any particular provision of the law because people are afraid to bring cases against him. They will not do so themselves, but are only too glad when we step in to aid them with the preventive sections; but if we are to do so, it is difficult to put the information against him under any clause other than clause (*f*) of section 110. When Mr. Iswar Saran was arguing his case, I heard somebody behind him whisper the word "Goonda". A happy thought for the legislation that has recently been put forward in Bengal and accepted gladly by public opinion in Calcutta proves conclusively that you have to provide by special means for people of this class. He animadverted on the fact that the definition of 110 (*f*) was a wide one; I maintain that it gets as near as any definition can to the real and essential facts. What has Bengal had to do in the way of definition? Bengal had to deal with cases of this kind, and provide for men who are a terror to the community. The class of persons they were thinking of was the type of character that is referred to in numerous examples that were quoted to us by the Bengal Government. Here are some. I will give the House only bare details, and will suppress the illustrious names of those who are mentioned in this catalogue of notabilities:

"He is a terror to the locality and has great influence over low class people. His men have committed assaults on police officers but the cases failed for want of evidence. He associates with persons who commit serious crimes such as robbery, dacoity and murder, and it is believed that he bears the cost of defence in cases in which they are concerned."

Take another:

"He has a cocaine den. Three prosecutions have, however, failed against him. He adopted the same ingenious device of electrifying his staircase, thereby preventing access to it on the part of the police."

[Sir Malcolm Hailey.]

Here is another:

"He formerly belonged to a wellknown gang of thieves. He has five mistresses with whom he lives in . . . street. He is a notorious gambler and has numbers of bad characters under his control."

Now, those are the classes of persons for whom Bengal had to make provision. They put forward a special Act, and I ask the House to note how they propose to define these persons. I commend the definition particularly to Mr. Iswar Saran. They call it Goondas Bill, and the definition they use is: "Goonda includes hooligan or other ruffian." Is that more restricted or more precise than our 110 (*f*)? Could all their legal ingenuity devise any more suitable terms than we have hitherto used for providing against the class of men whom Mr. Iswar Saran would now exclude from the purview of section 110? But enough; I am sure that the House really realizes the necessity of providing against this class of persons, that it will have every sympathy for the villagers who are terrified and with townspeople who are continually held in apprehension of their lives and property by hired bravos and miscellaneous ruffians; and that it will not agree with Mr. Iswar Saran.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I quite understand, though I do not fully appreciate Munshi Iswar Saran's desire to exclude this sturdy and amiable body of citizens from the purview of section 110. If we had not 158 clauses of the Bill still to dispose of, and if great economy of time was not imperative, mild excitements like what my friend from time to time provides might have been acceptable. As it is, it is hardly possible to take him seriously with regard to his contention that a desperate and dangerous character should not be even called upon to show cause as to why he should not execute security and promise to be of good behaviour. As has been pointed out by Sir Malcolm Hailey, the judgment that Munshi Iswar Saran referred to has reference to a state of things with which we have nothing to do at the present moment. Furthermore, Sir, that judgment laid considerable and very correct stress upon the fact that the Magistrate in dealing with the case had imported into it considerations within his own knowledge and what he had found out by private inquiry—an extremely improper thing for any Magistrate to have done—and the judgment was rightly set aside. However, that state of things does not exist. As has been pointed out, the omission from an earlier Code was found to be intolerable and had to be re-introduced. Mr. Mukherjee, I believe a fellow-sufferer in Calcutta, reminded the House about the Calcutta Goonda, and Sir Malcolm Hailey has given us some illustrations of the sort of things that Calcutta is suffering from, and Calcutta suffers although section 110 is there. Calcutta Magistrates and the Calcutta Police found that all the supposed arbitrary power provided in section 110 (*f*) is powerless against the Goonda. I am glad to see from the papers, the Select Committee's report, that those who are opposing the Goonda Bill have been able to evolve a *modus operandi* by which all objections will be met and Calcutta will have a Goonda Act of its own. The result will be that some of the Mirzapore amiables will have to come back home and give occupation to Munshi Iswar Saran in his province. Whether he will want this to be relaxed or more tightened will be a matter for him and the United Provinces Government to decide. (*A Voice*: "They will suffer".) It does not appear that the United Provinces with its sturdy optimism and muscle powers is in the same trouble as the Bengalee who

wants a special Goonda Act. Even section 110 (*f*) and the Goonda Act will by themselves not solve the problem and public co-operation is needed there. The ingenuity, the resources, and the masterful activity of this class of people is beyond imagination, and great care is needed to stamp out Hooliganism. I do not think the position of the Government and the Police and of society should be weakened by taking away what has been found imperatively necessary to be brought back.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): Sir, I think this amendment should not be accepted. It serves a distinct purpose and applies to cases of persons who have lost all regard for the safety, well-being and decency of their fellow creatures living in their neighbourhood. A person of desperate and dangerous character means a person who has a reckless disregard of the safety of the person or property of his neighbours. It cannot be maintained that such persons do not exist in our society. There are men in some localities whose business it is to create trouble for some of their neighbours by habitually provoking false or frivolous investigations, or who are desperate in their efforts to poison cattle by various devices such as by mixing something poisonous with their food, or who habitually or out of sheer mischief try to render injurious the water of wells here and there, or who habitually try to render unconscious for a little while persons with a view to take some mean advantage of them such as robbing them, or who habitually try to intimidate or terrorise people by threats or indecent speeches or songs, or by invoking the aid of religious, superstitious or social customs, or by simply preying on the ignorance of the people in various ways, or who even try to spoil the morals of some young men and women in some places. Well, Sir, it goes without saying that there should be some legal provision for bringing such persons to book. It is to meet such cases, Sir, that clause (*f*) exists and should exist. There seems to be nothing in the preceding clauses to meet such cases.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): I move, Sir, that the question be now put.

The motion was adopted.

Mr. Deputy President: The question is:

"That to clause 19 add the following sub-clause:

'(*iii*) The word 'or' at the end of clause (*e*) and the whole of clause (*f*) shall be omitted.'"

The motion was negatived.

Mr. Deputy President: Mr. K. Ahmed.

The Honourable Sir Malcolm Hailey: Might I rise to a point of order before this amendment* is moved? I merely wish to bring to your notice that it refers to section 112. Section 112 does not form part of the Bill.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Rural): May I be permitted to address you on that point because I have also got a similar amendment? The objection taken, Sir, is that this clause does

* "After clause 19 insert the following clause:

'19-A. In section 112 of the said Code for the words 'setting forth the substance of the information received' the words 'expressly specifying the particulars of the information received under section 107, section 108, section 109 or section 110' shall be substituted'."

[Rao Bahadur T. Rangachariar.]

not relate to any of the clauses in the Bill. That is quite true, but, Sir, the rule by which we are to be guided is a rule relating to amendments which says, they must be relevant to the scope of the Bill. I will find out the exact rule I have in mind; in the meantime I will refer to May's "Parliamentary Practice."

On page 864 it says:

"To explain the principles that govern the proposal of instructions to committees of the whole house, it must be borne in mind that, under the parliamentary usage in force in former times, an amendment might be wholly irrelevant to the motion or bill to which it was proposed, and that consequently clauses might be added to a bill during its progress through the house relating to any matters however various and unconnected, whether with one another or with the bill originally drawn. A reaction from such laxity of procedure led to the establishment of rules and practice which imposed on the House of Commons an inconvenient rigidity in dealing with a bill. No amendment could be moved which was not strictly within the scope of the prefatory paragraph, known as the title, which is prefixed to every bill and describes its object and scope. To obviate the difficulty thus created, the house, in 1854, by standing order No. 34, gave a general instruction to all committees of the whole house to which bills were committed, which empowered them to make such amendments therein as they should think fit, provided that the amendments were relevant to the subject matter of the bill; and, if such amendments were not within the title of the bill, the title was to be amended and reported specially to the house."

The Honourable Sir Malcolm Hailey: Will you kindly read the Standing Order No. 34, on page 815, of the book?

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Will the Honourable Member read further on the few lines at the bottom of the next paragraph?

Rao Bahadur T. Rangachariar: I will come to that; it says:

"An instruction is necessary to enable a committee to divide a bill into two or more bills, to consolidate two bills into one bill, or to give priority to the consideration of a portion of a bill, with power to report the same separately to the house.

'Instructions have been given to committees of the whole house, on the presentation of a petition, empowering the committee to hear counsel and examine witnesses."

The Honourable Sir Malcolm Hailey: The Standing Order is on page 815; it will make the matter quite clear. Standing Order No. 34.

Mr. N. M. Samarth: And the last paragraph on page 865.

Rao Bahadur T. Rangachariar (Reading Standing Order):

"It shall be an instruction to all committees of the whole house to which bills may be committed, that they have power to make such amendments therein as they shall think fit, provided they be relevant to the subject-matter of the bill."

And what is meant by the subject-matter of the Bill? We have to come back to page 864, where it is stated:

"No amendment could be moved which was not strictly within the scope of the prefatory paragraph, known as the title, which is prefixed to every bill and describes its object and scope."

That is what I rely upon. Now the object and scope of this Bill has to be gathered from its history. This is a Bill further to amend the Code of Criminal Procedure, not certain sections thereof. This is a Bill further to amend the Code of Criminal Procedure, and it will be seen, Sir, that almost every Chapter in the Code, including the Schedules, have come under revision in this Bill. If you will also look into the history of it, you

will see that a very influential Committee was appointed to go through the whole Code, and I may refer to the Statement of Objects and Reasons to which is annexed the report of this Committee, which is known as the Lowndes Committee. The Government of India, by a Resolution dated 18th September 1916, had under consideration for some time past the question of the general revision of the Code. The amending Bill was introduced in the Imperial Legislative Council on the 21st March, 1914, and was thereafter referred to Local Governments and Administrations. Meanwhile, the Governor General in Council decided to remit the Bill and the various opinions received in connection with it to a small Committee on which the legal profession was strongly represented.

