

shall be given; otherw'se, what is the meaning of putting "two days" here? Now, this is quite in keeping with rule 121. That is, I take it that rule 121 is accommodated here. Therefore, it should not be interpreted to brush aside the general rule and a particular rule never brushes aside the general rule. This is not the law of interpretation and, Sir, it should not be done. I would say, if you request and if you direct, we shall discuss it; I say, I will not oppose it. I know your difficulty because you are not to blame at all for this thing. We will do it but I submit, this matter may not be pushed through today . . .

MR. DEPUTY CHAIRMAN: We will get on with the business.

SHRI BHUPESH GUPTA: Do whatever you think or pass it. I think that Government is not showing proper respect to the House and they think that our job is to wait here on the pleasure of another place and as things come, we have to sign on the dotted line.

MR. DEPUTY CHAIRMAN: Both the Houses are working together. We are pressed for time. Some allowance has to be made. And I feel it will be taken up today.

SHRI BHUPESH GUPTA: You consider it, Sir. This general . . .

MR. DEPUTY CHAIRMAN: I understand your point.

SHRI BHUPESH GUPTA: You consider it. I agree . . .

MR. DEPUTY CHAIRMAN: As far as possible, we will try.

SHRI BHUPESH GUPTA: Business should be properly arranged.

THE INDIAN RAILWAYS (AMENDMENT) BILL, 1961.

THE DEPUTY MINISTER OF RAILWAYS (SHRI S. V. RAMASWAMY) : Mr. Deputy Chairman, Sir, I move:

"That the Bill further to amend the Indian Railways Act, 1890, as passed by the Lok Sabha, be taken into consideration."

As the House is well aware, this Bill introduces a fundamental change in the responsibility of the railways with regard to the carriage of goods. Hitherto, the liability has been that of the bailee. Hereafter it will be that of the carrier. There are some important changes also to which I will advert. But the main point which has to be high-lighted is the fact that from the bailee's liability, it is going to be one of the carrier's liability.

Sir, at present the bailee's liability is governed by certain sections of the Indian Contract Act—sections 151, 112 and 189. Section 151 of the Indian Contract Act reads thus:—

"In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed."

Section 152 reads thus: —

"The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described, in section 151."

Section 189 reads thus: —

"An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances."

[Shri S. V. Ramaswamy.]

Illustrations

(a) An agent for sale may have goods repaired if it be necessary.

(b) A consigns provisions to B at Calcutta, with directions to send them immediately to C, at Cuttack. B may sell the provisions at Calcutta, if they will not bear the journey to Cuttack without spoiling."

Sir, it is by virtue of these provisions that we can even now, in the case of goods which will perish sell them as prudent men, taking care of these goods as if they are our own.

Hereafter, Sir, it will be that of a carrier's liability. Then there is some misconception about the carrier's liability. It is spoken of as that of an insurer, but I would like to submit straightway that this liability of an insurer is circumscribed by the British terms and conditions, which were introduced in the British railways on; the 1st of January, 1928. It is not as if the insurer's liability is unconditional; it is not as if a trader can hand over something to the railways, and if there is loss or damage can make a claim straightway. No. There are certain conditions which have been laid down, and they have stood the test of time. We have sought an amendment to the Indian Railways Act, and the Bill that is before the House is largely based upon the British terms and conditions and the experience of the British railways all these years, and I must also submit that they have stood the test of time and there is no reason why we should not broadly accept those terms and conditions.

Sir, the point might be raised why we have not accepted this liability before. Whereas in the British railways this liability has been there ever since its inception, there are certain limiting factors here, and it is those factors which prevent the Indian railways from assuming a carrier's liability,

namely, the number of gauges, transshipment of goods at several points, long distances, the climatic conditions, etc. These vary, and also the packing conditions are not so well developed in our country as it is in England. These are the several factors which prevent us from assuming the carrier's liability. But then there was a clamour from trade and businessmen, and generally from the railway users that this should be assumed. They are quoting the instance from foreign countries and they urge that the Indian railways also should accept it. Also Dr. Ramasami Mudaliar—Committee—the Railway Freight Structure Enquiry Committee — recommended that it should be accepted, and the Government have accepted it, and it is in pursuance of this that this Bill has been brought.

I would like also to mention one other point, that the assumption of liability by the Indian railways is somewhat broader, in the case of owner's risk, than it is in the British railways. In the British railways, where the carriage is at the owner's risk rate, or the goods are not adequately packed, the liability of the railways in the United Kingdom is, at present, less than that of the Indian railways, in the United Kingdom the railways being liable only in proved cases of wilful misconduct while the Indian railways are liable even where negligence on their part or on the part of their servant is proved. Sir, this makes a very big difference. Whether the party should prove the wilful misconduct on the part of the railways, or not, is a thing which involves a very great difference between the Indian railways and the British railways. It is not proposed, however, to alter this position, as any change in this regard will amount to a retrograde step. The result of the changes proposed will be that the railways will be paying claims for compensation in many cases where they are not paid at present, for example, losses due to running train thefts, damage by wet in transit, in spite of bailee's care having been taken, etc.

Sir, the other basic thing, which is important and which should not be forgotten, is section 77. Hitherto, under the bailee's liability, it subsisted only so long as the goods were in transit or carriage and up to the expiry of the free time after reaching the destination. Thereafter the railways are not liable in any manner. Now a very important change has been introduced. Even during the course of transit or carriage it is now that of a carrier's liability; the railways have now assumed, under section 77 bailee's liability for 30 days after the goods reach their destination and after the expiry of the free time. This, I very humbly beg to submit, is a very large concession to trade and commerce, and generally to railway users, because 30 days is a long period; it is a concession, in fact, to the requests made by the trade interests and the railway users that the free time allowed was too short and that the railways should assume bailee's liability even after the goods reach their destination. It has been a very liberal concession, and I am glad about it and I hope the House will appreciate it.

Another two or three minor things may be mentioned. Under section 77B the value of the valuables, railways will carry under railway's risk, without paying anything extra, has been raised from Rs. 300 to Rs. 500. This is a matter to be noted.

The second minor point would be that under section 78B a proviso has been introduced, and that has been introduced by the Select Committee. It goes a long way to protect the interests of the railway users. I would like to read that proviso, which is the most important change which has been made by the Select Committee. Now this deals with notification of claims to refunds of overcharges and to compensation for losses. It says that a person shall not be entitled to a refund of an overcharge unless his claim to the refund or compensation has been preferred in writing. Let me read the proviso itself:

"Provided that any information demanded or inquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned above by or on behalf of the person within the said period of six months regarding the non-delivery or delay in delivery of the animals or goods with particulars sufficient to identify the consignment of such animals or goods shall, for the purposes of this section, be deemed to be a claim to the refund or compensation".

Sir, even a letter making enquiries about this is on a par with a legal notice and this, I submit, is a great concession to the railway users.

The last point that I would like to place before the House is the amendment to section 80. There was a good deal of confusion as to the cause of action, as to whom the notice should be given for the purpose of filing a suit against the railways. Now it has been clarified. It is now open to the claimant to file a suit for compensation either at the place where the thing was loaded or at the place of destination or, if in between, where the damage occurred, so that the difficulty that arose as a result of certain decisions and rulings on this subject, namely, of limiting cause of action to particular jurisdiction, has been removed, and now the railway users are given a wide latitude to lay their claims as it suits them.

With these words I commend the Bill for the consideration of the House.

The question was proposed.