I say they appointed that Committee to go through the whole Code and to go through all the suggestions received from the various Local Governments as regards the amendments noted in that Chapter. They took up Chapter after Chapter and suggestion after suggestion. They considered what would be necessary to be introduced and what would not be necessary to be introduced. Therefore, they paid attention to all the sections of the Code and came to the conclusion that these amendments were needed. Therefore, this Bill comes before us as a result of the labours of that Committee, and its object and scope is certainly to revise the Code, to see what portions may remain as they are and what portions should be amended. The Committee left certain sections as they are because they thought that no amendments were needed, but this House is certainly competent, when the object is to revise the Code, to consider whether their decision, namely, that certain sections should remain as they are, is correct or not. Therefore, Sir, I think that, having regard to the title of the Bill and having regard to the scope of this revision which we have now undertaken, it should be competent for this House to deal with other sections of the Code, because they are part of the Code. It may be mentioned, perhaps, that, on a former occasion, when an attempt was made to introduce a new clause in connection with the Land Acquisition Bill, the Honourable the President suggested—he did not exactly rule—that it was outside the scope of the Bill and advised me not to press my motion. That is quite true.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): May I correct the Honourable Member, Sir. The President distinctly ruled the amendment out of order on the ground of practice.

Rao Bahadur T. Rangachariar: The Honourable Member will remember that I raised the point against myself, because I knew that the scope of that Bill was not as its preamble indicated. I was quite convinced that the preamble was incorrectly worded in connection with that Bill and I raised the point myself. Now, this is quite a different case from the Land Acquisition Bill. That Bill was merely to amend a particular provision in the Land Acquisition Act and there was no such revision undertaken as in this case. The Bill was not the result of the deliberations of a Committee which sat to revise the whole Code. Sir Henry Moncrieff Smith will remember also that the President gave a warning to the Government that in cases where they wanted to restrict the scope of a Bill they should take care to see that the title was properly worded. He gave that warning, Sir, because he said the title is the guiding principle. He added " if you put your title so generally, I will be obliged to admit amendments." That is what the President said, at least that is my recollection of it. Therefore, the Government have not taken that warning in this case. The Bill, here, is to

[Rao Bahadur T. Rangachariar.]

amend the Code. The Code consists of all its sections and Schedules, and, therefore, I ask you, Sir, to rule the amendment in order.

The Honourable Sir Malcolm Hailey: I should have been content to avoid a discussion on this point and to leave it with the brief remark which I addressed to the Chair, in the full confidence that you, Sir, would have been in a position from your own study of the Home procedure to give a decision without further argument. But, further argument has been indulged in, and I must meet one aspect of it in particular, for I think that, unwittingly no doubt, Mr. Rangachariar has misled the House. At my request he read Standing Order 34 of the House of Commons. I will repeat it:

"It shall be an instruction to all Committees of the whole House to which Bills may be committed that they have power to make such amendments there as they shall think fit, provided they be relevant to the subject matter of the Bill."

Mr. Rangachariar proceeded to interpret for us the words "subject matter of the Bill." He said that the subject matter of a Bill was—and I will use his actual words—"decided by the title," and he quoted to us these words from May:

"No amendment could be moved which was not strictly within the scope of the prefatory paragraph, known as the title, prefixed to every Bill, to describe its object and scope."

But I ask the House to realize that the words which he quoted from May refer specifically to the previous state of things which existed before Standing Order 34 was passed? It was precisely that state of things which Standing Order 34 was passed to rectify. I say that, unwittingly, he has misled the House in that respect. In other words the House of Commons decided itself that the title was not decisive and that no amendments should be introduced which did not come strictly within the prescription that they were relevant to the subject matter of the Bill. Mr. Rangachariar has argued from the title of our Bill, and has quoted to us, the manner in which the whole of this legislation came to be initiated. He points to the fact that various Committees sat in order to amend the Code of Criminal Procedure at large. That might be, Sir, but the legislation that has been placed before the House refers to particular chapters and sections of the Code. We have not set out here actually to amend the whole of the Code. He himself referred, at the beginning of our discussion, to the fact that there are many points, such as the Racial Distinctions sections and the like, which have still to be amended. Mr. Chaudhuri again referred to the fact that, when the separation of executive and judicial functions takes place, other amendments of the Code will be necessary. Obviously and clearly the case as placed before the Legislature refers to the particular sections of the Code which find a place in the Bill, and we have not placed before the House the whole Code for the purposes of amendment or modification.

I must once more refer to the discussions in regard to the Land Acquisition Bill. Mr. Rangachariar, doing himself full justice, as I admit, says that he himself pointed out to the President the difficulty arising from the title of the Bill, and expressed doubts whether an amendment then proposed was actually in order, in spite of the wide title of the Land Acquisition Amendment Bill. It is as well that I should read to the House the ruling

of the President in order that it may be under no misapprehension. The President said:

"The amendment moved by the Honourable Member on my left is undoubtedly within the title of the Bill as drawn, and yet it is equally undoubtedly outside the scope of the substance of the Bill, which provides for an appeal to the Privy Council. Therefore, on the ground of practice, I think I am bound to rule it out of order. At the same time I suggest to the Government that it will be wise to protect themselves by seeing that the title of a Bill is not wider than its substance."

That is the suggestion made to us, and it was obviously made only in order so to regulate our titles as to prevent amendments such as those now put forward by Mr. Ahmed and supported by Mr. Rangachariar from being put before the House. It is a suggestion and no more.

Rao Bahadur T. Rangachariar: Suggestion for what purpose?

The Honourable Sir Malcolm Hailey: A suggestion, in order that Honourable Members should not be misled by the title into thinking that this necessarily was conclusion as to the subject matter of the Bill. I would remind the Honourable Member that that suggestion was put before us by the President in March 1921, and at that time the title of our Criminal Procedure Amendment Bill had already been settled and published. If that suggestion had been before us at the time, we should then no doubt have been warned and amended the title of the Bill. But the title, Sir, is not the decisive factor, as the Standing Order of the House of Commons shows.

Mr. Deputy President: With regard to this question as to whether the whole Code of Criminal Amendment is open to amendment during the consideration of this Bill, my ruling is that it is not. No amendment is permissible in the course of the consideration of the present Bill which is irrelevant or foreign to or outside the scope of the subject-matter of this Bill. In the case of the present amendment, although it proposes to amend a section of the Code which is not touched by the Bill, I think it might be held not to be inadmissible under the ruling which I have just given, as it is intimately connected with other sections which are being amended. In this particular case, therefore, I allow the amendment to be moved.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, I beg to move:

"That after clause 19, insert the following clause:

'19-A. In section 112 of the said Code for the words 'setting forth the substance of the information received' the words 'expressly specifying the particulars of the information received under section 107, section 108, section 109 or section 110' shall be substituted'."

Sir, Magistrates very frequently violate the provisions of these sections by merely stating the words of the section instead of specifying the substance of it. The information received is one thing, and specifying something is different. But if it is specifically set out what is the substance of the information, then the Magistrate is not entitled or not in a position to receive any additional information with regard to any number of particulars which the Sub-Inspector of Police, specially in the mofussil, often seeks to do.

As to the majority of big cases, if statistics are being taken over the whole of India, I am positive that in prosecutions under section 110, from 500 to 700 witnesses are examined and still the poor man against whom the prosecution is launched suffers. The police ask anybody and everybody to

[Mr. K. Ahmed.]

say that this man is bad or that man is bad, and the Government very often repents because the Sub-Inspector of Police, who is supposed to be second to God, is not able to make out a good case. So he says 'In the first charge sheet that I submitted, I left out these particulars, and I want to try this man in any way I like. I will call him desperate, I will call him a liar, and at the same time I will call him a black-guard.' Witness after witness is brought in, no end of them,—you get any number of witnesses—with the result that the poor man cannot get out of the trap that has been placed for him.

We therefore want this part of the law should be specifically dealt with; once you file a plaint in the Civil Court, before a Munsiff, Sub-Judge, or the Original Side of the High Court, you cannot go back upon it; you cannot change the substance of the written statement you have made, or put in any additional points. I am sorry to say that at present the Police is Almighty and many Honorary Magistrates present in this Assembly are very fond of giving indulgence to the Sub-Inspector of Police to the extent of allowing any number of witnesses and any amount of searches to be made. That being so, I think it necessary to move this amendment in order to remedy this defect so that the Sub-Inspector must expressly specify the charge, expressly particularise the charge he wishes to submit.

In this respect I cannot do better than quote the authority of my friend who is sitting in front of me—a learned Judge of the Madras High Court. My Honourable friend is here and I will take his learned ruling from I. L. R. 43, at page 450. My learned friend when he was on the Bench in 1919, only 3½ years ago, said,—the Honourable Mr. Justice Seshagiri Ayyar said:

"I am not sure that I understand this judgment. Section 110, clauses (d) to (e), speak of a man being a habitual robber, a habitual receiver of stolen property and a habitual harbourer of thieves, a habitual extortioner, or a habitual committer of breach of the peace. In my opinion, the evidence on which the Magistrate has to base his conclusion must relate to particular instances which have come to the knowledge of the deponent and so must be specific. Evidence relating to mere beliefs and opinions, without reference to acts or instances which have induced the witnesses to form the opinion, can hardly be regarded as established by the repetition of beliefs and opinions. At any rate, Courts ought to discard such evidence as much as possible."

That, Sir, comes from the mouth of a learned Judge of the Madras High Court Bench who had the opportunity of criticising the judgment of the Magistrate and criticising the manner in which the prosecution was conducted and in that the Almighty Sub-Inspector or the Court Inspector introduced evidence against this particular accused by bringing in additional points.