SHRI K. SANTHANAM (Madras): Mr. Deputy Chairman, Sir, I wholeheartedly welcome the main objective of the Bill, namely, the general responsibility of a railway administration as a carrier of animals and goods. This is the principle of the new clause. I do not know why those who have been responsible for this very good reform should have felt obliged to go back on the reform in the new clause 74, Sir,

[Shri K. Santhanam.] if this reform is to be effective, it means that wherever any kind of goods or any class of goods can be carried at railway risk, there will be no owner's risk at all. There will be only one risk and that will be the railway risk. It is only in the case of those classes of goods which cannot be carried at railway risk and where they will be carried in open wagons and such other ways there would be owners' risk, and naturally then the liability will be that of the bailee.

Now, new section 74 says that wherever a railway administration has got both risks and if somebody tenders goods, it will be presumed that he does it at owner's risk unless he goes out of the way and says that he wants to tender it at the railway risk. That is the present position. What exactly is the reform made? Even today if a man tenders goods at railway risk, then the common carrier's liability is there. Then what exactly is the purpose of clause 73? If it had been provided that ordinarily any goods tendered would be at the railway risk, and if the man tenders goods and goes out of his way and says that he wants it to be at the owner's risk and then takes the responsibility, I can understand that. Even that procedural change has not been made. I want a proper explanation as to why they should formulate a principle and proceed to defeat it in the following clause.

Sir, there are some other minor points which I would like to point out. On page 6, in the new clause 76D there are two provisos. But I am not able to understand why there is no operative part at all. The main clause says that where somebody tenders goods to a railway administration and that has to be carried through one or more railway administrations, he shall be deemed to have contracted not only with the administration to which he delivered the goods but also with all the other administrations involved. That is good. Nobody can object to that. But the proviso (a) says:

"Where there is a deviation in the route by which the animals or goods etc., etc."

What happens? I suppose it is intended that the contract will extend to the deviated railway also though it was not originally intended because it is said:

". . . through over the railways of two or more railway administrations or over one or more railway administrations and one or more transport systems . . ."

If the goods go through deviated routes, he should be deemed to have contracted with the administration responsible for the deviated route also. But as the clause stands, it does not make any sense at all-

The same thing applies to proviso (b):

"for the purpose of making the provisions of this Chapter . . ." etc., etc.

What happens? It will be said that either the owner's risk or the railway risk must be applicable or something. I think there is some defect in the very drafting of this proviso. I do not know, but if the hon. Minister understands, it is all right. But, I hope, he will be good enough to explain it to us.

Then, Sir, in clause 77B it is said that if the value of the package exceeds live hundred rupees etc., then he should give notice. I understand the necessity of it. But it goes further and says:

". . . and if so required by the administration, paid or engaged to pay in writing a percentage on the value so declared by way of compensation for the increased risk."

Why should there be this question of ". . . if so required by the administration"? If any articles mentioned in the Second Schedule is delivered and its value is more than five

hundred rupees, then he should automatically pay the insurance, or whatever it is called, to the railway. I do not know why this conditional clause has been put in.

Then, Sir, I come to clause 77C. Though it appears to be harmless, it enables many station masters, especially in rural areas, to tell the people, "LOOA here. It is defective and, therefore, I will take only at the owner's risk" and thereby defeat the main objective of the Bill. I think it would have been better, as we did the other day in the Bill relating to heavy packages, wherever the package is defective, the station master or other railway authority are given the right to remove the defect of the package and take it under railway risk. Now many people would not know about railway risk, especially in the rural areas. To all of them— the benefit of the Bill will be lost. Therefore, the obligation should be put on the railway authorities to rectify the defects. Let them add the charge, if necessary. I do not say that the railway administration should be put to a loss. I have found that even when the packages are properly packed— the people do not know whether it is properly packed or not—the railway authorities think that it is better not to take the responsibility and so they say that it is defective and then it is to go on owner's risk and the railway responsibility gets diminished.

Then, Sir, section 80 of the principal Act—clause 14 of the Bill—is sought to be made rather very obscure. It is said:—

"A suit for compensation for loss etc." can be against the administration where the goods are tendered, but the responsibility of proving that it was due to act of God or negligence, etc. in any other administration should be on the administration. Suppose a man files a suit and the administration says, "No. No damage was caused within my administration. The damage has been caused during the transit of

some other administration." Is it intended, as I presume it is, that this railway administration undertakes the responsibility for all the other administrations, otherwise there is no meaning in a man filing a suit against the administration and the administration saying, "I escape the responsibility. It is some other administration which is responsible"? It will then be very inconvenient and unreasonable if he is allowed to sue one administration. The responsibility should be squarely placed on that administration which ordinarily must take the responsibility of all the administrations concerned.

3 P.M.

In clause 6 it is said:

"Where by reason of any flood, land-slip, breach of any line of rails, collision between trains, derailment of or other accident to a train or any other cause . . ."

This includes even negligence and failure of the Railways. Again 6(2) says:

"Out of the proceeds of the sale, the railway administration may retain a sum equal to the charge due in respect of the goods and the expenses of and incidental to the sale rendering the surplus . . ."

Suppose some goods are sent from Delhi to Madras. The accident occurs somewhere in Agra, what is the charge due? Is it the charge which has been agreed to be levied from Delhi to Madras or it is only the charge from Delhi to Agra? Now the sub-clause is ambiguous and it is liable to be interpreted to say, "Because you have booked to Madras though the flood happened at Agra, you will have to pay the whole cost from Delhi to Madras." I do not think it is the intention but they have left it so obscure that either you will have to amend it here or again bring an amending Bill.

MR. DEPUTY CHAIRMAN: There are other speakers.

SHRI K. SANTHANAM: I think the points will be helpful to the other Members also who will speak. In clause 8 the words substituted are:

"in Hindi and in English and also, if considered necessary by the railway administration, in one or more of the regional languages in common use in the territory traversed by the railway".

Whenever anything is put in print in the posters or notices, it should become a rule that it should be in English, Hindi and the regional language concerned. It should not be left to the railway administration to consider it necessary and they should not wait for some agitation and some erasure of boards and other things before they are changed.

SHRI SANTOSH KUMAR BASU (West Bengal): That is my amendment.

SHRI K. SANTHANAM: I am glad about it. Only one more word and I shall have finished. The time has come when the railway administration should consider whether they should not abolish the smalls from the goods traffic altogether. I suggest that they should consider amalgamating parcels and smalls and have the goods traffic only in wagon loads. That will save a lot of transshipment and other delays in the movement of wagons, improve the turnover of wagons and enable the railway administration to carry much more traffic. By having parcels Grades I and II and amalgamating the smalls and parcels, they will be able to deliver the smalls quickly and probably get a little more freight. I commend this suggestion to the consideration of the Railway Minister.

SHRI SANTOSH KUMAR BASU: I welcome this Bill in so far as it tries to clear the tangle created by the application of the English law of Bailment to the administration of the railways in this country. The Minister has very rightly pointed out, if I may say so, that there are certain improve-

ments in this Bill on the present state of affairs as regards the application of the law of payment of claims by the Railways. He has referred to Section 77 on page 8 which is a part of the big clause 13. The Minister pointed out that it is a concession to the trading interests who have demanded that "the railways should continue to take the risk even after the arrival of certain consignments in a railway station for a certain period and that period is proposed to be determined as 30 days in this Bill after the termination of the transport. So far, it is an improvement but the proviso to Section 77(1) says:

"Provided that where the goods are carried at owner's risk rate, the railway administration shall not be responsible for such loss, destruction, damage, deterioration or nondelivery except on proof of negligence or misconduct on the part of the railway administration or of any of its servants."

The Minister must be aware that this throws the burden upon an outside party to establish and to furnish proof of negligence and misconduct on the part of the railway administration in the course of the transit of the goods. It is almost an impossible task to discharge that burden. In other words, what has been given in the clause itself has been taken away by the proviso. I would, therefore, suggest to the Minister to consider whether he could liberalise this provision in any particular respect so as to relieve the party who has suffered the loss from discharging this almost impossible burden of proving the negligence or misconduct on the part of the railway administration right from the beginning of the transit up to the end within 30 days. As I said, it takes away by one hand what is given by the other.

Shri K. Santhanam, from his careful study of the provision—which we always expect and get from him in this House and I am glad to acknowledge it on this occasion—has point-

ed out several items on which comments can be made legitimately and reasonably and he has made them. I would draw the attention of the House and the Minister to some of the points which I have tried to embody in the form of amendments.

In clause 6 we find Section 56A has been sought to be provided to which reference has been made by Mr. Santhanam. I may also draw the attention of the House again to bring out my point clearly. It says:

"56A.CD Where by reason of any flood, land-slip, breach of any line of rails, collision between trains, derailment of or other accident to a train or any other cause."

That is a point to which reference has already been made by Shri Santhanam-----

". . . traffic on any route is interrupted and there is no likelihood of early resumption of such traffic, nor is there any other reasonable route whereby traffic of perishable goods may be diverted *" prevent loss or deterioration of, or damage to, such goods, the railway administration may, after obtaining wherever practicable instructions from the person appearing to the railway administration to be entitled to the goods, sell them by public auction."

In other words, there are several causes which might lead to a diversion of the traffic and delay the delivery of the goods and reaching of the goods to their destination. Sub-clause (2) says:

"Out of the proceeds of the sale, the railway administration may retain a sum equal to the charge due in respect of the goods and the expenses of and incidental to the sale rendering the surplus . . ."

Sub-clause (2), therefore, stipulates two things, firstly, that the railway administration can retain after sale

out of the sale proceeds a sum equal to the charge due in respect of the goods. Shri Santhanam has pointed out that this charge might mean a charge arising out of the detour which had been made on account of the accident to the railway or breach of the line or it might mean the charge which was originally due from him even without a detour having been contemplated at the first instance. If it means the original charge which a party has bound himself to pay, then, of course, there is no difficulty but if this charge is to be enhanced because there has been a detour, then the party is certainly not bound . . .

SHRI K. SANTHANAM: My hon. friend has not caught my point. If a collision or something happens between the place of origin and the place of destination, the actual carriage is only for part of the distance contracted and if they insist on the entire charge, it will be unreasonable.

SHRI SANTOSH KUMAR BASU: Here they speak of "a sum equal to the charge due". It may mean the charge due for the entire route or it may mean the charge due only for that part of the route on which the consignment had travelled. So this point has got to be clarified. The expression "charge due" is extremely vague here and it is likely to give rise to considerable difficulties in courts of law.

The other matter to which I want to draw the attention of the House is this. They are going to retain a sum out of the sale proceeds, equal to the charge due and the expenses of and incidental to the sale. I submit that where this diversion or diversion was caused by something arising out of the negligence or misconduct on the part of the railway administration or of any of their employees, the cost should not be deducted from the sale proceeds. Therefore, I have in my amendment stated that if this mishap has taken place because of any act of war or any act of God or by any act of a public enemy—an expression which

[Shri Santosh Kumar Basu.] has been introduced in this measure— then and then only should the cost be deducted from the sale proceeds. If on the other hand, this expression "any-other cause" includes misconduct or negligence on the part of the railway administration, then in that case, the party should not be mulcted and all the sale proceeds should be made over to the party. I submit that this very healthy principle should be accepted and the public should not be made to suffer because of negligence or misconduct or any such thing on the part of the railway administration or its employees.

The next amendment of which I have given notice relates to clause 8 on page 3 and to that also Mr. Santhanam has already drawn attention. This relates to the maximum number of passengers in each compartment being written in the compartment itself. At present, under the present Act, as it stands today, English and the vernacular prevalent in the territory traversed by the railway, that is to say, the regional language, should be used for writing the maximum number of passengers that can be accommodated in each compartment. Now for the words "vernacular languages" it is proposed to use the words "regional languages". And of course, there will be Hindi. But I do not know why the regional language has to be put in only at the discretion of the railway administration. If they consider it necessary that this regional language also should figure in the compartment for the purpose of declaring the number of passengers, it is only then that this language is to be used. *(Time bell rings.)* I will take a few more minutes, Sir, unless I elaborate on it at the time of moving the amendment. I may mention here that where there is the existing system, as Mr. Santhanam has pointed out, of the regional language being used, why create new difficulties by removing that? Let that remain and let Hindi be added and English, of course, remains. And the regional language that is there, should be allowed—

ed to continue, instead of creating more difficulties in the present atmosphere where you have already so many language troubles.

There is one other point which I would like to mention. That will minimise my task while speaking on the amendments. On page 5, according to section 76—

"A railway administration shall be responsible for loss, destruction, damage or deterioration of animals or goods proved by the owner to have been caused by delay or detention in their carriage unless the railway administration proves that the delay or detention arose without negligence or misconduct on the part of the railway administration or of any of its servants."

Here I am anxious to put in the words "or at a station" after the word "carriage". In this clause delay or detention in the carriage of goods or animals is provided for. But I suggest that delay or detention can be there not only while actually the goods are being carried but also when the goods are at a station. It may be that even before the starting of the journey, the goods are detained unnecessarily at the station or at some intermediate station, the goods not being transferred to another connecting railway. In such cases also, the mischief of this section 76 ought to be visited upon the railways, and not merely when the goods are in carriage. I want to point out that the word "carriage" means, according to what appears here, only the carriage of the goods while actually being moved, and not when they are at a station. There is a distinction between "carriage" and "transit". I could understand "transit". When you use the word "carriage" here, it seems as if the responsibility taken is only about the goods when actually in motion, when moving. I want to include also the delay that may occur at a station. I know of cases where considerable difficulties have arisen because of detention of goods at the station and

not actually when being carried. I want to meet such cases and to provide for them by means of this amendment. If)

MR. DEPUTY CHAIRMAN: Mr. Ramamurti. Please take only five minutes. Only fifteen minutes are left.

SHRI P. RAMAMURTI (Madras): Sir, I will be brief. On the whole, I welcome this fact here that the Government has been animated by a desire to liberalise the existing provisions with regard to this matter. I would, however, like to impress upon the Government the fact that so long as there is the private sector—I am not talking of the big private sector but of the small merchants and others—it is the responsibility of the Government which is in a more or less monopolistic position with regard to the carriage of goods, to create more and more confidence in the minds of these people. That is what I would like to impress upon the administration here. Particularly today when there is great competition with road transport also, the railway service offered to the people must be comparable to the service that is offered by the private road transport carrier. That is very important. It is from that point of view that I would like to urge one or two things now. I am not urging anything new. Some of these have already been referred to by Mr. Santhanam and Mr. Basu here.

Take clause 6 of the Bill here. Mr. Santhanam has already referred to this clause, but I hold a view different from that of Mr. Santhanam. I will go a little further. Section 56 says:

"Where by reason of any flood, landslide, breach of any line of rails" etc. "there is no likelihood of early resumption of such traffic".