Now my Honourable friend, the Home Member, has been putting me out of order, at least he tried to do so—though he did not succeed—by a reference to the practice of the House of Commons. But fortunately the Deputy President has allowed me to move this amendment. As I have shown, learned Judges found out long ago that this sort of scope or latitude ought not to be given to the Sub-Inspector or the Court Inspector. Here, Sir, I want to quote the authority of a member of the Indian Civil Service who sat along with my Honourable friend, Mr. Seshagiri Ayyar, in the case to which I have already referred. I mean Mr. Justice Moore. This is what his Lordship said:

"I am unable to agree with the District Magistrate that there is a large body of evidence 'regarding the petitioner's bad life, his habit of engineering crimes and his

general desperate character.' The evidence on record does not warrant any such conclusion. The District Magistrate also says that there is evidence of witnesses who speak to 'definite acts of criminality on the part of the petitioner'. But I cannot find any definite evidence of any specific acts of violence committed by the petitioner. In my opinion the order requiring the petitioner to furnish security to be of good behaviour cannot be supported and should be set aside."

In the light of what I have said, and the opinions I have quoted from Mr. Justice Seshagiri Ayyar and Mr. Justice Moore, I hope that this Honourable House, consisting as it does of Members who represent the people of this country, will accept my amendment; and my Honourable friend who is piloting the Bill on behalf of Government will also accept it without any hesitation. I move the amendment which stands in my name.

12 Noon.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I am very grateful to the Honourable Member for reading to us the instructive judgment of my Honourable and learned friend, Mr. Seshagiri Ayyar, in the case in question, but I venture, Sir, to suggest that there is no reason whatsoever in the judgment which he read out to justify the change which he proposes in section 112 of the Code. The judgment, in fact, does not indicate that it is necessary that section 112 should be amended so as to require that in the preliminary order which is made under section 112 full particulars of the information which is received should be specified. It is clear, Sir, that the judgment in the case must be based upon evidence which is on the lines of the order framed under section 112. But how can we expect the Magistrate in framing this order to specify full particulars of the information in it? Sir, that is quite impossible. The object of section 112 is to give the accused notice of the accusation which has been made against him. It may be compared perhaps with other provisions in the Code such as sections 221, 222 dealing with warrant cases, and section 242 dealing with summons cases. Section 242 reads thus: "When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him and he shall be asked if he has any cause to show why he should not be convicted." Section 222 says that "the charge shall state the offence with which the accused is charged and it must contain such particulars as to the time and place of the alleged offence and the person (if any) against whom or the thing (if any) in respect of which it was committed, *as are reasonably sufficient to give the accused notice of the matter with which he is charged*". Now, Sir, how does section 112 read at present? It reads thus: "When a Magistrate acting under section 107, section 108, section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number, character and class of sureties (if any) required". I suggest, Sir, that this is amply sufficient to give the person proceeded against notice of the information which has been received and which he has to produce evidence against.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I rise to support the amendment moved by the Honourable Mr. Kabir-ud-Din Ahmed. The object of section 112 is to call upon a person against whom the information has been received to show cause as to why he should not be bound over, and to give him the information of the materials of the report on which he is required to show cause. That is the object of section 112. Now as provided in section 112, it is

[Mr. K. B. L. Agnihotri.]

that the substance of the information should be given to the person concerned, *i.e.*, the person who is required to show cause. The "substance" of the information is by itself not quite sufficient and gives a wide scope to the Magistrates. He may give only a précis of the information that has been received by him or he may give the full details of the information that he has received or he may give only a summary of the information,—which he has received. Sometimes it happens in the mufassil courts that the Magistrates generally put down that 'you are required to show cause as to why you should not be bound over for keeping the peace or for good behaviour'. This by itself is not sufficient to enlighten the person concerned as to the particulars of the complaints in which he is required to show cause and the matters on which he is required to adduce evidence to rebut the prosecution or the police allegations. Therefore, in the interests of justice it is material and extremely important that the full particulars of the information before the Magistrate be given to the accused or the person who is required to show cause, so that on the date when he appears for showing cause he may be in a position to defend himself against the allegations made by the other side. Therefore, Sir, I submit that the amendment moved by my Honourable friend, Mr. Kabir-ud-Din Ahmed, is of a wholesome nature and should be allowed.

The motion was negatived.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, while we are on section 112 I wish to mention that I gave notice of an amendment for carrying out the suggestions of the Greaves' Committee, but I had a talk with Sir Malcolm Hailey with regard to the matter and he has promised to give me hearing in private and to discuss the matter with me and I quite appreciate the difficulty that the Home Member is in now. He has got 398 amendments to consider, so I do not wish to rush him and I accept his suggestion that I should have a talk with him in private and that, if he can accommodate me, I shall be at liberty to bring up this amendment later on. So you will kindly leave that open for the present.

Clause 19, as amended, was added to the Bill.

Mr. K. Ahmed: Sir, I beg leave to move the following amendment:

"Omit sub-clause (*ii*) of clause 20."

If the man has been brought up under arrest under section 110, it is very difficult for him especially in this cold winter, to be detained in the lock-up without having any surety of getting out of the jail and living comfortably outside. Sir, this question of furnishing sureties is a very difficult one, because if a person wants to get enlarged on surety, he will find, there will be a charge sheet against him submitted by the police. At the same time, he will have the opportunity, he will have time enough, Sir, to find sufficient funds to engage vakils, pleaders, mukhtars and barristers. That being so, Sir, it is in the interest of justice that these persons should be given a free hand in the matter of granting bail. Section 110 is a section which is called a preventive section. It is not a section that deals with the commission of an offence: it is preventive. It is aimed at ensuring that the man who has committed an offence under 110 may not in future commit any offence A man must be very careful and if he is in the habit of committing certain offenses, he must be careful at the same time

to the amount of money for which he will be bound over or bound down to give surety to keep the peace and to be reasonable with regard to his behaviour and habits. Sir, if this man is taken straight to the jail or to the lock-up without having an opportunity or hope that he will be enlarged on bail, if this man is not in a position to give surety— the man has not committed any offence in the eye of the law—the object of section 110 is that he should be a reasonable neighbour, living in the locality so that he might not commit any offence to others living in the same village. If that question is before the Magistrate, to test the character of this man without getting evidence, he may be discharged later on, but why should his defence be hampered? Why should not sufficient opportunity be given to that poor unlucky man that he should be properly defended and that certain lawyers should be instructed on his behalf? Is not this an engine of oppression against this man before he takes his trial that he should be asked to give surety? This man has not committed any offence and if he did, he should have been punished a long time ago and that being the test, I do not see any reason why this man should be hampered in his defence by being asked to give surety for a certain amount, interfering with his liberty of engaging lawyers, interfering with his freedom and liberty to ask his villagers to stand by him and give testimony in his defence, that he is a good man and not as black as he is painted by the police. The police can do anything and everything. I do not like to show any wording of the judges showing that the police have acted not successfully in many cases particularly of this kind. Speaking from experience, I can say that there has been failure on the part of the police, very often. That being so, Sir, and for considerations of a common sense point of view, I do not think you should bind down a man without giving him proper latitude in substantiating his defence; it is interfering with the liberty of the subject. You want to take him straight to the lock-up. Thereby you interfere with his defence. Supposing he has got landed property and his money is not kept in cash and he wants to sell his property and realise money out of which he wishes to engage a lawyer and that lawyer should be properly instructed. The lawyer should be given an opportunity to equip himself with all the facts considering that the police are doing so much against him (the accused). The Sub-Inspector, Head Constable and the Superintendent of Police probably do not want the lawyer to defend the accused. They want him to take his trial and go to jail straight. There are hundreds of elephants upon which the prosecution witnesses generally come. I have seen two or three miles of area being covered by the police and this poor man is completely helpless. The men in the street can shout, but this man cannot utter a single word. For the ends of justice I think that the retention of this custody will hamper his trial and I hope that this sub-clause (*ii*) of clause 20 will be omitted.

Mr. H. Tonkinson: Sir, so far as I understand the argument of the Honourable Member it is as follows. These provisions in the Code are preventive provisions. They are not punitive provisions. It is improper that a man should be sent straight to jail. It is improper that he should not be let out on bail. He ought to be able to consult his legal advisers and he should not be hampered in drawing up his defence. Well, Sir, that being the argument of the Honourable Member, I am exceedingly surprised that he has suggested the omission of this sub-clause. The object of this sub-clause is to do exactly what the Honourable Member wishes should be done. At the present time, Sir, under the proviso to section 114 of the Code, if there is any reason to fear the commission of a breach of the

[Mr. H. Tonkinson.]

peace, and if such a breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest. Now, Sir, the Bill proposes, in this sub-clause to enable the Magistrate to let the accused out on bail. That being the object of this sub-clause and it being absolutely in conformity with the intentions of the Honourable Member who has moved this amendment, I do not think it is necessary to argue further against the suggestion to omit this sub-clause.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Where is the provision for bail? Is this the bail provision?

Mr. H. Tonkinson: It is this sub-clause.

Mr. Deputy President: The question is:

"Omit sub-clause (*ii*) of clause 20."

The motion was negatived.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): I think, Sir, that this is the stage at which I should move my supplementary amendment* provided the Government do not object to it under your ruling and under Standing Order 46. It is supplementary amendment No. 5. This is the stage that it should come in. I pause for an announcement from the Government Benches whether they object to this amendment or not.

The Honourable Sir Malcolm Hailey: If I am obliged to object to it, it is really in the interests of the House that I do so and not from any motives peculiar or particular to Government. I put it to the House that it has not had time to consider these supplementary amendments and it is inadvisable if only on that account that we should ask the President to utilise his special powers to admit them.

Mr. Deputy President: Under the ruling given by me I must rule it out of order.

Mr. T. V. Seshagiri Ayyar: I move the amendment† standing in Dr. Gour's name.

The Honourable Sir Malcolm Hailey: As the Honourable Member has moved it without argument, I oppose it without argument.