So it is not a question of the goods being carried by any diversion or anything like that. The goods cannot be carried at all. There is no possibility

of carrying those goods to their destination even by diversion. In such a case what happens? They will auction the goods and out of the proceeds of the sale, the railway administration will retain "a sum equal to the charge due". But the question here is, this sum is due for what? I have entrusted you with a particular duty. I have asked the railways to carry the goods from Madras to Bombay and they have not carried out that duty. On the way the goods are there. Then what is the charge that they are entitled to, I would like to know. If you have not carried out your duty properly, if on the way for certain reasons—and the reasons may be anything—the goods are there still, why penalise the man who entrusted the goods to you? And why are you so anxious to get that small amount from that party? That I don't understand. After all, if you sell a thing in auction, if it is worth Rs. 100 it will be sold off for, say, Rs. 25. That is absolutely certain and the man will lose completely. On the top of that, why you should be so anxious to get this small charge out of it, I don't understand. This amount is not going to be very big. It will indeed, be small, and if you forgo that small sum, you will be creating a great amount of confidence in the minds of the consigning public. That is what I want to be done. After all, this amount will not come to much. It is not every day that collisions occur. It is not every day that accidents happen, and goods cannot be carried to their destinations. On all these small matters it should certainly be possible to get more and more the confidence of the people. The other point which I would like to urge upon the Minister is this. This is the same point on which Mr. Santhanam and others spoke and that is with regard to Hindi and the regional language. They said that this has created problems but your bringing in this amendment has itself created problems and this is what I cannot understand. Why at all rake up this question? Normally speaking, these are things for the Railway Administrations by administrative acts. Straightway, where those

[Shri P. Ramamurti.] regional languages are being spoken, you can have this change made by administrative acts. That is the normal thing but here you say that where the Railway Administration thinks it necessary then it will take action. All this formulation is going to be taken hold of and you are going to create unnecessary agitation. I would urge upon the Government that this goes against the very spirit of the Presidential Order. The President issued an Order on the question of language and there it was made absolutely clear that in all the regions, in respect of dealings with the public, whether it be in the Income-tax Department or the Railway Department or whatever department it might be, the language of the region will be the language in which the officials will deal with the common public. This is what has been made clear in the President's Order and today you are going counter to that by saying that you will do this when the Railway Administration thinks it necessary. Do not create unnecessary problems. There are enough problems in the country and it is not at all necessary to make any such amendment.

I now come to the other point which was also touched upon by other speakers and that is with regard to the responsibility of proving neglect or misconduct on the part of railway officials. I would like to ask the hon. Minister whether he has appointed people from the public to be supervisors of their conduct. It is for you to prove that there was no misconduct or that there was no negligence. You should not put the onus on the poor man who sends goods because there is no representative of the sending public sitting and watching the conduct of the officers. Therefore, this is a responsibility which cannot at all be fulfilled.

Finally, I would also like to urge that if you want to have all these things implemented—this is a suggestion apart from the measure now

before us—then you must have refresher courses for the parcel clerk, goods clerk and the station master in the small station, just as you are having refresher courses for the running staff, guards, etc. The people who handle goods in transit must be given some refresher course. Particularly now when the volume of goods traffic is going to increase day by day, it is essential that the relation between the public and the officials who handle this traffic must be very good. They must be conversant with all the difficulties. I dare say many of the officials do not know—I am not blaming all of them—even the provisions of the law. It is, therefore, essential that there must be periodical arrangements for a refresher course for the parcel clerks, goods clerks and all sorts of people. I do not want to name them; you know them. Just as you have refresher courses for other grades, you must have such courses for these people.

I hope all these suggestions will be accepted by Government.

श्री पा० ना० राजभोज (महाराष्ट्र) :
उपसभापति महोदय, मैं इस बिल का समर्थन करने के लिये खड़ा हुआ हूँ। मैं थोड़ी सी बात ही आपके सामने कहना चाहता हूँ। कई बातें ऐसी हैं जिन पर रामस्वामी जी को ध्यान देना चाहिये।

SHRI S. V. RAMASWAMY: Why not speak in English so that I can follow.

श्री पा० ना० राजभोज : आपको हिन्दी सीखना चाहिये, हिन्दी राष्ट्रभाषा है।

श्री पी० रामामूर्ती : एक बात है। आप कहते हैं कि उनको हिन्दी सीखना चाहिये और वह इसमें कहते हैं कि जब हम चाहेंगे तभी हम दूसरी भाषा में लोगों को बतायेंगे।

श्री पा० ना० राजभोज : हिन्दी हमारी राष्ट्रभाषा होनी चाहिये । हमें हिन्दी बोलनी चाहिये । मुझे बहुत दुःख होता है कि इसमें मेरा दो मिनट खत्म हो गया है ।

उपसभापति महोदय, मैं महाराष्ट्र का रहने वाला हूँ । वहाँ के बारे में मेरी प्रार्थना यह है कि रेलवे में चोरियां बहुत होती हैं । अनाज और कोयला वगैरह की चोरी होती है । हमारे यहाँ शोलापुर है । वहाँ कोयले के वैगन जाते हैं लेकिन वैगन्स सिंक कर दिये जाते हैं और उससे बहुत नुकसान होता है । रेलवे आफिसर्स कुछ न कुछ खींचना चाहते हैं और दवा-पानी कर के ही वे वैगन्स चलाये जाते हैं । आप जानते हैं कि दवा-पानी का क्या मतलब है । मेरी यह भी प्रार्थना है कि फल वगैरह जो कि नाशवंत चीजें हैं उनके लिये खास हवादार वैगन्स बनने चाहियें । आज-कल जो लोहे के वैगन्स होते हैं उनसे बहुत नुकसान होता है । जानवरों के लिये वैगन्स तो दिये जाते हैं लेकिन वहाँ जानवरों की तजवीज ठीक से नहीं की जाती है । पक्षी, मृगी, बन्दर वगैरह जो उसमें भेजे जाते हैं उनमें से आधे तो रास्ते में ही मर जाते हैं क्योंकि उनकी निगाह अच्छी तरह से नहीं होती है । तो उनके लिये अच्छे प्रकार के वैगन्स देने चाहियें केला भी हमारे यहाँ से जलगांव की तरफ से बहुत आता है और उसके लिये स्पेशल ट्रेन्स दिल्ली आती हैं लेकिन वह ट्रेन एक-एक दिन, चौबीस-चौबीस घंटे लेट आती है और इस वजह से केला खराब हो जाता है । इस वजह से किसानों को बहुत नुकसान होता है । एक साल में जलगांव जिले से करीब ५०० वैगन्स दिल्ली तक केले के आते हैं । तो मेरी प्रार्थना है कि वह ट्रेन कभी लेट नहीं होनी चाहिये और लेट होने की वजह से जो नुकसान होता है उसकी नुकसानी रेलवे की तरफ से मिलनी चाहिये । हमारे लोक सभा के सदस्य और डिप्टी व्हिप श्री काका साहेब राने जलगांव जिला की तरफ से हैं और वह हर वक्त इस बारे में शिकायत करते

हैं । तो उनकी बात के ऊपर भी ध्यान देना चाहिये ।

रेलवे ने बेली की वजह से कामन कैरियर की लायबिलिटी को स्वीकार करके लोकशाही घोरण का अवलम्बन किया है और १८६० का कानून सिर्फ आज ही इस सिलसिले में सुधारा जा रहा है और यह अत्यंत महत्व की बात है । इसके लिये मैं माननीय बाबू जगजीवन राम जी को बधाई देता हूँ ।

दफा ७३ में जो नया अपवाद रखा गया है वह बहुत आवश्यक है लेकिन सबसे महत्व की तरफ दफा ७३ के प्राविजों में है जो मैं आपको पढ़ कर बताऊंगा । संतानम् जी ने इस बारे में बताया है । वह प्राविजो यह है :

"Provided that even where such loss, destruction, damage, deterioration or non-delivery is proved to have arisen from any one or more of the aforesaid causes, the railway administration shall not be relieved of its responsibility for the loss, destruction, damage, deterioration or non-delivery unless the administration further proves that it has used reasonable foresight and care in the carriage of the animals or goods."