The motion was negatived.

Bhai Man Singh (East Punjab: Sikh): Sir, the amendment that stands in my name runs as follows:

"In clause 20, sub-clause (*ii*), for the proviso (*a*) to the proposed sub-section (3) substitute the following:

'(*a*) No person under this sub-section shall be required to execute a bond for maintaining good behaviour if the notice issued to him under section 112 was to keep the peace nor can he be so required to keep the peace if the said notice was to maintain good behaviour'."

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* "In clause 20, add the following paragraph at the end of section 117, sub-section (2):

"Provided that all inquiries under section 108 shall be held with the aid of a jury, as nearly as may be practicable, in the manner hereinafter provided for trials in a Court of Sessions with the aid of Jury."

† "In clause 20 (*ii*), in proposed sub-section (3), insert the word 'forthwith' before the words 'execute a bond'."

The clause I want to amend, as proposed in the Bill, runs as follows:

"No person against whom proceedings are not being taken under section 108, section 109, or section 110, shall be directed to execute a bond for maintaining good behaviour."

The clause as it stands, really speaking, recognises the principle which I want to lay down more clearly and definitely. Leaving out clauses 108, 109 and 110, the only clause that remains is 107 under which a person is required to keep the public peace. The clause as it stands means that if a person has been issued a notice to show cause why he should not be bound over to keep the peace, he shall not under this sub-section be required to execute a bond for maintaining good behaviour. I see no reason, Sir, why we should take only one side of the question and not both the sides. If a notice has been issued to a man to show cause why he should not be bound over to maintain good behaviour, why should the Magistrate go beyond the scope of the notice and ask him under this sub-section to keep the peace? As a matter of fact, Sir, these proceedings are intermediate proceedings during the pendency of a case. There is no reason why any more power should be given to the Magistrate than there exists under the terms of the notice. I may also submit, Sir, that under section 118, while finally ordering a person to give a security, it is laid down:

"If, upon such inquiry, it is proved that it is necessary, for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided:

First, that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112 . . ."

Now, if under section 118 the Magistrate cannot order the accused, while deciding the case finally, to furnish a security of a different nature than he was required to do under the notice issued to him under section 112, there is no reason why in these intermediate proceedings the Magistrate should have the right to ask him to furnish security of a different nature than mentioned in the notice under section 112. I think this oversight in the drafting is due to the words of I. L. R. 25, Cal. 798, wherein the case was that the person was required to be of good behaviour and it was held that he could not be bound over to give security for keeping the peace. The case before the High Court at that time was simply one-sided, it referred to only one side of the question. So High Court had to give their ruling only on that part of the question, the other part was not before them. But the principle laid down therein was that since that man was asked to keep the peace in the notice issued under section 112, therefore he ought not to have been required to be of good behaviour in the final order. The notice under section 112 and the final order under section 118 should not clash with each other,—that is the principle of the ruling in the Calcutta case, and there is no reason why that principle should not be applied in this clause also.

Mr. R. A. Spence (Bombay: European): May I ask for information from the Honourable the Mover of this amendment? Does he object to any one who is bound over to be of good behaviour, keeping the peace while he is bound over for good behaviour, or if he is bound over to keep the peace, does he not think that he ought also to be of good behaviour?

Bhai Man Singh: In reply I have only to say, do the framers of the Code object to a man who is asked to keep the peace to be of good behaviour? There is the plain thing, we should have some guiding principle and should be guided by that principle.

Mr. H. Tonkinson: Sir, the Honourable Member proposes to substitute another proviso for proviso (*a*) in the Bill. His suggestion is that if the person proceeded against has been called upon to give security for keeping the peace, then the interim order to which this proviso refers should be an order for keeping the peace, and similarly, if the man is ultimately assuming that the Magistrate finds the facts to be true, to give security to be of good behaviour, then the interim bond should be one for good behaviour. That, Sir, appears to be an eminently reasonable proposition, but I would suggest that the proposition in the Bill itself is even more reasonable and more in the interests of the person proceeded against. I think that the Honourable Member has neglected to notice the provisions of section 121 of the Code of Criminal Procedure. It says:

"The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and, in the latter case (that is to say, in the case of a bond to be of good behaviour) the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond."

That is to say, Sir, the commission of any offence whatsoever would mean a breach of a bond to be of good behaviour. As regards a bond to keep the peace, the only offences which will involve a breach of the bond are offences which involve a breach of the peace. It is true, Honourable Members may refer to the form (Form X in Schedule V), in which the bond to keep the peace is drawn up, that a bond to keep the peace may be broken where a bond to be of good behaviour would not be—I refer to the case of doing an act that may probably occasion a breach of the peace. On the whole, there is no doubt, however, that the bond to be of good behaviour is a wider bond, and embraces a considerably wider field than the bond to keep the peace, and therefore the Bill proposes that the Magistrate should be able to take an interim bond, the less stringent bond in all cases. In these circumstances, I trust that this House will not accept the amendment.

Colonel Sir Henry Stanyon (United Provinces: European): My submission is that some misconception underlies the amendment which has been proposed. The clause, as it is at present worded, makes special provision for persons against whom proceedings are taken under section 107 of the Code for keeping the peace. The persons proceeded against under that section may be persons of the highest respectability, in no sense criminals, but driven by circumstances into a position which has made it necessary to take action against them under section 107. But proceedings under the more serious sections 108, 109, and 110 involve a stigma. They are proceedings against character, not against an act of impulse or a particular set of temporary circumstances which lead to a danger of a breach of the peace, but which involve a question of character; and the clause as now put up in the Bill very rightly makes a difference in favour of the non-criminal peace-breaker. If the House were to accept the proposed amendment, what would be the result? The result would be an inconsistency, because if a man is proceeded against under section 110 and is required to execute a bond to be of good behaviour, it would be a contradiction to say that he is not thereby required to execute a bond

to keep the peace. Section 110 includes under clause (*e*) a person who habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace. The moment you bind a man to be of good behaviour, you necessarily bind him, *inter alia*, to keep the peace, and therefore to legislate that a man who is bound to be of good behaviour shall not be bound to keep the peace is a contradiction and an inconsistency. I am quite sure that when this is perceived by the House, this amendment will be given the short shrift that it deserves.

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: Sir, the amendment which stands in my name asks that in clause 20. . . . . .

(*Voices*: " What about Dr. Gour's amendment* No. 57?")

Mr. T. V. Seshagiri Ayyar: I do not move it.

Mr. K. B. L. Agnihotri: I beg to move:

" That in clause 20, sub-clause (*iii*) the word 'omitted' be substituted for all words after the words 'shall be' where they first occur."

The present sub-clause (*iii*) is to this effect:

" Sub-section (3) shall be renumbered (4) and after the words 'habitual offender' in the said sub-section the words 'or is so desperate and dangerous as to render his being at large without security hazardous to the community' shall be inserted."

My amendment asks that the sub-section (3) shall be omitted.

The present sub-section (3) says:

" For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise."

I beg to put before the House that this clause which entitles the prosecution to prove the character of the habitual offender by the evidence of general repute or otherwise be deleted. Sir, under this section the Magistrate stamps a person with a bad character and of being a habitual offender for his whole life and this sub-clause provides that the man could be bound over on the evidence of general repute. The words " general repute " are of very wide interpretation and of confused application. The courts that have attempted to clear their meaning have introduced further confusion rather than succeeded in clearing in any way the meaning thereof. In the case of an habitual offender, the fact could be proved even by circumstances or personal knowledge. It is not necessary that the fact of the person being an habitual offender should be proved by the general reputation which a man bears in the community or among people in general in the town. It will be in the knowledge of the House that there are people in the mofussil who are not so well educated, who cannot think clearly for themselves and who are more or less guided by the opinions of others and it may happen as it generally happens that either they are carried away by their own prejudices or by the influence of the opinions of others with whom they come into contact. Therefore the fact that an habitual offender is a person who habitually offends against the laws could very well be proved by the evidence itself regarding offences which he may have committed. There may be a reply from the Government Benches that it often happens that though the courts are morally convinced that

* " And renumber clauses (*a*) and (*b*) of the proviso as clauses (*b*) and (*a*), respectively."

[Mr. K. B. L. Agnihotri.]

the man has committed an offence, still on some technical ground, the man may get off and may not get the punishment which he richly deserved for the offence which he committed. My reply would be that those very witnesses who came forward to prove that the man had committed the offence, would also come forward in this case to prove the offence and to prove that it is within their knowledge that the man has committed such and such offences; and probably that evidence will be a better evidence to prove about the habitual nature of that offender. Moreover, Sir, if we were to rely on the reputation which a man bears, it is pretty certain as has happened in the past that many cases may come before the courts in which a man may unnecessarily be bound over simply on account of the prejudices or the opinions wrongly based, of the persons who come to give evidence against him. Therefore, I submit that it is not necessary to change the law of evidence so far as the nature of proof necessary for binding over an habitual offender is concerned under this section, or to allow this clause to stand. I therefore submit that this clause should be deleted. The Government do not only want the retention of the clause in this Bill but on the other hand they also want to make it applicable to certain other classes of people within the purview of this clause, that is, to include desperate and dangerous characters. The question as to how far it was desirable to include such persons under section 110 was very well discussed in the amendment which was moved by my Honourable friend, Munshi Iswar Saran, and I need not go into details. I may simply submit that all these particulars are very difficult to be proved by general repute which is of a very wide application and therefore it is better that the whole clause should be deleted

The Honourable Sir Malcolm Hailey: It is perhaps difficult to appreciate the full meaning of the amendment in the form in which it appears on the paper, owing to the exigencies of drafting. The Honourable Member however has explained his intention very definitely to us; he wants to do away with the whole of section 117, sub-section (3). That is to say, he would make it impossible for the courts to accept evidence of general repute in dealing with habitual offenders.