तो इसका मतलब यह है कि समझो कोई आदमी ने दूसरे गांव को माल भेजा है और उस की पैकिंग ठीक नहीं हुई होगी तो बलाज एक के मुताबिक रेलवे जिम्मेवार नहीं है किन्तु रेलवे की ड्यूटी यह है कि जब माल स्वीकार करे तब वह पैकिंग को देखे और यदि अच्छी नहीं हो तो उस माल को स्वीकार नहीं करना चाहिये तो इसका मतलब यह हुआ कि रेलवे ने कामन कैरियर की जिम्मेदारी नहीं ली है किन्तु कार्यक्षमता और सच्चाई के लिये कहा है । इसके लिये मैं माननीय मंत्री महोदय को धन्यवाद देता हूँ ।

अब मेरे जो सजेसंस हैं उनको जल्दी जल्दी बताता हूँ । एक यह है कि सब जगह पर गुड्स शेड नहीं हैं और उन्हें रेलवे को जल्दी ही सब

[श्री पा० ना० राजभोज]

जगह पर बनाना चाहिये। दूसरा यह है कि क्लेम्स के सेटिलमेंट के बारे में जल्दी फैसला होना चाहिये। तीसरा यह है कि मिट्टी का तेल, सीमेंट, लकड़ी, अनाज फल इन सब का बिल्कुल लास नहीं होना चाहिये ऐसा इंतजाम हो। चौथा यह है कि छोटे छोटे क्लेम्स व्यापार मंडल के मार्फत ही तय होना चाहिये, कोर्ट में उनके जाने की जरूरत नहीं होनी चाहिये।

मेरी आखिरी प्रार्थना यह है कि रेलवे अधिकारियों को ज्यादा से ज्यादा प्रमाणिक होना चाहिये। बहुत गड़बड़ होती है और वे रिश्तत भी लेते हैं कई जगह पर, इसलिये मैं प्रार्थना करना चाहता हूँ कि अनेस्टी के साथ, सच्चाई के साथ उन्हें काम करने की कोशिश करनी चाहिये। इतने मेरे सन्देश हैं। मैं बिल का स्वागत करता हूँ।

SHRI SANTOSH KUMAR BASU: I would just like to correct one error which I made and which was pointed out by Mr. Ramamurti. before the hon. Minister replies. Section 56 does not refer to diversion of traffic but to total stoppage. When there is no resumption of traffic possible, the perishable goods have got to be sold.

SHRI S. V. RAMASWAMY: Mr. Deputy Chairman, Sir, I am very thankful to the hon. Members who have spoken on this Bill. On the whole there has been a general welcome to this Bill although they tried to point out some defects which, I submit to you, Sir, and to the House, are not really defects.

There is some misconception about section 56A. If the whole scheme of the Bill is understood rightly, section 56A will be found as one which has been introduced for the purpose of making available in the Indian Railways Act itself what is now available under the Indian Contracts Act, section 151 read with 189. After we assume the carrier's liability we can-

not fall back upon the Indian Contract Act because we are no longer the bailees and we cannot avail ourselves of that provision. It is for this purpose that this section 56A is sought to be introduced in the Indian Railways Act itself.

Now, this provision does not deal with the question of compensation or the quantum of compensation or any such thing whatsoever. That is governed by other sections. All that this section says is that if such and such a thing takes place instead of allowing the goods to perish in *toto* the railways will now have the right to sell them in order to prevent a total loss. That is what we are exactly doing even now. The point is whether the railways should deduct the amount due. An amendment has been made by means of sub-section (2) that where a sale is held under sub-section (1) as a result of any act of God or act of war or any other thing, the railways can deduct the charge due. Supposing there is some explosion somewhere; are we not entitled to take the benefit of that? This provision does not deal with the question of compensation. And whatever rights there are already, they are covered by sub-section (3). My hon. friend will kindly read that:

"The provisions of this section shall be without prejudice to the claim or right which the person entitled to the goods may have against the railway administration under any other enactment for the time being in force".

So this is a saving clause. These provisions do not deal with the question of compensation.

As regards the other point, supposing the goods have been booked from Madras to Delhi and there is damage on the way at Agra. What happens? He has no doubt paid the freight up to Delhi and it stands to reason that we should not charge for what we have not done. We have not carried the goods beyond Agra because of the

Accident or some such thing. That is the point which Mr. Santhanam raised.

SHRI K. SANTHANAM: Does 'charge due' mean that?

SHRI S. V. RAMASWAMY: This cannot be incorporated in the Act itself. These are all administrative directions and they cannot form part of an Act. The Act can only lay down the principles, not administrative details. As to where there is an accident or where there is not an accident, it all depends upon the circumstances of each case. Therefore, my humble submission is this.

SHRI AKBAR ALI KHAN (Andhra Pradesh): There should be no charge once he has met with this calamity of course, not without your fault. You should not charge for it.

SHRI S. V. RAMASWAMY: I submit once again that there is a confusion of thought. This question does not deal with anything like that. What it says is this. We have carried up to Agra. Why should we not claim for what we have done.

SHRI SANTOSH KUMAR BASU: Nobody wanted it.

SHRI S. V. RAMASWAMY: The example that has been given is this. From Madras to Delhi the goods have been booked. At Agra there is some accident. Are you going to refund for not carrying from Agra to Delhi?

SHRI P. RAMAMURTI: That is what we said.

SHRI K. SANTHANAM: There are two points. He is answering one point. My point was that 'charge due' ordinarily will mean due according to contract. Now he says because of the collision the contract is automatically modified and 'charge due' will mean the charge for the actual distance carried. I do not know what

453 RS—6.

legal authority he has for any such interpretation.

SHRI S. V. RAMASWAMY: There is the principle of *Quantum meruit* in the Indian Contract Act. For that portion of the work I have done I am entitled to payment on the basis of *Quantum meruit*.

SHRI P. RAMAMURTI: This is a wonderful argument. If you ask somebody to build a house . . .

(Interruptions.)

MR. DEPUTY CHAIRMAN: Order, order,

SHRI S. V. RAMASWAMY: I may submit on a parity of reasoning. There is no reason why we should not be entitled to the freight up to the point where there was the accident.

As regards other things, you claim under sub-section (3).

SHRI K. SANTHANAM: What is the 'other enactment' referred to in subsection (3)?

SHRI S. V. RAMASWAMY: Whatever you are entitled to under whatever Acts there are.

SHRI K. SANTHANAM: Sir, according to the carrier's liability we are entitled to the entire value and . . .

MR. DEPUTY CHAIRMAN: He is replying to you, Mr. Santhanam. You cannot go on like this at every point.

SHRI K. SANTHANAM: After all, he should make himself understood.

SHRI S. V. RAMASWAMY: It is very clear. It says without prejudice to the claim or right which the person may have against the railway administration under any other enactment for the time being in force. Under what do you claim now? All those things will be available even now.

[Shri S. V. Ramaswamy.]

The other point that Mr. Santhanam raised was about section 74. There is a slight misunderstanding. I thought he knew things better having been a Minister himself before. What I would like to submit is that a vast majority of commodities are carried at railway risk rates as no owner's risk rates have been quoted for them. Only for about 31 commodities this owner's risk rates have been quoted with effect from 1.10.1958. Some of the commodities are betel leaves, fish, eggs, vegetables, fresh fruits, potatoes, onions, firewood, charcoal etc. Mostly all these commodities are carried at owner's risk rates and it is very rarely that the consignor elects railway risk rates for these. For the few commodities for which owner's risk rates have been quoted and which owners generally prefer to carry at owner's risk rates the provision made some years back is still in force and is being retained. It saves clerical work as it requires a specific election to be exercised by the sender only when he wishes to send the goods at railway risk rates. It is for this purpose that owner's risk has been mentioned. As I said, there are only about 31 commodities for which this applies.

Mr. Santhanam raised another point about section 77B. Under the scheme of the Bill, the House and Mr. Santhanam will be pleased to see that section 77 comes into operation after the thing has been transported to the point of destination. Now, according to the existing law I am a bailee during transit and for five hours after it has reached the destination. After that even that liability ceases. Section 77 now imposes a liability on me extending this bailee's liability for thirty days after the arrival at destination.

SHRI K. SANTHANAM: I welcomed it; I did not object to 77.

SHRI S. V. RAMASWAMY: But my point was why should not negligence and misconduct be proved by the other party?

SHRI SANTOSH KUMAR BASU: That is the point I raised.

SHRI S. V. RAMASWAMY: My answer is even this liability is something which is onerous, which does not exist now. When I am taking this responsibility for 30 days as against five hours now, you are asking me to shift the onus of proof to the railways and not to the person to whom this right did not exist before. Is it reasonable? I submit, Sir, it is not reasonable.

Again Mr. Santhanam raised another point about section 77B. Why should the excess be paid or engaged to pay in writing a percentage on the value so declared by way of compensation for the increased risk? It is: just possible that people may not know and that is why we have said, 'if so-required by the administration'. It is put in there to apprise the man who is ignorant of it that he will have to pay it. It is for that purpose these words have been introduced. My friend will kindly read the clause which says, 'if so required by the administration.'

SHRI K. SANTHANAM: I must say I am rather surprised at this. As *sobit* as it is declared, they should not accept it without additional payment. 'Unless it is paid'; what is the meaning of this?

SHRI S. V. RAMASWAMY: 'If so, required' because he may not know-it.

SHRI K. SANTHANAM: Why should he know; you will demand it.

SHRI S. V. RAMASWAMY: Very-well.

Sir, Mr. Santhanam also raised a point about section 76A. He said he could not understand the meaning of that proviso. Here is a case where we have got to provide against certain contingencies. The deviation may not be voluntary or on our own volition. It may be due to other reasons beyond our control; it may be due to operational needs. In such cases are

we or are we not to protect ourselves? If we have contracted to carry the goods by a particular route and if we deviate, you will say that we have broken the contract. That is why we have made the provision for deviation of route. If you will read proposed section 76A, it says:—

"Where, due to a cause beyond the control of a railway administration or due to congestion in the yard or other operational reasons . . ."

SHRI K. SANTHANAM: Then what?

SHRI S. V. RAMASWAMY: Therefore, we say that this proviso should operate.

SHRI K. SANTHANAM: The proviso does not operate, because there is no operative portion. It is a drafting mistake that I pointed out. There is no operative portion.

SHRI S. V. RAMASWAMY: I do not know how he is finding any drafting mistake there.

SHRI K. SANTHANAM: What happens if you do not say that?

SHRI S. V. RAMASWAMY: Now, about proposed section 77C also, my friends mentioned that the defect in the packing should be pointed out and they should be asked to rectify the mistake and that the station master should accept it after rectification. It is too much to expect the station master to examine every package or parcel. We are not dealing with thousands but lakhs and lakhs of them. And it is impossible for any station master to pay attention to each parcel to see whether it is packed correctly and then all him, 'You go and rectify it and then bring it again' and then see whether it has been correctly packed or not, according to the instructions. It would be impossible to do it. Such a responsibility cannot be accepted by the railways. I would like to apprise the House that, after the House has passed the Bill, we are going to lay

down certain packing condition? to which the trade will have to conform. Then, it will become easier both for the trade and for the administration. That will be published as soon as this becomes an Act.

With regard to the proposed section 80, I fail to understand the difficulty of my friend, Mr. Santhanam. Section 80 deals with the institution of suit. It deals with the cause of action, as to where it should be instituted and not with regard to the quantum or any such thing, not with regard to the fixation of liability of a particular railway. That would come in a different section altogether.

SHRI K. SANTHANAM: Which section?

SHRI S. V. RAMASWAMY: You are raising a point and I am answering that you ask me 'Which section?' With regard to that I will have to go through the entire Act.

SHRI K. SANTHANAM: It is all right.

SHRI S. V. RAMASWAMY: He raised the point that he is not sure as to which railway administration is to be fixed with the liability. My submission is that section 80 does not deal with the liability of railway administration. It deals with the place where you are to file the suit.

SHRI K. SANTHANAM: I ask him to show any section in the Indian Railways Act to define that liability.

SHRI S. V. RAMASWAMY: You fall back upon the English law, if you do not know.

Now, with regard to the amendments that have been placed before us, the question of Hindi is raised. It says:—

"That at page 3, lines 8-9, the words 'if considered necessary by the railway administration' be deleted."

[Shri S. V. Ramaswamy.]

If you will kindly permit me to read the old section 63, then the amendment would be very clear. It reads:—

"Every railway administration shall fix, subject to the approval of the Central Government, the maximum number of passengers which may be carried in each compartment of every description of carriage, and shall exhibit the number so fixed in a conspicuous manner inside or outside each compartment, in English"

That was the prominence given in the existing Act to English. Then it goes on:—

"... or in one or more of the vernacular languages in common use in the territory traversed by the railway, or both in English and in one or more of such vernacular languages, as the Central Government, after consultation with the railway administration, may determine."

Now, the amendment becomes quite intelligible. The object is now to see that Hindi—English will also be there—is there, because Hindi is the national language. The point is, 'Why is the right given to the administration?' Hindi is the regional language in U.P. and in Bihar. Now, if you delete this clause

SHRI DAHYABHAI V. PATEL (Gujarat): I thought that it is the national language.

(*Interruption.*)

MR. DEPUTY CHAIRMAN: Order, order. It is time. You have to hurry up, Mr. Ramaswamy.

SHRI S. V. RAMASWAMY: Therefore, this amendment has been introduced. The regional language is also there. If it is Madras, Tamil will be there. Do not be afraid. And if it is Mysore, Kannada will be there. But there is also a difficulty. There are

certain carnages which go over the whole of India. The question will arise whether this particular carriage will have the description in that particular regional language. All these difficulties arise and, therefore, discretion is now given to the railway administration to see whether a particular thing should be done or not done, to suit their convenience.