Mr. T. V. Seshagiri Ayyar: No.

The Honourable Sir Malcolm Hailey: Yes. You cannot place any other construction than that I have placed upon the proposal of the Honourable Member; and I see that I have the assent of the Honourable Member himself in my statement that I have correctly and clearly described his intention. Let me repeat; he would delete the whole of clause 117, sub-clause (3) and make it impossible for the courts to accept evidence of general repute in dealing with habitual offenders. Now it is an argument which we have had to use before, an argument which we have indeed heard used also on the other side, that if a particular provision has stood in the law for many years, we should not alter it unless very substantial reason exists for doing so. Has there been any general expression of opinion against the provision? None whatever. I would ask the House to refer to the opinions which we have placed in their hands and to tell me whether they can quote any substantial body of opinion against this provision, or indeed any expression of opinion at all. Now have the courts themselves deprecated its use. I am on strong ground when I say that they have not done so. It is true that the question as to what constitutes general repute has been discussed at length in the courts, and has formed the subject of

judicial decisions, but the courts have now laid down definite standards for applying this particular provision. I draw the conclusion then that neither the public at large nor the judicial authorities have felt that this is an unreasonable provision of law. You will find a similar provision in the Italian law, where a man's character for the purposes of preventive sections is judged *per voce publica*. You will find a similar provision in the Egyptian law. (*A Voice*: "What about English law?") It does not, I admit, exist in the English law, but I have quoted two instances perhaps somewhat more analogous to Indian conditions. And I believe, and honestly believe, that people in India generally consider that this provision constitutes a real safeguard. We have been told to-day, that we should not rely on evidence of general repute, and should prove by concrete instances the character of a person who is to be made the subject of a preventive order. Of course the Honourable Member will not claim that we should prove this by concrete instances of conviction. The concrete instances are only concrete instances of alleged offences. But there is no very great difference, if you think of it, between the two sets of circumstances. In one a witness comes before a Court and says, 'I and every one who knows this man knows him to be a thief;' in the other a witness says, 'this man has stolen from A or stolen from B or from C,' but the Court is not able to call upon him for proof that the man has stolen from A, or from B or C. And every one is well aware of the class of cases in which this sub-section is really needed. It is no dialectical matter; I appeal to the practical experience of every one here. There are a large number of men who so terrify their neighbours that cases are not brought against them, though it is perfectly well known by the community what class of men they are; and if the verdict of the neighbourhood is unanimous, if there is no contradictory evidence against it, one may be pretty sure in the conditions of India that that verdict is correct. I may be pardoned perhaps for referring to a case within my own knowledge, but it is an interesting one and I will give it to the Assembly for what it is worth. We were colonising a new district in the Punjab; that is to say, there was a large and unpopulated waste into which we were bringing canal irrigation. Our colonists came from the congested districts of the Punjab—many of them military pensioners, many of them from the Sikh districts, all carefully selected and respectable men. They had, of course, to bring their cattle with them to plough their new holdings and any delay would have meant a heavy loss not only to the State, but to them. Now there happened to be living on the edges of this tract men whose sole profession in life was that of cattle stealing. They had practically little other means of subsistence. So far was this acknowleged in the neighbourhood that by the law of the tribe no man could even put a turban on his head until he could prove to his family that he had stolen five cows. Was it possible to get convictions against these people? Of course not. If they stole cattle from a village and the villagers complained, the rest of their cattle disappeared next night. Yet everybody knew what was their means of livelihood; they knew by long experience that they were habitual cattle thieves. And directly the colonists appeared, some from 200 and from 300 miles away, prepared to take up new land, after incurring all the burden of raising funds for building their houses and buying their oxen and implements, their cattle were swept off by these amiable gentlemen. What remedy had the colonists and ourselves? One only. We took action against the most notorious of these men, some ten or fifteen, and we applied section 110. We proved by general repute that they were cattle thieves, they were put on security and the matter ended at once. That is exactly the kind of case to which

[Sir Malcolm Hailey.]

this sub-section of section 110 would apply, no other provision would be adequate, and I have ventured for that reason to quote the case.

We have been told by Mr. Agnihotri that if the section is allowed to stand, there is a risk that people will unnecessarily be bound over on account of prejudice. Now, the Courts have made it perfectly clear that reputation must be general reputation in the vicinity; not vague belief but reputation among people who know the person affected and reputation that is not capable of contradiction. Would it be possible, therefore, if the courts did their duty—and we have no reason to suppose that they do not do their duty in this respect—for a man to be bound over on account of unreasonable prejudice? Mr. Agnihotri has also supported his objection to the section by the statement that we have proposed to extend it. I am prepared to argue the supposed extension when we come to the amendment that Mr. Seshagiri Ayyar will shortly put before us. I would merely ask the House not to be swayed in its consideration of this very wholesome, salutary and long-standing section by the fact that we have been obliged, purely in order to clear up legal difficulties and for no other purpose, to add a few extra words to it. The sole question now is, would India at large approve of this Assembly withdrawing this necessary provision by which in the case of an habitual offender we can rely on evidence of general repute?

Mr. T. V. Seshagiri Ayyar: Sir, I cannot help characterising this clause as a very dangerous instrument which has been misused in the past and is sure to be misused in the future. The Honourable the Home Member has referred to his own experience; I may be pardoned by the House if I refer to my experiences and say that in ninety cases out of one hundred this section has been misused; and there have been no more improper convictions than the running in of a man on the ground that he is an habitual offender, and one therefore whose movements should be checked. The Honourable the Home Member was obliged to refer to the Italian and Egyptian Codes for a parallel. Certainly he could find nothing like it in the English Code, in the French law and nothing in America. He could only refer to the example of Egypt for the purpose of supporting this drastic provision in the Criminal Procedure Code. Sir, those who have judicial experience will bear me out when I say that repute evidence is nothing but evidence which the Police Inspector or Sub-Inspector of the place considers good. He goes to a number of people and asks them to say that a certain man is a dangerous man and is an habitual offender, and immediately the cry is taken up by a large number of people, and evidence comes before the Court with the result that the man's liberty is sworn away by people who do not know anything specific about him, but think that his liberty ought to be curbed in some way or the other. Take the case of men who make themselves obnoxious to people in their locality by holding peculiar religious opinions and social views. They are generally hated in the locality with the result that if the Police Inspector sets his mind to procuring a conviction against him and getting such a man out of the place, all he has to do is to go to the other people in the locality and ask them to swear that the man is dangerous and an habitual offender. There is no difficulty about this at all; you can always get people to swear that a man is an habitual offender, and if they were cross-examined they would say they were not in a position to give specific instances; they would say, all they know is that he

is a man who habitually commits offences. Sir, as the Honourable the Home Member has said he would reserve his comments as regards the amendment which I propose to make. I would not say anything about that matter. I will confine myself solely to the question of a person who is described to be a habitual offender being restrained. I submit, Sir, that Mr. Agnihotri has given very good reasons for convincing the House that if such a provision as that is allowed to stand, no man's liberty would be safe.

1 P.M.

The Honourable Sir Malcolm Hailey: Sir, I would ask your special permission to make not a second speech to the House but for one remark only to the last speaker. I will hand to Mr. Seshagiri Ayyar the opinions which he recorded about our Bill when he was a Judge of the Madras High Court, and I would ask him to point to a single remark which he then made in opposition to this section of the Bill. Obviously his opinion as a Judge was not then as strong as he expresses to us now. There is not a single word of his on the subject.

Mr. N. M. Samarth: It is a later development, Sir.

Mr. Harchandrai Vishindas: Sir, to the experiences which have been just now detailed by Mr. Seshagiri Ayyar, I might add my own. Now, I will begin by saying that in many cases the provisions of this chapter are salutory and are worked salutorily, but at the same time there are many instances in which they are misused; I will not go so far as to say that they are misused in 90 per cent. of the cases in my own province. Still I have personal experience of many cases in which they were misused. Not only is it the case that the Police go about and ask people that this is a dangerous man and therefore he should be restrained or some action of this kind should be taken, but, as a matter of fact, there are standing professional witnesses for these cases under section 110, and they are very glib witnesses too. I remember a case in which a baniya who was a mere shop keeper whom nobody could possibly conceive of being a habitual offender rendered himself obnoxious, for circumstances which need not be mentioned, to the police and the police brought up two or three witnesses who were in the habit of giving evidence against habitual offenders, and when the witnesses were asked as to instances of the accused person having harboured thieves, they glibly gave 10 or 15 cases, of which there was no possibility of verifying. On the one hand, I say that the provisions of this section do require to be administered, and on the other hand there are many cases in which they are misused and they are taken advantage of by the police as instruments to run in persons whom they consider obnoxious.

The Honourable Sir Malcolm Hailey: Was security taken from the baniya you mention?

Mr. Harchandrai Vishindas: It was. Sir Malcolm Hailey might say one bad case does not mean that the law is improper or improperly worked, and, as they say, hard cases make bad law. At the same time, I think, the absolute abolition of this chapter in this country would be undesirable, because, whilst there are cases in which these sections are being misused, in some cases the presence of this section is absolutely necessary in the interests of the people. In a place where dacoities are very rife, as it very often happens in my own province, when it is impossible to adduce evidence to identify dacoits when they commit dacoities, there is no other means of pinning down those dacoits than by having resort to the provisions of this section. Therefore in reply to Mr. Agnihotri and Mr. Seshagiri Ayyar, I have to say, as Sir Malcolm Hailey has pointd out, it would be impossible

[Mr. Harchandrai Vishindas.]

to work this chapter if you were to remove these provisions altogether. It is impossible to bring evidence of persons who would speak to the fact that they saw this man commit a theft or some such thing. They can give evidence of a general character that they had heard that this man had harboured such and such offenders in his house and was usually a man in the habit of receiving stolen property. Still, I am of opinion that if this amendment of Mr. Agnihotri is allowed, the result would be that it would be impossible to work this chapter. The better course would have been to have moved for the abolition of the whole chapter and Mr. Agnihotri would have been better advised if he had moved for the abolition of the whole chapter, but not merely for inserting a provision which will make the provisions of the rest of the chapter entirely nugatory. As we should look to the greater good of the greater number, I think people who require some order to be preserved in their provinces will, in the interests of the peaceful man, agree that the provisions of this chapter are very necessary. It very often happens in my province that there are waves of lawlessness and waves of dacoity and then it becomes very essential to have the provisions of this chapter.

Rao Bahadur O. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, the discussion on this clause has given opportunities to indulge in moods of reminiscences. But the point taken by my friend, Mr. Agnihotri, is, as I understood him, that this clause is liable to be harshly worked. That is the evidence in support of it would be vague, and, therefore very difficult for an accused person to meet it. That, I think, is the main objection to this clause. Another point which has been taken up by my friend, Mr. Seshagiri Ayyar, is that out of 90 out of 100 cases which came up before the High Court the provisions had been misused. The two are distinct. There is the law. It may be sometimes that those who work the law go wrong, and therefore when the matter goes before the higher Court, naturally the errors are corrected. But, taking Mr. Agnihotri's objections, what is it he offers us in the place of this clause? Is it easy, is it workable, to offer an alternative to the clause that exists? Well, that alternative has not been placed before the House. Well, the question naturally turns to the point whether we should have a clause like this and whether it is necessary to control the men who are brought under this clause. The question is apart from the reference of the percentage which my Honourable friend, Mr. Seshagiri Ayyar, gave, which, no doubt, requires to be verified, whether really such a large percentage of cases had been found to have been so egrigiously dealt with. The interpretation of the phrase 'general repute' as the Honourable the Home Member very clearly pointed out has not led to any difficulties. No doubt, subordinate Magistrates sometimes have admitted what is called hearsay evidence, and they have sometimes admitted vague general aspersions against the man, but in every one of those cases, the High Court has corrected. Now, the phrase has got a regular well understood meaning. The words 'general repute' have practically been defined by judicial decisions and no practitioner of any standing or no judge of any legal knowledge can have any difficulty in interpreting the words 'general repute.' That has practically become a phrase of accredited interpretation. Now witnesses of general repute must speak from personal knowledge. That excludes mere vague hearsay. It must be the reputation in the locality and among the people where the person resides. I do not want to define the law at length because, as I have said, it has been done

exceedingly well by the Honourable the Home Member, but as the discussion has taken a form which is not entirely germane to the interpretation of the term, I refer to it. Courts have not any difficulty in laying down the conditions and the elements of evidence necessary to come under this clause, and therefore there is no difficulty in understanding the phrase " general repute " in this clause. Now we are faced with this alternative. If you omit that, then there are absolutely no means of bringing in offenders who come under this clause. I will give an instance which recently occurred. There was the case of a man who was a real bully. That man used to terrorise the neighbourhood. The neighbourhood was in a slum locality. And it happened one night that a number of people joined together and beat him to death, and when I inquired, I heard he was a bully who had been bullying the neighbourhood for a great many years, and then the people could not stand it any longer, and they combined and beat him to death Now if proceedings had been taken against that man and he had been bound over, that man would not have been killed. That is one case where it has gone to extreme lengths. As the section as to good behaviour stands, I may say that I am not convinced that it has been really abused. No doubt the evidence judged from the standpoint of evidence required to convict a man is less exact. All the same that section when used in regard to good behaviour, which I am discussing now, has produced salutary results, and therefore it cannot be said that it has been misused. It is no doubt liable to be misused by people, or Magistrates who have got the requisite training or balance of mind. That no amount of training or legislation can give. Therefore I say that the clause which my learned friend, Mr. Agnihotri, wants to be dropped ought to be retained.

Rao Bahadur T. Rangachariar: I move that the question be now put.

The motion was adopted.

Mr. Deputy President: It would be perhaps more convenient if I put the question in the following terms:

The question is:

" That sub-section (3) of section 123 of the Code be omitted."

The motion was negatived.

Mr. Deputy President: Mr. Seshagiri Ayyar.

Mr. K. Ahmed: Sir, I rise to a point of order. You see, Sir, the next amendment covers amendment No. 60. A portion of No. 61 is amendment No. 60, and therefore 61 swallows up No. 60, or at least 60 is a part of 61. I think, Sir, if 61 is moved, that will be sufficient to cover 60.

Mr. Deputy President: Mr. Seshagiri Ayyar.

Mr. T. V. Seshagiri Ayyar: Sir, I said a few words on the last occasion which to a considerable extent bear upon the amendment which I now move, namely:

" That in clause 20 (*iii*) omit the words from ' and after ' to ' instead '."

There is this additional factor, so far as this amendment is concerned; it is not an old-standing provision, it is something which the Government wants to introduce for the first time. Under the original section the fact that a person is a habitual offender may be proved by general repute or otherwise. It is now sought to add to the clause relating to " habitual offender " the clause "or is so desperate and dangerous as to render his being at large without security hazardous to the community." It is bad enough to have reputable evidence as regards old offenders; we are going to add a new

[Mr. T. V. Seshagiri Ayyar.]

terror to the lives of peaceable citizens by introducing a new clause and by permitting evidence to be given by the police for the purpose of showing that a man is of so dangerous and desperate a character that his liberty should be curtailed. Sir, as far as possible in all civilized Governments, there should be as little evidence of this vague character as possible; evidence which can be easily manufactured, evidence which would give a handle to persons who do not like a particular person to go before a Magistrate and swear that this is a very dangerous and desperate man and it is desirable that his liberties should be curtailed. My friend, Mr. Subrahmanayam, seemed to a certain extent to doubt whether I was justified in saying that in 90 per cent. of cases the evidence is not good. I will not refer to anything which I know personally, but I say, Sir, that the appearance of this clause in the form in which it has been introduced is likely to be greatly abused, and is likely to put honest men into the clutches of the police, and I think it is desirable that no innovation should be made in regard to the letting in of evidence of this character in the Criminal Procedure Code. The Honourable the Home Member has already advocated the retention of the existing clause, but I do not think he would be justified in asking that there should be an addition to that clause; namely, you must allow the police to let in evidence for the purpose of showing that a man is a very dangerous and desperate character. And after all, what is the evidence which would be allowed? A few people would come in and say: "We know this man is very dangerous and should not be allowed to live in the village; he is a very desperate man, if he is allowed to live in the village, our lives would be in danger," and if they are asked to give instances, there would be great difficulty in getting anything specific in regard to the matter. It has been said by my friends that Courts have always required in such matters that specific evidence should be given. But that is only when the matter goes before the High Court, after the man is called upon to show cause why he should not execute a bond for good behaviour. Evidence of this nature would be let in and the man would be bound over for a long time and subjected to all manner of difficulties before the matter is taken up to the High Court. The High Court may later on point out that there was no evidence of a specific nature but the mischief would have been done. That has been the experience of a number of police, and I do not think it is desirable that this means should be left in the hands of the police to harass honest men; and I therefore move, Sir, that this new clause which it is intended to insert should be dropped.

Mr. Deputy President: The amendment moved is:

"That in clause 20, sub-clause (*iii*), omit the words from 'and after' to 'inserted'."

The Honourable Sir Malcolm Hailey: I find that we are again under the imputation of attempting to gain extensive and undesirable powers under the cover of a little addition of this nature. But if I give the House an explanation of the reason for the addition of these words in the drafting, they will see that, after all, our intentions were not so dreadful, nor on so vast a scale as suggested. The history of the case is as follows: It is sufficient to say that in 1872 you could get security against a man on the ground that he was of notoriously bad livelihood or a dangerous character, and you could prove this by evidence of general repute. When the Act came to be amended subsequently, in 1882, the Legislature omitted the condition that you might proceed against a man merely because he was a dangerous character. In other words, it was necessary then to prove that he was

a habitual thief, receiver of stolen property and the like. Now, we have already had by the vote of the House this morning, a very general admission that it was unfortunate that the revision of 1882 left out the provision that you could proceed against a man on the ground that he was a desperate and dangerous character. That, I say with confidence, was a result which every one must admit was arrived at on the discussion of Munshi Iswar Saran's amendment. We actually discussed a particular case in which, acting under the law of 1882, a Judge, who found that a man was what in other and perhaps lighter terms we should describe as a holy terror, could not be proceeded against because of the omission of 1882. Our Legislature, wisely as I claim, re-introduced this provision in 1898, but, when it did so, it was unfortunately not noticed that it had not provided, as was provided in 1872, that you could prove that a man was a dangerous character by evidence of general repute. If Honourable Members will glance at section 110, they will see that from (*a*) to (*e*) the clauses are proceeded by the words "habitually" or "by habit". When you come to clause (*f*), namely, the case of a man who is so desperate and dangerous as to render his being at large without security hazardous to the community, these preliminary words are omitted, and the Courts found, when they came to interpret section 117, sub-clause (3), that the omission of these words made it impossible to prove by evidence of general repute that a man was of so dangerous and desperate a character. All we seek to do, therefore, is to correct the inadvertent omission of 1898 and to bring back the law as it stood in 1872, so as to make it possible to prove by evidence of general repute that a man is a dangerous and desperate character. We seek to do that and nothing else; and I leave it to the House to judge whether what we propose is anything in substance so dangerous as to merit the terms which Mr. Seshagiri Ayyar has used. I think I need confine my further argument to one point only. I need only put it to the House that, if a man is really so dangerous and desperate as to render his being at large without security hazardous to the community, that is exactly the kind of case which you would ordinarily prove by evidence of general repute and for which it would be difficult to find proof of any other kind than general repute.

Mr. N. M. Samarth: Sir, I beg to support this amendment. The judicial decisions on this subject are to the effect that it is wrong in principle to apply evidence of general repute to a person who is to be condemned as a desperate man.

The Honourable Sir Malcolm Hailey: Might we have those?

Mr. N. M. Samarth: The Honourable Member will find them in Sohoni's edition of the Criminal Procedure Code under section 123, note 52, clause (*ii*), namely, 34 M., page 255, 5 C. W. N., page 249, 18 Cr. L. J. (9 All.). Then, again, there are several cases given under note 45. The principle is this. In the case of habitual offenders one can understand evidence of general repute being given, but in the case of a man who is for the first time being pounced upon as a desperate man, that is to say, in regard to whom there is no habitual offence brought home, it is not right that you should resort to general repute. You must give specific instances in his case to show that he is a desperate man, and that is the *raison d'etre* of the decision in 34 M., page 255, and other cases. I submit, therefore, that it is not right that we should now extend in the case of these men the principle that they should be condemned by general repute; the ordinary rules of evidence must apply. It is quite easy, if a man is really a

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desperate and dangerous man, to prove by actual evidence, by specific, concrete, acts on his part, that he is so, and it is not right that that man should now be brought under this clause of general repute.

I, therefore, support this amendment.

Sir Henry Moncrieff Smith: Sir, I think it is not right that the House should be misled by any remarks that have just fallen from my Honourable and learned friend.

Mr. N. M. Samarth: I should be delighted to know how I have misled the House.

Sir Henry Moncrieff Smith: I shall endeavour to explain. I understood Mr. Samarth to be attempting to persuade the House to believe that the High Courts had suggested that the principle of section 117 (3) was wrong.

Mr. N. M. Samarth: No, I never said that.

Sir Henry Moncrieff Smith: That evidence should not be given of general repute and that we should not make any exception to our general law of evidence in these cases.

Mr. N. M. Samarth: May I rise to a point of explanation before the discussion proceeds further. What in effect I said was that the High Courts have laid down that a provision of law which is an exception to the general rule of evidence must be applied only to the cases to which it is confined by the Legislature, and that the Legislature should not now proceed beyond the limits that have been already laid down.

Sir Henry Moncrieff Smith: Sir, I must again remark that I understood Mr. Samarth to refer to the principle and he suggested that the High Courts had also referred to the principle of this section 117 (3). However, admitting the Honourable Member's explanation, we come to this. What did the Madras High Court say? Merely this, that section 117 (3), which enables evidence of general repute to be given, can only be used in cases where you are attempting to prove that a man is a habitual offender. They said: "You cannot prove that a man is of so desperate and dangerous a character by evidence of general repute." It was no more than this. The cases that followed took exactly the same point. Munshi Iswar Saran has quoted another case which took almost the same point. The Courts kept on holding that evidence of general repute was not admissible in cases of persons whom you wish to prove to be so desperate and dangerous that their being at large was hazardous to the community. They have not said anything further—I have been unable to find any ruling and I do not think Mr. Samarth has found a ruling, in which the Courts have condemned the principle of this section.

Mr. K. Ahmed: May I support the argument of Mr. Samarth by saying that the Calcutta High Court has also held that this sort of evidence of general repute is inadmissible. Their decision is reported in I. L. R. 29 Cal., page 779, in the judgment of Mr. Justice Ameer Ali and Mr. Justice Pratt:

"A charge under clause (*f*) of section 110 of the Criminal Procedure Code cannot be proved by general reputation, but by definite evidence.

To prove a charge under section 110 that a person is by habit a thief and a dacoit or that he is so desperate and dangerous as to render his being at large without

security hazardous to the community, there should be proof of specific acts showing that he, to the knowledge of some particular individual, is a dangerous or desperate character.

It is not sufficient that persons, however respectable, should come forward and depose that they have heard that such person is a thief and a dangerous character, when they themselves have no personal knowledge of or acquaintance with him. Such evidence is not only such as could not be safely acted upon, but is also likely to work serious prejudice."

Now, Sir, the closing lines of the judgment that was delivered by the Honourable Judge of the High Court are these:

"They say that they have heard that these men are thieves and dangerous characters, but when they are asked, if they know them personally, they answer in the negative, nor can they mention the people from whom they derived their information. In our opinion the evidence is not only such as cannot be safely acted upon, but it is also likely to work serious prejudice. If the men from whom these witnesses purported to derive their information were examined, it would be possible for the accused to test their means of knowledge that they were men of bad character. General suspicion of this nature, however, is not safe to act upon.

Having regard to the nature of the evidence in this case, we are of opinion that the order against the two petitioners cannot be sustained. We accordingly set it aside, and direct that the petitioners be discharged."

This is the sort of thing that is sometimes brought up against a man—that he is by general repute a thief or the son of a thief and *ipso facto* the finding of the Magistrate is that he must be a thief. That is generally the conclusion of the Magistrate against these poor unfortunates, who are the victims of police oppression; and this sort of thing is happening every day. It will continue so long as the District Magistrate, who is under the present law supposed to be also the head of the police, acts, I am sorry to say, in collusion with the police. When the matter goes up to the High Court, the learned Judges find that there is not a single item from (*a*) to (*f*) which has been proved; that he is neither a thief nor the son of a thief, nor a desperate and dangerous character, nor in the habit of committing robberies. One of the witnesses, the best man of the locality, comes forward and says "He is a thief—*chor ka larka.*" But what do Mr. Justice Ameer Ali and Mr. Justice Pratt say about it? That not an iota of reliance should be placed on evidence like this. The police, Sir, is like a magic lantern in the village that tantalises the minds of honest people who have asked again and again when this sort of thing is going to stop. I am very much obliged to my Honourable friend the Home Member for saying that in about 1872 the words were there. . . . . .

The Honourable Sir Malcolm Hailey: No, Sir, I said 1882.

Mr. K. Ahmed: I beg your pardon, it is 1882. And now, Sir, we have this recent case from Calcutta to which I have made reference, *i.e.*, I. L. R. XXIX Calcutta at page 779. What we want is not to strengthen the hands of the police or to help the police any longer, but to protect the victims of this oppression. We have had no other argument from the other side which will hold water, as my friend from Karachi said the other day; and therefore, Sir, it is advisable that those words that my Honourable friend Mr. Seshagiri Ayyar moved—"or is so desperate and dangerous as to render his being at large without security hazardous to the community"—should be deleted.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): Sir, it seems to me that it has become necessary to clear the position with

[Dr. Mian Sir Muhammad Shafi.]

reference to the remarks which fell from the lips of my Honourable friend Mr. Samarth in order that the House may be in a position to know what the law at present is, and whether it is desirable to incorporate into this sub-section the words which we seek to introduce. The principle laid down by the Madras High Court in the ruling to which my Honourable friend referred was not that the Legislature ought not to restore the position which, as was pointed out by the Honourable Sir Malcolm Hailey, existed in 1872. All that the High Court did say was this, that the evidence relating to the general repute which a man may bear in his neighbourhood not being ordinarily evidence admissible under the Indian Evidence Act must be confined to the particular cases which fall within the purview of section 117. That is all that the High Court laid down. The Courts of law when judging whether certain evidence relating to general repute is admissible against the person who is on his trial before the Court should see that such evidence is strictly confined to the cases expressly laid down in section 117, and the Courts should not go outside the purview of those cases, for as a general principle the evidence relating to general repute is inadmissible under the Evidence Act.

Mr. N. M. Samarth: I quite agree.

The Honourable Dr. Mian Sir Muhammad Shafi: That being the position, the rulings referred to by my Honourable friend or that may be referred to by other Honourable gentlemen are really entirely beside the point. They do not help the issue which is now before the House. The question for decision by this House is whether the rule which obtains at present under the provisions of the Act of 1898 with regard to the eligibility of evidence of general repute against habitual offenders should or should not be extended to the class of persons who are described in the phrase which we want to introduce in clause 3; that is to say, "men who are so desperate and dangerous as to render their being at large without security hazardous to the community". If this House is of opinion that persons falling under this section should be called upon to furnish security—and I assume that the House has already arrived at that opinion—

Mr. N. M. Samarth: And I quite agree with that opinion.

The Honourable Dr. Mian Sir Muhammad Shafi: Then it is clear, I submit, that the evidence of general repute ought to be considered admissible in the case of this class of persons also, because it seems to me that this is the one class of persons to whom on *a priori* grounds such evidence ought to be held applicable. No doubt it would strengthen the evidence of general repute if the prosecution or the police is able to prove specific cases against them. Surely it is men of this character, who are dangerous to society within the meaning of the words which we want to incorporate in this section, against whom evidence of general repute ought in the interests of society to be held as admissible. After all, remember what is the meaning of general repute. According to Chief Justice Petheram "a man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen". Moreover it has been held by the High Courts that when security is demanded from a person on the evidence of general repute, that repute must be universal and there should be no doubt about it. Now that being so, surely in cases where it is proved by general repute, that is to say, general repute amongst the neighbours in the midst of whom such a person resides, where it is proved by evidence of an overwhelming majority of those neighbours that

the man is dangerous, so dangerous and so desperate as to render his being at large without security hazardous to the community, is there any reasonable person who would still maintain that although this proof, this evidence, is forthcoming against the particular individual, yet he should not be called upon to furnish security simply because the evidence that has been adduced against him is evidence of the character of general repute? Surely, such a position as that is hardly maintainable. I therefore submit that this is exactly the class of persons against whom this House should hold that evidence of general repute ought to be made admissible in order to bring them within the purview of section 117, clause 8.

Sir Deva Prasad Sarvadhikary: Sir, I am afraid I must plead guilty to being an unreasonable person in the sense in which the Honourable the Law Member has just used the words. Having contributed to a certain extent to the retention of sub-clause (*f*) in section 110, about dangerous and desperate characters being required to give security in certain circumstances, I owe it to myself to disclaim the further liability of making abnormal evidence applicable to such a person. I am not quite sure, Sir, that the draftsmen of olden times were so very careless as has been indicated to-day. When clause (*f*) came to be re-introduced in section 110, I am not sure that the further extension in section 117 was accidental. Let us examine what (*a*), (*b*), (*c*), (*d*) and (*e*) in 110 are. Every one of these relates to a case where certain specific offences, concrete misdeeds, are indicated. Furthermore, we have the element of their having to be what is termed habitual offenders. With regard to clause (*f*), before this section could be applied to them or before evidence about repute could be admitted a man may be a veritable tyro, a young blood just taking to bad ways and means, there cannot be any confidence in him, and therefore he has to be checked. In his case what would determine the quality of evidence, and also the quantum would not then be the same as in (*a*), (*b*), (*c*), (*d*) and (*e*) and ordinarily the rules of evidence would apply. Furthermore, habitual offenders are sneaks who work in the dark; while the dangerous and desperate characters are the contrary. (*A Voice*: " No ".) I hear a voice ' No ' behind me. I think people find that that is so. Apart from it being possible to pin him down to his overt misdeeds, there is this further danger and difficulty. In regard to (*a*), (*b*) (*c*), (*d*) and (*e*) we know exactly what the witness is speaking of and what the accused is guilty of . With regard to (*f*), it is more or less nebulous, may to some extent be imaginary. Any witness saying " I believe the man to be desperate or dangerous " or that he is dangerous or desperate without being able to quote definite facts will be throwing the gate far too wide, and therefore I think it was a wise discretion that the Legislature exercised in not introducing with regard to clause (*f*) what finds place in clause 3 of section 117. It has been suggested that my Honourable friend Mr. Samarth on this side of the House was suggesting that the Courts have held that it is wrong in principle for the Legislature to extend the scope of this section if they thought fit to do so. The Honourable the Law Member, if I may say so with great respect, is quite right in saying that the law courts found themselves powerless in these cases, because clause 3 of section 117 did not apply to the case of dangerous and desperate characters. But, Sir, the point that I should like to make with regard to those cases is that, if the Courts felt that such an enactment was necessary with regard to dangerous and desperate characters, and that its absence was really felt one should have found some indication of that in the judicial decisions. Their trend is on the other hand that the courts were unwilling that this principle should be

[Sir Deva Prasad Sarvadhikary.]
extended to the cases in question in the absence of express provision and that they did not want to countenance such unauthorised extension.

The Honourable Sir Malcolm Hailey: Is that so?

Sir Deva Prasad Sarvadhikary: I say that is the trend. I am entitled to draw my own conclusions. . . . .

The Honourable Sir Malcolm Hailey: Have you a single case in which language of that kind is used?

Sir Deva Prasad Sarvadhikary: My suggestion is that there is not a single word in any one of these cases where the courts found it necessary to suggest the need for the extension of this principle to dangerous characters.

The Honourable Sir Malcolm Hailey: Could you quote any case?

Sir Deva Prasad Sarvadhikary: No. That proves my point all the more, because it was not the Judge's business to make remarks against the principle of extension if the Legislature later intended it. But as custodians of peace and order, as some law Courts here have imagined themselves to be, we should have found some indication if that was necessary. And because of real dangers that there are in extending the principle in the case of those not yet guilty of anything habitual, we should be well advised in not pressing for enactment of the provision of clause (*iii*) of section 117 with regard to (*f*) of 110.

Colonel Sir Henry Stanyon: Sir, the fears entertained by the Honourable Mover and those who sustain him can easily be understood. There is no doubt that the conferring upon Courts of a general power of this kind is attended with a certain amount of risk. As has been pointed out by the Honourable the Law Member, this is a case where you create an exception to a rule of the law of evidence. Nevertheless, a Legislature has to take risks of this kind. The amendment which the framers of the Bill propose to introduce seems to me almost consequential to a retention on the Statute Book of clause (*f*), section 110. To my mind, it seems to be inconsistent that we should have one rule of evidence for cases coming under clauses (*a*) to (*e*) of that section and that we should shut out that exceptional rule of evidence, if I may so speak of it, in the case of clause (*f*), where perhaps its presence is more necessary than in any one of the other cases. The High Court rulings which have been cited will be accepted as sound law by every lawyer. As the Honourable the Home Member has pointed out in his very clear enunication of the subject, they restrict the exception to the cases expressly provided for. But for that very reason they indicate the necessity of the amendment which the framers of the Bill have now put up. The Honourable Mover said, if I heard him correctly, that this would be a dangerous power to put into the hands of the police. We have heard also other speakers condemning the police. That condemnation, I take it, is based upon "general reputation"; but it seems to me that it is not a power placed in the hands of the police: it is a rule of procedure laid down for the guidance of the Courts. No doubt, it is a procedure which the Courts of supervision have to watch with extreme care. If the estimate made by the Honourable Mover is correct, that in Madras 90 per cent. go wrong, then either the quality of the magistracy or the supervision of the supervising authorities there calls for improvement. But I think that, if Honourable Members will halt a moment and give their full significance to

the words " general repute," perhaps they will be disposed to see that many of their fears are not so well founded as the casual consideration of that phrase might lead one to believe. " General repute " means something than mere statements by one or two persons as to the reputation of a man. It means that there is a general body of people, in a position to know and to hear and to sense the character of a man who lives among them, who are agreed in condemning him as desperate and dangerous. A headman of a village may receive daily complaints from ryots concerning the unscrupulous conduct or dangerous conduct or intimidation or bullying of a particular man but only upon the understanding that he is not to give them away as informants lest they should find themselves going from the frying pan into the fire. In all communities, every day, it happens that you have a marked man. Plenty of people are ready to tell one another in confidence about him but very few have the necessary moral courage, or the necessary standing, to take active steps to put a stop to the acts which have made him a marked man. I think it is very essential that, since desperate and dangerous characters do exist against whom specific offences cannot be proved, that our Courts should be armed with authority to help the general body of the public in obtaining relief against the acts and misconduct of such characters. I admit,—as I have already said—it is a power which requires very careful control and watching; but that of itself is no reason why the power should not be given. We are dealing now with what we have been reminded over and over again to be preventive and not punitive sections. We do not want here provisions to *punish* crime. We want provisions to *prevent* crime. We do not want evidence so much that a particular crime has been committed, as evidence that a particular individual is likely to commit a particular crime; and I find it difficult to understand how you can have anything except evidence of this class to say what a man is likely to do—what there is danger that he may do—if he is not checked by an order for security or the like. And so, I think that while we retain clause (*f*) as a part of section 110, we should in all consistency include the additional words added by the Bill, but proposed to be omitted by the motion now before the House.

(*Several Honourable Members*: I move that the question be now put.)

Mr. Deputy President: The question is:

" That in clause 20, sub-clause (*iii*), omit the words from 'and after' to ' inserted '."

The Assembly then divided as follows:

AYES—35.

Abdul Quadir, Maulvi.	Iswar Saran, Munshi.
Agnihotri, Mr. K. B. L.	Jatkar, Mr. B. H. R.
Ahmed, Mr. K.	Joshi, Mr. N. M.
Ahsan Khan, Mr. M.	Lakshmi Narayan Lal, Mr.
Asad Ali, Mir.	Man Singh, Bhai.
Asjad-ul-lah, Maulvi Miyan.	Misra, Mr. B. N.
Ayyar, Mr. T. V. Seshagiri.	Mukherjee, Mr. J. N.
Bagde, Mr. K. G.	Nag, Mr. G. C.
Bajpai, Mr. S. P.	Neogy, Mr. K. C.
Basu, Mr. J. N.	Rangachariar, Mr. T.
Bhargava, Pandit J. L.	Samarth, Mr. N. M.
Das, Babu B. S.	Sarvadhikary, Sir Deva Prasad.
Faiyaz Khan, Mr. M.	Singh, Babu B. P.
Ghulam Sarwar Khan, Chaudhuri.	Sircar, Mr. N. C.
Gulab Singh, Sardar.	Srinivasa Rao, Mr. P. V.
Hussanally, Mr. W. M.	Venkatapatiraju, Mr. B.
Ibrahim Ali Khan, Col. Nawab Mohd.	Vishindas, Mr. H.
Ikramullah Khan, Raja Mohd.	

NOES—41.

Abdul Rahim Khan, Mr.	Holme, Mr. H. E.
Abdul Rahman, Munshi.	Hullah, Mr. J.
Abdulla, Mr. S. M.	Innes, the Honourable Mr. C. A.
Akram Hussain, Prince A. M. M.	Kamat, Mr. B. S.
Allen, Mr. B. C.	Ley, Mr. A. H.
Barua, Mr. D. C.	Mitter, Mr. K. N.
Blackett, Sir Basil.	Moncrieff Smith, Sir Henry.
Bradley-Birt, Mr. F. B.	Muhammad Hussain, Mr. T.
Bray, Mr. Denys.	Muhammad Ismail, Mr. S.
Burdon, Mr. E.	Percival, Mr. P. E.
Cabell, Mr. W. H. L.	Ramayya Pantulu, Mr. J.
Chatterjee, Mr. A. C.	Sen, Mr. N. K.
Chaudhuri, Mr. J.	Singh, Mr. S. N.
Cotelingam, Mr. J. P.	Sinha, Babu Ambica Prasad.
Crookshank, Sir Sydney.	Spence, Mr. R. A.
Dalal, Sardar B. A.	Stanyon, Col. Sir Henry.
Faridoonji, Mr. R.	Subrahmanayam, Mr. C. S.
Ginwala, Mr. P. P.	Tonkinson, Mr. H.
Haigh, Mr. P. B.	Webb, Sir Montagu.
Hailey, the Honourable Sir Malcolm.	Zahiruddin Ahmed, Mr.
Hindley, Mr. C. D. M.	

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 23rd January, 1923.