Now, the third amendment deals with the question of carriage. He wants to add the words "or at a station". My humble submission is that Mr. Basu has not read proposed section 77(5) (a). There it is given as 'carriage'. 'Carriage' is transit. The liability continues throughout the period it is in transit or as I put it 'carried and up to the free time', so far as the carrier's liability is concerned. Therefore, it is very clear. Even if it halts at a station, even in transit it will be covered. Now, if you will kindly permit me, I will read

MR. DEPUTY CHAIRMAN: You have already exceeded the time.

SHRI S. V. RAMASWAMY: I think it is very clear from the proposed section 77 (5) (a). It is clear on the point that the words 'carriage' and 'transit' can almost interchange.

SHRI SANTOSH KUMAR BASU- I shall place my point of view at the time I move my amendment. I will not disturb him now.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill further to amend the Indian Railways Act, 1890, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up the clause by clause consideration of the Bill.

Clauses 2 to 5 were added to the Bill.

Clause 6—Insertion of new section 56A

SHRI SANTOSH KUMAR BASU: Sir, I move:

1. "That at page 2, lines 34-35, after the words 'in respect of the goods and' the words 'where the sale is held under sub-section (1) as 'the result of any act of God, act of war, or act of public enemies, be inserted."

The question was proposed.

MR. DEPUTY CHAIRMAN: Are you accepting it?

SHRI S. V. RAMASWAMY: No, Sir. I have already explained it.

MR. DEPUTY CHAIRMAN: Do you press it to a vote? He has spoken on the amendment and you have spoken on it.

SHRI SANTOSH KUMAR BASU: I have spoken on this, but I will speak on the last amendment of mine.

MR. DEPUTY CHAIRMAN: Do you press it to a vote?

SHRI SANTOSH KUMAR BASU: No, Sir. I beg leave to withdraw my amendment.

Amendment No. 1 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill. Clause 7 was added to the Bill.

Clause 8—Amendment of section 63

SHRI SANTOSH KUMAR BASU: Sir, I move:

2. "That at page 3, lines 8-9, the words 'if considered necessary by the railway administration' be deleted."

The question was proposed.

MR. DEPUTY CHAIRMAN: Do you accept it?

SHRI S. V. RAMASWAMY: No, Sir. I have already submitted that this provision is made in order to facilitate administration.

SHRI SANTOSH KUMAR BASU: I am not pressing it, but I am sorry that it has not been accented. I beg leave to withdraw my amendment.

Amendment No. 2 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

Clauses 9 to 12 were added to the Bill.

Clause 13—Substitution of new sections for sections 72 to 78

SHRI SANTOSH KUMAR BASU: Sir, I move:

3. "That at page 5, line 41, after the word 'carriage' the words 'or at a station' be inserted."

What I want to say in answer to what the hon. Minister has said is this. He says that 'carried* here means 'transit*'

[Shri Santosh Kumar Basu.] and that includes the station where the goods are being detained at the time. I submit not. That is a wrong interpretation. If the hon. Minister will kindly turn to page 8, of the Bill, proposed section 77 (5) says:-

"(5) For the purposes of this Chapter,—

(a) unless otherwise previously determined,, transit terminates on the expiry of the free time allowed."

Now, the word 'transit' is used as different from the word 'carried'. If you turn to page 9, in the proposed section 77B you have got the words 'carried by railway' mentioned therein. Therefore, transit and carriage are two different concepts so far as this Bill is concerned.

The question was proposed

SHRI K. SANTHANAM (Madras): Sir, I want to say one thing now that the Railway Minister is there. Something which happened in the case of the Income-tax Bill has happened here also. There I pointed out one clause which was defective, not intentionally but by oversight. A similar oversight has taken place here in the case of this Bill in the proviso to clause 76D. The operative portion is not there. If he wants to put that defective clause in the Statute Book, having been told that it is defective, he takes the responsibility for that.

SHRI SANTOSH KUMAR BASU: Sir, I join my friend in saying that this Upper House can perform some functions at times as a revising Chamber. Rushing through Bills in this House will serve no purpose. It will do no good to anybody.

MR. DEPUTY CHAIRMAN: Mr. Ramaswamy, what about the operative part? He says it is not there.

SHRI S. V. RAMASWAMY: There is the operative part. The purpose is to declare—

"Where any animals or goods delivered to a railway administration to be carried by railway have been booked through over the railways of two or more railway administrations or over one or more railway administrations and one 'or more transport systems not belonging to any railway administration, the person tendering the animals or goods to the railway administration shall be deemed to have contracted with each one of the railway administrations or the owners of the transport s> stems concerned", etc.,

"Provided"

SHRI K. SANTHANAM: Sir, you can say whether the prov'so has got any meaning.

MR. DEPUTY CHAIRMAN: The operative portion is contained in the main clause itself.

SHRI K. SANTHANAM: The main clause says that he will be deemed to have contracted with each one of the administrations. The proviso speaks of deviation. If there is a deviation, the intention is that he will be deemed to have contracted with the new railway as a result of deviation. That is the intention of the proviso. It has not been put there. Otherwise there is no meaning in the proviso.

MR. DEPUTY CHAIRMAN: There is no amendment before the House for that.

SHRI K. SANTHANAM: Is it not the duty of the Government to put in the amendment?

SHRI SANTOSH KUMAR BASU: We do not know what Government wants to do with regard to this

matter. How could we suggest something positive by way of a proviso? It is for the Government to provide it and not for us.

SHRI BHUPESH GUPTA: The hon. Minister is here, Shri Jagjivan Ram. But he may not be a lawyer. Nobody seems to be a lawyer.

MR. DEPUTY CHAIRMAN: I think the drafting is a little defective.

SHRI S. V. RAMASWAMY: The proviso is just a reproduction of what is in the existing Act itself under section 74E. No change has been introduced. I am submitting that there is nothing new. I am stating a fact. It is not as if we are interested in something new.

SHRI K. SANTHANAM: What is the present section?

SHRI S. V. RAMASWAMY: Section 74E—liability of two or more railway administrations for through traffic.

SHRI AKBAR ALI KHAN: Is it complete?

SHRI S. V. RAMASWAMY: It is a long section. Therefore, all this arises. The sentence is complete.

MR. DEPUTY CHAIRMAN: You are satisfied?

SHRI S. V. RAMASWAMY: I am satisfied.

SHRI K. SANTHANAM: Sir, I think you must take the opinion of our Secretary. He is one of our best draftsmen. If the Secretary convinces you ...

MR. DEPUTY CHAIRMAN: What does the proviso qualify? What is the actual phrase or sentence in the main clause which the proviso qualifies?

Does the main clause refer to deviation at all?

SHRI S. V. RAMASWAMY: The person "shall be deemed to have contracted with each one of the railway administrations or the owners of the transport systems concerned, as the case may be, that the provisions of this Chapter shall apply".

MR. DEPUTY CHAIRMAN: What does the main clause say in 76D?

"Where any animals or goods delivered to a railway administration to be carried by railway have been booked through over the railways of two or more railway administrations or over one or more railway administrations and one or more transport systems not belonging to any railway administration, the person tendering the animals or goods to the railway administration, shall be deemed to have, contracted with each one of the railway administrations or the owners of the transport systems concerned, as the case may be, that the provisions of this Chapter shall apply, so far as may be, in relation to the carriage of such animals or goods in the same manner and to the same extent as they would have applied if the animals or goods had been carried by the railway of only one railway administration:

Provided that—

m

(a) where there is a deviation in the route by which the animals or goods are to be carried, such deviation was due to a cause beyond the control of the railway administration or the owner of the transport system concerned, as the case may be, or to congestion in the yard or other operational reasons;"

[Mr. Deputy Chairman.] And what? The operative portion here is that such deviation was due to a cause beyond their control. It was badly drafted.

SHRI K. SANTHANAM: The original clause says that he must be deemed to have contracted with all the owners of transport systems or the railway administrations. When a deviation occurs, will he be deemed to have contracted with the new transport system or railway administration as a result of that deviation? That is the point. It has not been covered. That is all.

SHRI SANTOSH KUMAR BASU: If you look at the words, "Provided that where there is a deviation", they speak of a new set of circumstances. It speaks of a new set of 4 P.M. circumstances not contemplated by this section itself. And in spite of a new set of circumstances, nothing happens; it provides nothing. That is the difficulty. "Where there is a deviation" means a new set of circumstances.

MR. DEPUTY CHAIRMAN: The meaning is rather not very clear.

THE MINISTER OF RAILWAYS (SHRI JAGJIVAN RAM): I have got some light now.

SHRI BHUPESH GUPTA: Let us hear it.

SHRI JAGJIVAN RAM: I can share it with my friend, Mr. Basu. It is quite clear now. Because we were trying to find some verb in the proviso, that was the difficulty. Now here the provisions in this chapter will apply. Where we have said "where there is a deviation" and all these things, it will not apply. But what the proviso provides . . .

MR. DEPUTY CHAIRMAN: What, is the operative clause?

SHRI JAGJIVAN RAM: I am coming to it.

"Where each one of the railway administrations or the owners of the transport systems concerned, as the case may be, that the provisions of this Chapter shall apply....".

SHRI P. RAMAMURTI: Where is that?

SHRI JAGJIVAN RAM: You read the substantive clause. You will find it.

". . . shall apply, so far as may be, in relation to the carriage of such animals or goods in the same manner and to the same extent as they would have applied if the animals or goods had been carried by the railway of only one-railway administration:"

MR. DEPUTY CHAIRMAN: "Provided that—".

SHRI JAGJIVAN RAM: If you come to section 76A, it deals with deviation. The railway administration shall not be deemed to have committed a breach of the contract of carriage by reasons only of the deviation of the rules.

SHRI SANTOSH KUMAR BASU: Which one?

SHRI JAGJIVAN RAM: Section 76A absolves the railway administration in case of deviation due to certain causes. Now, you understand it?

SHRI K. SANTHANAM: I do not understand section 76D.

SHRI JAGJIVAN RAM: The proviso says—

"Where there is a deviation in the route by which the animals or goods are to be carried, such deviation was due to a cause beyond the control of the railway administration, or the owner of

the transport system concerned, as the case may be, or to congestion in the yard or other operational reasons;".

SHRI K. SANTHANAM: Section 7HD deals with contracts with the various administrations, it does not deal with mere deviation. It deals with all. Where there is a contract with one administration, will it be deemed to be a contract with all the administrations concerned? And that is the only purpose of section 76D, and so, you have to relate the proviso to that contract. How do you relate it? Will the contract hold good or not? Unless you say it, it may be . . .

SHRI P. RAMAMURTI: Will it hold good for other things?

SHRI JAGJIVAN RAM: It will hold good only if the deviation is due to these causes. It will . . .

SHRI K. SANTHANAM: You will have to say that it will hold good here. You cannot bring section 76A to interpret section 76D. You will have to say that it will hold good here.

SHRI P. RAMAMURTI: For example, I book a consignment from Madras to Delhi *via* Bombay. Due to some reasons, the consignment has been carried from Madras to Delhi *via* Nagpur. Normally speaking, the liability will be with so many railway administrations. Against which administration will the liability lie?

MR. DEPUTY CHAIRMAN: Mr. Santhanam, the proviso refers to section 76A. Section 76A says—

"Where, due to a cause beyond the control of a railway administration or due to congestion in the yard or other operational reasons, animals or goods delivered to the railway administration to be carried by railway are carried over a

route other than the route by which they are booked or the usual or customary route, the railway administration shall not be deemed to have committed a breach of the contract of carriage by reason only of the deviation of route."

SHRI K. SANTHANAM: They must say . . .

MR. DEPUTY CHAIRMAN: Please consider the matter. Section 76A here says that it will not be a breach of the contract if the deviation of the route has been occasioned by causes beyond the control of the railways. What the proviso says is—

"....such deviation was due to a cause beyond the control of the railway administration".

So, section 76A comes into operation there and I think it is quite clear.

SHRI K. SANTHANAM: They will have to say that section 76A will apply.

SHRI NAFISUL HASAN (Uttar Pradesh): They are separate clauses.

MR. DEPUTY CHAIRMAN: It is one clause; the whole chapter applies.

SHRI SANTOSH KUMAR BASU: It refers to each and everything.

SHRI BHUPESH GUPTA: One point. If it is a proviso, the proviso cannot invite or attract any other clause. The proviso must relate immediately to the clause to which it is a proviso.

MR. DEPUTY CHAIRMAN: In the same clause 13.

SHRI JAGJIVAN RAM: The provision in this chapter has been made applicable in this.

MR. DEPUTY CHAIRMAN: I think there is no difficulty.

SHRI M. P. BHARGAVA (Uttar Pradesh): If I may say so, all these difficulties have arisen because the Rajya Sabha has not been associated with the Select Committee.

SHRI SANTOSH KUMAR BASU: It is now clause 13 in this Bill no doubt. But when it becomes an Act, these will all become independent sections of the Act itself, and in that case, you cannot attach the proviso from sub-section D to sub-section A. You cannot do it. They will be sub-sections. If they are independent sections, you cannot transplant this proviso and skip through . . .

MR. DEPUTY CHAIRMAN: The proviso says—

" . . . such deviation was due to a cause beyond the control of the railway administration,".

And section 76A says—

"Where, due to a cause beyond the control of the railway administration. . . .".

and there is no breach of a contract. I think one governs the other, and there is no . . .

SHRI AKBAR ALI KHAN: How can it govern? , How can section 76A be governed by that proviso? It is obvious; let them correct it.

SHRI K. SANTHANAM: Section 76A will apply there. It will be the proper way of drafting.

MR. DEPUTY CHAIRMAN: I think it is all right.

SHRI SANTOSH KUMAR BASU: Sir, I beg leave to withdraw my amendment No. 3.

'Amendment No. 3 was, by leave, withdrawn.'

•For text of amendment, vide col. 3746 *supra*«.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 13 stand part of the Bill."

The motion was adopted.

Clause 13 was added to the Bill.

Clauses 14 to 27 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI S. V. RAMASWAMY: Sir, I move:

"That the Bill be passed."

The question was proposed.

SHRI P. RAMAMURTI: Sir, we have exceeded by forty minutes . . .

SHRI BHUPESH GUPTA: For nothing, we have exceeded the time.

SHRI P. RAMAMURTI: If there is bad drafting, what am I to do?

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

THE SUGARCANE CESS (VALIDATION) BILL, 1961

SHRI BHUPESH GUPTA (West Bengal): Sir, the hon. Deputy Minister should be told that under protest we are participating in the discussion because we have not been given enough time or notice for it here. The Minister is here. That should be made clear, because it is a violation of the rules. The Government is responsible for it.

THE DEPUTY MINISTER OF FINANCE (SHRIMATI TARKESHWARI SINHA): Mr. Deputy Chairman, I move: