

with all fairness, Sir, that none is more anxious than the hon. Law Minister himself to get the Hindu Marriage and Divorce Bill passed as soon as possible and as a member of the Select Committee I can say that the Law Minister is very keen on this. He has also explained how under the stress of certain circumstances he could not convene the Select Committee earlier. There was a break from the 14th to the 20th of August and the.....

SHRI P. SUNDARAYYA: Why should there have been a break?

SHRI S. MAHANTY: I do not think it quite fair to impute motives to the Law Minister, and to say that passage of an important piece of legislation is being procrastinated for certain ulterior motives. We are the victims of circumstances and we should all know our limitations.

SHRI GOVINDA REDDY (Mysore): Sir, I wish to say a word.

MR. CHAIRMAN: I don't think it is necessary.

SHRI B. GUPTA: Sir, I was on my legs and....

MR. CHAIRMAN: Mr. Sundarayya has already spoken for you.

SHRI B. GUPTA: But I have to say something more, Sir.

MR. CHAIRMAN: Please sit down. What have you to say, Mr. Reddy?

SHRI GOVINDA REDDY: Sir, I only want to say that I wish Mr. Sundarayya had, before raising his objection to the motion, consulted the members of his own party who are on the Select Committee. If he had done that, they would certainly have apprised him of the progress made and of the necessity for this motion. This Bill is affecting important traditions, customs and law of large sections of Hindu

society and every sentence, indeed every word of it, is being contested very keenly, and rightly too, for it is really a very difficult matter. And as my hon. friend Mr. Mahanty has said, the Law Minister has done his very best to push through the work and he has been trying to make the work of the Committee easier, as much as he can. But in spite of all that, it is taking time, and rightly too.

SHRI P. SUNDARAYYA: I have consulted the members of the Select Committee.

SHRI C. C. BISWAS: Sir, the Government has been used to this kind of criticism for quite a long time and therefore it does not affect me personally. I know I have done my duty and I have tried to assist the Joint Select Committee in their labours to the utmost extent.

SHRI P. SUNDARAYYA: Why was not the Select Committee convened in the month of June?

SHRI C. C. BISWAS: If my hon. friend who took exception had only consulted members of the Select Committee, they would have informed him of the necessity for this motion.

SHRI P. SUNDARAYYA: I have consulted them.

MR. CHAIRMAN: Yes, please sit down. That will do.

The question is:

"That the time appointed for the presentation of the Report of the Joint Committee of the Houses on the Bill to amend and codify the law relating to marriage and divorce among Hindus be extended up to Friday, the 24th September 1954."

The motion was adopted.

THE RAILWAY STORES (UNLAWFUL POSSESSION) BILL, 1954.—
continued

SHRI GOVINDA REDDY (Mysore).
Mr. Chairman, the other day when this

[Shri Govinda Reddy.]

Bill was being considered, I was observing that apart from this Bill, it was open to the Government and the Railway Department to take certain preventive and precautionary measures and I suggested the checking of incidents, the frequent verification of stores and also stricter supervision not only by the immediate higher authorities but by the top authorities also in the Railway Administration and I said that these would go a long way to check the pilfering of articles from these stores. Today I would like to briefly say a few words on the Bill itself.

I begin with the definitions given in clause 2 of the Bill. There an article of railway stores is defined. It says "‘railway stores’ includes any article used or intended to be used in the construction, operation or maintenance of a railway." Sir, I find that such a definition as this is very inadequate. Take for instance an engineering spare part. That cannot be brought inside this definition because it is not any article which is used in the construction of the railway. It cannot be said that it is used in the operation of the railway and it cannot also be said that it is an article which is used in the maintenance of the railway. How can such an article be brought under the operation of this Bill? I wish language similar to what is used in clause 3 had been used to define railway stores. There the words used are—"the property of any railway administration". If those words had been used for defining railway stores, I think it would have been better, for under the property of any railway administration, all articles come in. As it is, clause 3, as I said in my prefatory remarks the other day, is very inadequate. As it is, according to this clause, it is only when a man is found in possession at the time of the detection of a stolen article that he can be dealt with. Whoever is found, or is proved to have been in possession of any such article, is punishable; only he will be liable to be prosecuted. Take

a case like this. Four persons go and commit a theft in the railway stores. One of them handles the thing, and he takes it away while the other three keep watch. In that case the other three cannot be prosecuted according to this Bill. Only the man who was in possession or the man who came to be in possession of the stolen articles can be prosecuted. What about the others? They go scot-free.

SHRI T. S. PATTABIRAMAN (Madras): They come under the Indian Penal Code.

SHRI GOVINDA REDDY: Yes, theft is punishable under the I.P.C. But how do they come under this Bill? Under this Bill, even though they commit such an offence, it is no offence. It is an offence under the Indian Penal Code, I know, and they have to be brought in under the Indian Penal Code as accomplices or persons who connived at the offence. But according to this law that we are enacting as a special piece of legislation for dealing with this matter, I feel that we should provide for that also in this Bill. We are making the fact of possession of stolen articles punishable. When we are making a provision for that, we should also make provision, in my opinion, to see that the man who was an accomplice is also made punishable.

Then, again, it is stated:

"If the court sees reasonable grounds for believing such article to be or to have been the property of any railway administration....."

These words, I feel, are not necessary and they can very well be omitted. The court cannot punish a culprit unless the guilt is proved to the satisfaction of the court. Unless the offence is proved against the accused, the court cannot give a conviction. So it is implied that the court must have reasonable grounds, that it satisfies itself about the guilt of the accused. By having these words here, by providing

like this in this clause, it gives rise to the doubt whether the onus of proving that the articles belong to the railway administration is on the prosecutor. According to the ordinary law, the prosecution has to establish that the articles belong to Railways. If these words that I have referred to are omitted all complications will be avoided.

Further, it is provided in this clause "unless he proves that the article came into his possession lawfully" Exception was taken to this by several speakers the other day, saying that the onus of proof should not be put on the accused, that it would be unfair on the part of the Government to put the onus of proof on the accused. Sir, there are two things concerned here. The identity of the article stolen should be established. If the identity cannot be established, that they belong to the railway administration, that they are the property of the railway administration, then the onus goes to the accused. Then the accused should have no objection.

Sir, the punishment here is a term of imprisonment and also if necessary, fine. The term of imprisonment is defined and it is said that it may extend to five years, but the amount of the fine is not stated. It may be Rs. 5 or Rs. 10 or Rs. 1,000 or Rs. 5,000 or even Rs. 10,000. It may be anything. In my opinion, it is but proper that the maximum of the fine permitted should be determined and laid down here.

With these remarks I give my support to the Bill. There are some good amendments moved by my hon. friend Kazi Karimuddin and I hope the hon. Railway Minister will see his way to accept those amendments, because this Bill as it is now framed does not give him much help.

श्रीमती सावित्री निगम (उत्तर प्रदेश) : अध्यक्ष महोदय, मैं रेलवे स्टोर्स (अनलौफुल पजेशन) बिल का पूर्ण समर्थन

करना चाहती हूँ। मैंने बड़ी गंभीरतापूर्वक इस विधेयक पर कानूनी गई बहस को सुना और समझने की भी कोशिश की। किन्तु बड़े अध्ययन, चिन्तन और मनन के बाद मैं इस नतीजे पर पहुँची हूँ कि यह बिल अत्यन्त उपयोगी है और समय की आवश्यकता को पूरा करने वाला है।

श्रीमन्, मौजूदा करप्शन और स्मगलिंग को दूर करने के लिये यह बहुत जरूरी था कि यह आर्डिनैंस से एक बिल की शकल में परिवर्तित कर दिया जाय। आज की स्थिति किसी से छुप नहीं है। रेलवे स्टोर्स का स्मगल किया हुआ सामान बिना किसी सिझक, बिना किसी शर्म के सरे बाजार खुले आम बिकता है और यदि रेलवे स्टोर्स के आस पास के सौ गज या दो सौ गज की दूरी के मकानों में देखा जाय तो शायद ही कोई ऐसा मकान मिलेगा जिसमें कुछ न कुछ सामान रेलवे का, जिसमें कर्मती सामान भी शामिल है, घरों की शोभा न बड़ा रहा हो। श्रीमन्, वे चीजे जिनकी लागत दस ग्यारह रुपया देकर बड़े लार्ज स्केल प्रोडक्शन में रेलवे वर्कशॉप में बनाई जाती है, बड़ी आसानी से दस बारह आने में किसी भी पुराने पुर्जों के दुकानों में खरीदी जा सकती है। दूर न जाइए, इधर दिल्ली में जामा मसजिद के आसपास की दुकानों में हजारों की तादाद में ये पुर्जे रोज आये दिन बेचे और खरीदे जाया करते हैं, और जांच पड़ताल से यह पता लगाना भी बिल्कुल नामुमकिन है कि इन का खरीदने वाला या बेचने वाला कौन था और ये कहाँ से आये या किस प्रकार से यहां

[श्रीमती सावित्री निगम]

पहुंच गये। इसीलिये किसी प्रकार का रोकथाम भी नहीं होती है। श्रीमन्, ऐसी घांघल के साथ रेलवे का कीमत सामान इधर उधर तोड़ फोड़ कर दूसरे चीजों में परिवर्तित किया जाता है कि देख कर बड़ा ही खेद और क्षोभ होता है। इसलिये इस रेलवे स्टोर्स (अनलौ-फुल पजेशन) बिल का इस प्रकार एम-डेड रूप में लाया जाना सचमुच बड़ी दूरदर्शिता और बुद्धिमान का परिचय देता है।

मैं बड़े नम्रतापूर्वक श्री विष्ट के उस कथन का विरोध करती हूँ कि यह बिल लोगों के लिये हार्डशिप लाने वाली चीज होगी। श्रीमन्, आज कल के मौजूदा करप्शन और उससे मिलने वाले राष्ट्रीय नुकसानों को देखते हुए, और खास कर के उस अजीब साइकोलोजी को बदलने के लिये, जिसके जरिये आदमी जो चाहे कर डालता है, बिना सोचे हुए या बिना किसी झिझक के कि आगे चलकर इसका नतीजा क्या होगा या इससे किसको नुकसान होने वाला है, यदि हमें बार बार सर्कैफाइस क्यों न करना पड़े, तब भी रस्ती भर नहीं झिझकना चाहिये। यदि हम इस प्रकार उन थोड़े से लोगों के हार्डशिप की चिन्ता करेंगे जो कि इल्लिगली और अनलौफुली रेलवे के सामान को सस्ते दामों में बेचा और खरीदा करेंगे, वे लोग जो उस सामान को खरीदने के लिये लालच में पड़ जाते हैं, उनका सुविधा का परवाह करेंगे तो सचमुच हम जनता का कोई भी सुधार नहीं कर सकेंगे। श्रीमन्, थोड़े से लोगों के हार्डशिप की चिन्ता के लिये हमें ऐसी भयानक कुरीति और

चोरी की आदत को अपने देश में पनपने नहीं देना है। मैं तो साफ साफ कहती हूँ कि ऐसे पुर्जों का चोरी-छिपे व्यापार करने वालों से हम किसी कदर कम दोषी उन लोगों को नहीं मानते हैं जो उन पुर्जों को खरीदने के लिये लालायित हो जाते हैं और बिना यह जाने हुए कि कहां से यह चीज आई उसको सस्ते दाम में मिलने के कारण तुरन्त खरीद लेते हैं। यदि खरदने वाले ही चोरी का सामान खरदना छोड़ दें तो कोई वजह नहीं है कि इस तरह का जो व्यापार है वह तेजी से फैले और उसमें रोकथाम न हो। इसलिये यदि लोग ऐसा सामान खरीदना ही चाहते हैं और सस्ते दाम के लालच को रोक नहीं सकते हैं, तो जरूर उनको इस बात का पूरा पूरा पता रहना चाहिये और इस बात की बा-कायदा रसीद रखनी चाहिये कि वह सामान कहां से खरीदा गया। कोई वजह नहीं है कि वे सिर्फ थोड़े से हार्डशिप की परवाह करें और उन रसीदों को संभाल कर न रखें और उन रसीदों को वक्त पड़ने पर, मौका पड़ने पर, दिखा न सकें। श्रीमन्, यह बात अवश्य है कि यदि हम इस मेजर को, करेक्टिव मेजर को, वाकई में बनाना चाहते हैं तो हमें कुछ और आगे जाना चाहिये था। यह कानून इस बात के लिये काफी नहीं है कि वह ऐसे लोगों की उन आदतों को, जो कि एक अरसे से पड़ हुई हैं, पूरे तौर से सुधार सकें। इसलिये हमें ऐसे राष्ट्र-घातक अपराधों की रोकथाम के लिये कुछ और सख्त सजाएं रखनी चाहिये थीं और जैसा कि अर्भी रेड साहब ने कहा, इस बात का भी उल्लेख होना चाहिये था कि

ऐसे अपराधों के लिये कितना फाइन एप्रोक्सिमेटली हो तो बड़ा अच्छा होता । इससे लोगों को ज्यादा डर भी हो जाता और मजिस्ट्रेट को भी इंसाफ करने में काफ आसान रहत । श्रीमन्, लोगों की नस नस में शामिल हुई इस आदत को दूर करने के लिये यदि हम क्लोज नम्बर ३ को और ज्यादा एफेक्टिव बनाना चाहते हैं तो हमें सोलहवीं लाइन में यह शब्द जरूर जोड़ना चाहिये कि जैसे "दि केस विल बी डिसाइडेड विदिन थ्री डेज" या कुछ ऐसा पीरियड रख दिया जाय, क्योंकि ऐसे मामलों में होता अक्सर यह है कि एक आदमी प्रोसीक्यूट किया जाता है, इसके बाद वही तरह तरह के वकीलों को कंसल्ट करता है, झूठी सच्ची गवाहियां सबूत आदि तैयार करता है । इतना ही नहीं उसके बाद फिर वह ऊपर से इन्फ्लुएंस कराने की कोशिश करता है । नतीजा यह होता है कि कोई न कोई कानूनी फ्लो निकल जाता है और वह हजरत बच के चुपचाप निकल आते हैं और अपराध से मुक्त हो जाते हैं । इसलिये, श्रीमन्, यह बहुत जरूरी है कि इसके लिये कुछ एमेंडमेंट किया जाय ताकि वह क्लोज ज्यादा एफेक्टिव बन जाय । और यदि ऐसा हो सके कि अलग कोर्ट्स ऐसे करप्शन केसेज के लिये बनाये जा सकें, चाहे वे किसी विभाग से संबंध रखते हों, ताकि उन पर तुरन्त और ईजीली फैसले दिये जा सकें, तो अपराध करने वाले लोग डराये और भयभीत किये जा सकते हैं और उनकी चोरी की आदत बराबर पनपने और फैलने न पायेगी ।

श्रीमन्, एक बात और है और वह यह है कि अगर हम चाहते हैं कि इस प्रकार

की बेईमानी को बढ़ाया न जाय और इस चोरी के प्रलोभन को सामने न रखा जाय, तो हमारे रेलवे औथोरिटीज को भी एक बात पर जरूर ध्यान रखना चाहिये । हमने अक्सर देखा है कि रेलवे स्टोर्स खोल कर अपने सामान का एक ढेर लगा देते हैं, जो माल रिजर्वेटेड या बेचने वाला होता है, उसका खुले आम ढेर लगा दिया जाता है । छोटे छोटे बच्चे बिना समझे वृद्ध उस सामान को खेलने के लिये पहले ले जाते हैं और फिर अपने इस्तेमाल के लिये रख लेते हैं । इसलिये रेलवे का सामान ऐसी जगह में न रखा जाना चाहिये जिससे कि वह चुराया जा सके । दूसरी बात यह है कि ऐसे सामान को तुरन्त डिस्पोज ऑफ कर देना चाहिये । मैंने देखा है कि यह सामान महीनों, वर्षों पड़ा रहता है, वह खराब हो जाता है, उसकी कीमत घट जाती है और वहां से चुराने के लिये भी आदमियों को टेम्प्टेशन मिलता है । इसके अतिरिक्त, अगर बेचने या खरीदने वालों को कोई लाइसेंस या औथोरिटी दी जायगी, तो भी हम उन गुनाहों को बहुत कुछ रोक सकेंगे क्योंकि हम लोगों में से उन लोगों को जो कि ऐसा सामान खरीदने के लिये शौकीन हैं और ज्यादा एफोर्ड नहीं कर सकते हैं, उनके बारे में पता रहेगा और इस तरह से लाइसेंस होल्डर्स के पास जाकर माल खरीदा और बेचा जा सकेगा । धन्यवाद ।

KAZI KARIMUDDIN (Madhya Pradesh): Mr. Chairman, I would not like to go into the detailed administrative proposals which have been made by the Minister. I only want to discuss the legal side of clause 3 of this Bill. When this was an Ordinance, any lan-

[Kazi Karimuddin.]

guage could be tolerated, but when it is being placed on the statute book, we have to see whether the burden of proof is rightly placed on the accused and whether this covers all the offences connected with the unlawful possession of the articles belonging to the railway. It is said, in this clause 3, "Whoever is found, or is proved to have been, in possession of any article of railway stores shall, if the court sees reasonable grounds for believing such article to be or to have been the property of any railway administration....." This is very loose language and it cannot be said that it is legal language because the reasonable grounds must have some basis. In any conviction under section 411 regarding unlawful possession of this article, it has to be found out whether the identity of the article belonging to the railway department is established or not. It cannot be left to the imagination of the court but it has to be decided as a factual matter. Now, in clause 3, for reasonable grounds for believing, there are no specific grounds on the basis of which such a belief can be formed. Therefore, it requires that the word 'identity' after the word 'believing' should be inserted in clause 3 as otherwise convictions will be based on the mere imaginative and whimsical grounds of some courts and that, I think, will be contrary to the spirit of criminal jurisprudence. Further, the burden of proof in clause 3 is placed on the accused as soon as a charge is framed and the court believes that there are grounds to suppose that this belongs to the railway department. In my opinion, the clause should be worded thus: "Whoever is found, or is proved to have been, in possession of any article of railway stores unlawfully..." The prosecution has to prove that he has come in possession unlawfully. This clause does not contemplate that it has been remarked by some Member of the House when Mr. Reddy was speaking that the offence of theft is punishable under the Indian Penal Code but it is really an irony of fate that unlawful posses-

sion of articles belonging to the railway department is punishable with five years and the commission of theft of this very article is punishable with three years. This is a very anomalous position which the Minister in charge of this Bill should take into consideration.

Under section 114 of the Evidence Act, a man, who is in possession is either a thief or a receiver of stolen property. If a man is found in unlawful possession of property, under section 114 either he is a thief or a receiver of stolen property and the punishment for the commission of theft is three years and by being in possession of this article, he gets five years.

SHRI B. GUPTA (West Bengal): They have lost all sense of proportion.

KAZI KARIMUDDIN: This is a very anomalous position which has not been clarified at all. Simple copying of section 3 from the ordinance will not do when the provisions are being placed on a Statute Book. Connivance at this offence has not been made an offence under this Bill. Generally those who are in charge of the stores or other articles—the moment they come to know that some people are in possession of these articles unlawfully—should be charged with connivance, otherwise it would happen, as Mr. Reddy said, that those who are accomplices, who know that certain things are in unlawful possession of others, will have no legal responsibility at all and they will not be prosecuted also. This is a special measure which is being enacted and, therefore, even connivance on the part of those who are in charge of the stores, those who come to know this information and yet do not take action, should be proceeded against. Therefore, in my opinion, one more clause should be added that if people know that railway stores are in the possession of somebody and that somebody has committed theft, there should be a legal duty cast on them to give information. If, during investigation, it becomes known that a theft was committed and that the other man,

knowingly, did not make a report, he should be made criminally liable.

My submission is that the wording of clause 3 is very unfortunate; it is only a copy from the Ordinance and, therefore, the whole thing has got to be overhauled.

SHRI H. C. DASAPPA (Mysore): I would like to deal, Sir, with only one or two matters of procedure. Of course, as an Ordinance it might have been good enough but as a piece of legislation, a Statute which we have got to work, I think the procedure must have provided for various other things. I would only speak with regard to one thing, that is, about the court which has got to try these cases. In view of the fact that the sentence goes up to five years, I take it that it is a First Class Magistrate who would try them but even so, Sir, the mode of trial, whether it would be tried as a warrant case or as a summons case, has not been mentioned. Evidently, it would be tried as a warrant case.

KAZI KARIMUDDIN: Any case in which there is more than six month's imprisonment is a warrant case.

SHRI H. C. DASAPPA: That is what I say; whether it should be tried summarily or not—that question has got to be decided. There is no provision here as to the mode of trial. I take it that these railway offences, generally speaking, do not have to go through the elaborate procedure laid down for trial in warrant cases. It may be that this is a case which has got to be tried summarily. That is not indicated here.

With regard to the question of the procedure which has got to be followed when an offence like this is found, should there not be a duty cast on the authority to immediately contact the police who have got to give, what is known as first information report? It is not very clear. In measures like this, generally it is stated that the procedure for the conduct of the enquiry and investigation is the same as in the

Criminal Procedure Code. Even a general clause like that is not here. When property is found in the unlawful possession of a person, a certain procedure is prescribed, like the preparation of a *mahzar* and so on. We have no indication here at all as to what procedure will be followed when property is found in the possession of a person. Usually, what happens is, some respectable persons of the neighbourhood are asked to be present there as to the time of seizure and a *mahzar* is drawn up. It only strikes me that some of these things have got to be provided in this Bill and it is just as well that the hon. Minister gives thought to these.

[MR. DEPUTY CHAIRMAN in the Chair.]

SHRI B. K. MUKERJEE (Uttar Pradesh): Mr. Deputy Chairman, though I am in full agreement with the Ministry in devising ways and means of eradicating the chances or incidence of leakage of railway revenue, the present Bill is, in my opinion, not only illogical but useless.....

SHRI B. GUPTA: And obnoxious.

SHRI B. K. MUKERJEE: .. to be put on the statute book.

While introducing this Bill in this House for consideration, the hon. Minister failed to give us any facts and figures for our consideration and for judging whether this legislation should be passed or not. How many items of stores are there? When we are dealing with a Bill to prevent theft of stores, we should know the number of stores the railways have got in their stores price list. What are the items which are generally stolen have not been given to us and what are the conditions under which these thefts take place and what steps the railways have taken so far to prevent these thefts and pilferages have not been given to us. We are being asked to pass this Bill without any sort of information. I have no doubt in my mind that the Railway Minister or the Deputy Minister of Railways in charge

[Shri B. K. Mukerjee.]

of this Bill would have asked for information on these points but they have not been supplied with the information by the officers interested in this matter. In every matter I find the officers are trying to camouflage the main issue which should be tackled by Parliament and the Ministries. The real issue is how to prevent leakage of railway revenues whether in the shape of pilferage and theft or the amount paid in the shape of claims or the amount lost by way of ticketless travel. There is no doubt that the hon. the Deputy Minister and some of the Members who preceded me and lent their wholehearted support to this legislation are labouring under some wrong ideas, some wrong conceptions in the matter.....

SHRI B. GUPTA: And in the fascination of the Minister.

SHRI B. K. MUKERJEE: Therefore, I am not very much convinced of the usefulness of this piece of legislation and therefore, I would press the Deputy Minister in charge of this Bill to please withdraw this Bill. This Bill, if needed at all, must be brought before this House in a proper form. As has been stated by previous speakers, this Bill does not deal with the real offender. The real offender is the person who steals the railway property, but he goes free and the man who may come to be in possession of the same will be adjudged the offender, I mean, the man who may be in possession of certain materials which are likely to be used by the railways; and I do not know what are the items that we can conceive of which are not used by the railways. Whatever items of stores are found anywhere in this world are all required for the railways. Railway is a very big industry and therefore they consume all kinds of material that is available or can be conceived of by the railways. Therefore anybody having anything in his possession can be told this and hauled up: "This is a material to be used by the railway and so you are punishable under this law." This may happen.

MR. DEPUTY CHAIRMAN: You know the definition of "theft", Mr. Mukerjee.

SHRI B. K. MUKERJEE: There is no definition given here, but as a layman—not as a lawyer—I understand the definition of theft.

MR. DEPUTY CHAIRMAN: It is "being in unlawful possession of what is not one's own."

SHRI B. K. MUKERJEE: Now I am not convinced because all the facts that I want to know are not given here and so I request him to withdraw this Bill and wait till the time when it will be necessary to bring this Bill in a proper form. It is not even a year since we had the assurance from the hon. Minister in charge of Railways which is contained in his speech delivered while introducing the Railway Budget for 1954-55 in Parliament. This is what he said: "It has been possible to take definite steps to improve Watch and Ward and the security organisations of the railways following the appointment of the Security Adviser to the Railway Board and it is proposed to appoint for each zonal Railway, a Security Officer of the rank of a Deputy Inspector General of Police who will have direct access to the General Manager. It should lead to a better system of co-ordination between the police of the States and the Government Railway Police. Training schools are being opened in each zone for the training of men and officers of Watch and Ward and refresher courses are also being introduced for those already in service. Special rules and regulations are under preparation for meeting the menace of pilferage and thefts on railways. I am glad to announce that the Home Ministry is considering measures to co-ordinate with us in this matter. It is hoped that substantial improvement will take place in the near future."

Now may I know that within these few months the Railway Ministry feels that whatever assurance the Minister

gave to this House while presenting his Budget is useless or cannot be implemented? If they still feel "that substantial improvement will take place in the near future" I do not see any utility for bringing this Bill just now.

Then again the Railway Ministry has set up a committee and I hope they have the co-operation of the Home Ministry in the activities of that committee and I do not know if that committee has submitted any report requesting the Government to come forward with such a legislation as this Bill. As far as my information goes, the committee is still labouring and they have not submitted any report upto now. And when for this year we have provided in the Budget a sum of Rs. 7 lakhs for special police arrangement to check all these thefts and pilferages, we have got still to wait and see whether we have wasted that money or not. We have got to wait for the result of that experiment, but before we have arrived at any conclusion the Deputy Minister comes with this piece of legislation which, in my opinion, is not only not good but is illogical also, illogical in the sense that this House is fully aware that in 1949 a Resolution was passed by the Constituent Assembly of India. And in para. 2 of that Resolution passed by the Constituent Assembly of India it was stated that the general tax-payers shall have the status of the sole owners of the railway undertaking. This Resolution was passed in December 1949 and certainly superseded the Ordinance which was passed in an emergent condition of the country in the year 1944. This Resolution says that we, not only members of this House and the members of the other House, but the entire population of this country as tax-payers are the owners of the railways. If they are the owners, all the property of the railways belongs to them and nobody who is in charge of a property which belongs to him can be asked to prove that he has not acquired it illegally.

SHRI B. K. P. SINHA (Bihar): He is free to use it?

SHRI B. K. MUKERJEE: No, he may not be free to use it. But even if he is in possession of any article of railway stores used or intended to be used by the railways, he is penalised unless he proves that the article came into his possession lawfully and that he did not procure that for any private use or for any use unconnected with the railways. Sir, generally in all laws the prosecution is required to prove that the procurement of the article in question was illegal, but here the burden of the proof is placed on the accused who is legally, as tax-payer, the owner of the article or stores. When a person is found to be in possession of even a pin or a bolt he is punishable. Now this is illogical in my opinion especially in view of para. 2 of the Resolution I have referred to.

Sir, this Ordinance was passed in 1944 when there was an emergency in the country. It was passed during the last world war. Not only is there no such emergency existing in the country today but there has been a lot of political changes in the country since then. In 1944 India was a slave country but today India is free. At that time there were so many Railways which did not belong to the Government but which belonged to private companies but now fortunately all the railways belong to the Government. The position has changed to a considerable extent.

10 A.M.

Again, the hon. Minister did not give us any statistics as to how many cases of thefts of this sort had happened and as to what the amount involved was. He has not told us how many people committed the theft in an area where the Ordinance is applicable just now and then moved to an area where this Ordinance is not applicable. There has been no statistics given to us in this direction. From the latest report of the Railway Board we find only 27 cases were reported, and out of that only three were reported to the Police. The amount involved in these 27 cases

[Shri B. K. Mukerjee.]
 is Rs. 1,26,745. Out of 27 cases only three prosecutions were launched, and out of those three only two resulted in convictions and I do not know what is the amount involved in those two cases. In any case the amount involved on this account is not as large as the amount paid by the Railways against claims preferred by the public. The net amount paid by Railways during the year on account of goods lost or damaged was Rs. 3,18,66,922. Both these belong to the same category of thefts and pilferages; one relates to such material which is likely to be used for railway maintenance while the other relates to goods or stores carried by the railways for other persons and which were lost or damaged. Now my contention is that you are dealing with only this Rs. 1,26,745. You are ignoring the other Rs. 3,18,66,922. And here this is not the actual amount. For reducing the claims to this amount you would have had to spend at least half of that amount by maintaining your staff, etc. If we add that also to this figure then it comes to about Rs. 4½ crores and the Minister is ignorant—I do not think he can be ignorant—of that fact or at least he is silent about that fact. He is now asking us to legislate in respect of the small sum of Rs. 1,26,745 involving some 27 cases. I am ready to support him if he brings forward a similar legislation to prevent this leakage of Rs. 4½ crores every year. He must pay more attention to check that pilferage and that theft than this one.

Now, they have tightened up security measures and we were assured by the Railway Minister when presenting the Budget in the beginning of this year that there would be improvement and we were asked to wait for the results. I do not know whether there has been reduction in the number of cases from 27.

SHRI T. S. PATTABIRAMAN: The committee is in connection with pilferage in transit

SHRI B. K. MUKERJEE: If you have tightened your security measures I do not know how things can be taken away by anybody. If your security staff is efficient and if they work properly, then it is absurd that stores worth Rs. 1,26,000 can be taken away. Certainly, there is some inefficiency somewhere. The security staff may be neglectful of their duties. Perhaps they are not watchful and that is why people take things away. Or it may be that the authorities higher than them may be neglectful, or they do not take any action against them. Now my point is this that we have sanctioned a large sum of money for police and other security staff for this kind of work, and over and above that, there is a committee appointed to investigate and report. Not only that, but we have also appointed one big officer, of the rank of the Deputy Inspector General of Police, for every General Manager. We have got to wait and see what is the effect of all this. We are going to tax our people for this large amount to implement all these ideas that have been given to us, and we have got to wait till such time as we receive the report of the committee that has been appointed. I can only say that if the security staff acts properly the incidence will be reduced no doubt.

I think, most of the Members may be unaware of the fact that Railways maintain separate staff perpetually for checking the stores. I do not know what these people are doing. They are getting fat salaries for checking the stocks every day, and still we find that there have been 27 cases involving Rs. 1,26,000. Sir, I think the Railway Minister will be well advised to realise this amount from the staff which was maintained for the purpose of checking the stores every day. They should be made to make good the loss sustained by the Railways. Presumably, the Railway Minister is not informed because some high officers are involved. That is the only reason. Otherwise, had it been the case of a very poor employee getting Rs. 100 or Rs. 50, immediately the Railway Board mem-

bers would have jumped upon him and sent him to jail for five years. But here, the staff perpetually maintained for checking the stores is neglectful of their duties. We do not take notice of that. On the other hand, we are going to penalise the public for being in possession of a thing knowingly or unknowingly. The hon. Minister might be aware of what the ladies do in the villages. When they are defeated by their husbands, they beat the children. That always happens in almost all parts of India. When the ladies get defeated by their husbands, they beat the children. The hon. Minister also, finding nobody, goes to the tax-payers and penalises them for having something in their possession.

SHRI B. K. P. SINHA: May I point out, Sir, that the wife is never defeated by her husband? It is always the other way round.

SHRI B. K. MUKERJEE: Now, I do not know how many hon. Members went through this report. It was submitted by the Railway Board last year. It is said therein that there have been sales of scrap worth Rs. 1,70,00,000. Now, if anybody purchases that scrap material from the Railway, he can be challaned by any police officer.

SHRIMATI SAVITRY NIGAM: It has already been provided in the Bill that he should keep the receipts.

SHRI B. K. MUKERJEE: How can he always have those receipts with him? I will now come to the conditions obtaining in the Railways. Now you will find that there is the sale of cinders, and coal is also sold to the staff. Cinder is sold to the contractors. Cinder is used for building purposes. Now anybody purchasing this thing from a contractor—one maund of cinder or two maunds of cinder—for repairs to his house, can be challaned by any police officer.

SHRI H. P. SAKSENA (Uttar Pradesh): Is it relevant to discuss a Bill which has been recommended to be withdrawn? If a Bill is fit to be

withdrawn, and a recommendation to that effect has been made, then why discuss it at all?

MR. DEPUTY CHAIRMAN: Who is going to withdraw it?

SHRI B. K. MUKERJEE: I am challenging the hon. Minister for not giving us any material for our consideration.

MR. DEPUTY CHAIRMAN: Mr. Mukerjee, please read the definition of "railway stores"—any article used or intended to be used in the construction, operation or maintenance of a railway. I do not think cinder will be used in construction.

SHRI B. K. MUKERJEE: Not only cinder, but coal also. The railway uses coal, and coal is also sold to their staff. And therefore, anybody in possession of coal or cinder can be challenged. (*Interruption*). That is why I say that you should prove that it is railway material. The railway has got to prove that it is railway material.

SHRI T. S. PATTABIRAMAN: There are similar provisions in the Indian Evidence Act and other Acts.

SHRI B. K. MUKERJEE: This Bill will actually operate harshly not only against the tax-payers but also against the railway workers themselves, and the railway workers will be penalised because of this.

SHRI KANHAIYALAL D. VAIDYA (Madhya Bharat): They will be penalised only if they are committing theft.

SHRI B. K. MUKERJEE: They are not committing theft.

SHRI T. S. PATTABIRAMAN: Not all but some of them.

SHRI B. K. MUKERJEE: Their trade union activity is going to be jeopardised by this Act. I am talking to an audience who have not got much experience of railway trade unions.

SHRI T. S. PATTABIRAMAN: The hon. Member presumes too much. We are as much aware of labour questions as he is.

SHRI B. K. MUKERJEE: Often a man suffers because his officer finds him otherwise unmanageable. If he is an active member of trade unions, he is penalised.

SHRI KANHAIYALAL D. VAIDYA: This Ordinance has been there since 1944. Has any trade union suffered?

SHRI B. K. MUKERJEE: But they do not give us any statistics, any figures or any information. The Minister has not given any materials, any information as to the number of cases and the types of materials which are stolen. He may bring forward this Bill after all the reports come in and all these experiments are carried out. We can then know what the result of these experiments has been. As it is, when a cinder or a bolt or a nut is found in the possession of a worker or is found near his house, he is likely to be prosecuted. I may give one information to the hon. Minister as to why this Ordinance was required in 1944. As most of the Members here know, we had to travel often by trains without any light, because the bulbs were stolen from the railway carriages. Now, the Railways purchase these bulbs not from every shop but they have got special suppliers of these bulbs, and it may be a new thing for Members to know that these bulbs cannot be used by anybody in his house. These bulbs can only be used in railway carriages, but still these bulbs used to be stolen in large numbers. The Railways used to purchase these bulbs from the same source which used to supply them before. Now, when the bulbs were stolen, what happened? The people who stole them sold them not in the market but to the same contractor and the contractor used to gain, and thus payment used to be made to the same contractor for the same bulbs three, or four or five times. This is not a small item because the Railways consume bulbs worth lakhs and lakhs of

rupees, but still the Railway authorities and the Railway Board did not take any action. There was a suggestion about a change of contractors but they did not change the contractor. They could have stopped the whole pilferage if only they had changed the contractor but they did not do it. But now that contingency is not there. Still we want to bring this Ordinance into our Statute Book which, I feel, is not a wise move. If the necessity for such a measure is felt after all these experiments and if the Minister comes forward with a measure like this again, he must include provisions covering claim payments, i.e., claims for pilferage and theft. The theft of railway stores is only to the extent of Rs. 1,26,000, but theft and pilferage for which claims are met are to the extent of Rs. 3,18,00,000. You must pay more attention to theft of goods in transit. If you legislate for theft of railway property, you must legislate for theft of property in transit.

MR. DEPUTY CHAIRMAN: This Bill does not exclude anybody. It applies equally to all.

SHRI B. K. MUKERJEE: This does not include theft for which they pay claims.

MR. DEPUTY CHAIRMAN: "Whoever is found in possession of any article of railway stores....." It does not make any exception.

SHRI B. K. MUKERJEE: I am sorry I have not been understood. This includes articles for use on the railways. I am talking of articles in transit, i.e., articles carried over the railways. These goods are stolen in spite of all their security measures. People stop the goods trains and rob them, and thereby the Railways have got to pay compensation to claimants. This amounts to Rs. 3,18,00,000 according to the last report, the theft of railway material is only to the extent of Rs. 1,26,000. That is my point. If we take note of railway stores worth Rs. 1,26,000, we must also take note of goods worth Rs. 3,18,00,000 which are

also stolen. If the Minister brings in a Bill like this again later on, he must not forget about the compensation paid. He must bring in legislation to prevent that also. With these words, I request the hon. Minister to drop this Bill.

SHRI T. S. PATTABIRAMAN: Sir, I am really surprised that there should have been so much agitation over this Bill and that there should have been so much ground covered on this very simple Bill. This does not justify any opposition especially from my friend over there who has just sat down and who thinks that we are less interested in labour problems. This Ordinance has been there since 1944 and I am sure no labour unions, whether they are led by my hon. friend on this side or by my hon. friends on the other side, have protested even once that this Ordinance has been used against the workers because of their trade union activities. But they come here now and raise the bogey of workers being penalised by the Railways or by the monstrous Railway Board according to my hon. friend. When they have not protested even once against the Ordinance since 1944 saying that it is working against the interests of their unions, it does not lie in the mouth of my friends to come and complain at this stage that it is against the interests of labour. When they have failed to advance any reasonable arguments against the Bill, they are trying to raise this bogey, and as such I am sure the House will dismiss it. The Bill does not seek to bring in any innovation. After all it is an accepted principle that a man or an institution cannot be deprived of his or its property by wrongful means. That is exactly the accepted criminal law. If you are in possession of a property and if another man takes it away without your consent or against your consent or without your knowledge, that means that you have been dispossessed of the property wrongly and that the criminal law of the land should step in. That is a fundamental principle accepted by all.....

SHRI B. K. MUKERJEE: Is it criminal law?

SHRI T. S. PATTABIRAMAN: Yes, it is criminal law.

SHRI B. GUPTA: But the criminal law is that one is innocent unless he is proved guilty.

SHRI T. S. PATTABIRAMAN: With very great deference to my hon friend's legal knowledge, I should say that what he said is completely wrong and I am going to prove it. I shall prove it if my hon. friend will kindly bear with me and I may tell him that I shall be able to quote chapter and verse from cases—not from the Privy Council but from the Indian High Courts to show that my hon. friend's presumption is totally wrong and unjustified. I would like my hon. friend to be patient and not be impatient as I can also be impatient otherwise. The principle is accepted that the Railway should safeguard property of its own and also the property that has been entrusted to it as a carrier. There are two kinds of theft in the Railways and we are all aware of it. The Railway is the greatest national asset, which we should not forget. Today the Railway is not owned by any foreigner or individual or by the capitalists. It is the greatest national asset. It is the tax-payers, it is the semi-starved millions of this country who have been contributing to the railways from their own savings. It is the ordinary man, the tiller of the soil, the common man who is the owner of the Railways and his interests should be protected. He owns this property, and is it not justifiable that the Railway Minister should take care that this property of the common man, the ordinary taxpayer, should not be made use of by unsocial elements? I am sure no Member in this House will suggest that this can be taken away. There is then the question of another kind of property that is being pilfered on Railways. The Railways are entrusted with certain things to carry from one place to another and for safe delivery and during transit mysteriously the

[Shri T. S. Pattabiraman.]
goods disappear, and as my friend, rightly pointed out, we have to pay compensation to the extent of Rs. 5 crores. It is very clear that these two sorts of pilferage should be put an end to and most probably the second must have precedence because the public are also affected—not only the tax-payer—and money is going to be given as compensation for the loss of property entrusted to them. It is necessary that the administration should take up all measures to see that pilferages do not occur. Here comes the snag. Who actually pilfers? My hon. friend was saying that the railway officers are guilty of thefts. May I know whether the Railway Board or some D.T.S. or some big officers commit thefts of these articles? No. It is the ordinary worker. I don't say that all the railwaymen are bad.....

SHRI B. GUPTA: That is slander, that is a libel against the workers.

SHRI T. S. PATTABIRAMAN: I know libel because.....

SHRI B. GUPTA: You should know.....

SHRI T. S. PATTABIRAMAN: I am not prepared to be interrupted. If he wants, let him challenge it.

MR. DEPUTY CHAIRMAN: Please go on.

SHRI T. S. PATTABIRAMAN: I am not prepared to bow down to the hon. Member. There are black sheep in every place. It is no use saying that all railwaymen are angels. I will never accept it. The hon. Member says so many other things for political exploitation. I know there are black sheep. I know the standard of the average worker is very high but there are black sheep everywhere and Railways are no exception to it.

SHRI B. GUPTA: The whole structure.....

SHRI T. S. PATTABIRAMAN: The hon. Member is likely to receive more from me.....

MR. DEPUTY CHAIRMAN: Please go on with your speech.

SHRI T. S. PATTABIRAMAN: There are anti-social elements in the Railways also. The loss incurred by the Railways is colossal. A few years back you know that the Railways were the object of the greatest pilferage. We remember those days; the trains will leave out of Delhi and by the time it reaches Agra, the bulbs will not be there, fans will be removed, etc. These are the objects that are likely to be stolen. There are a large number of railway stores distributed to various places. Mr. Mukerjee was saying "What does the officer do and why not he check them up?" I admit it must be done periodically. As a matter of fact I think the Committee have recommended that there must be more frequent checks of the stocks held by the Railways. But is it possible for the officer to go on checking the stores which may contain millions of articles at important places? Is it possible for one officer or two officers to check every day? It is not possible. If he begins to check, the check may continue for one month and by the time the check finishes the first article may be stolen from the stores. So it is necessary that there must be some provision made to see that Railway property is protected. After all what has been done by this Bill? It is not a new Bill. My friends cannot take objection to the principles because it has been on the Statute since 1944. What the new Bill seeks to do is this. It exists in Part A States and now it is sought to extend it to the whole of India. What has been good for the Part A States should be good for the rest of the country also. So my friends cannot take objection to it. It was asked: "Why should you have a separate Bill like this. Is it not enough that we have the Criminal Procedure Code or the Indian Penal Code?" The point is this. There are some sections in the I.P.C. under which it is very difficult to prove the guilt.

I refer to section 379 which refers to theft and sections 410 and 411 of the I.P.C. which refer to the possession of stolen property. I will tell you why it is necessary to have this present law. Sir, railway property is a sacred trust now in view of nationalization. The Railways have expanded and they have built up a large number of stores everywhere and it is found that the ordinary law of the land is not enough to bring to book all offenders because now the Railways have expanded greatly. Sir, this is a simple Bill and if railway property is found in possession of some other person, the onus of proof is on the person who is found in possession of it. I am certain that it is not going against the accepted principles of criminal law. My friends were saying and there are a number of amendments which say that it is wrong and objectionable in principle that the onus of proof should be shifted to the defence instead of being on the prosecution. But, Sir, with your permission, may I draw your attention to the fact that sections 410 and 411 of the Indian Penal Code already put the onus of proof on the defence? Section 411 says:

"Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

SHRI B. GUPTA: Does the hon. Member see any difference between this section and the provision in clause 3?

SHRI T. S. PATTABIRAMAN: Not only have I seen it but I have studied it and I know it very well. If the hon. Member can wait and if he has an open mind, I am prepared to convince him. Section 411 lays down a punishment for 3 years. The amendment says that as it is a nationalized property, it must be considered with sanctity and so one purpose of the Bill is to increase the punishment to 5

years. That is one of the main reasons why this Bill has been brought here. I have said that already the existing law says that the onus of proof should be on the defence. Various High Courts have held.....

KAZI KARIMUDDIN: Where is it said in section 411 that the burden of proof is on the defence?

SHRI T. S. PATTABIRAMAN: I am prepared to quote instances and the proceedings of the courts are binding today.

SHRI B. GUPTA: I think the hon. Member would help us if he explains what are the ingredients of an evidence under section 411 and what the prosecution has to prove in order to get a conviction under that section.

SHRI T. S. PATTABIRAMAN: Sir, I am dealing with this Bill and if the hon. Member wants more information I can only refer him to Ratanlal and Thakore's 'The Law of Crimes'.

KAZI KARIMUDDIN: We have read it.

SHRI K. L. NARASIMHAM (Madras): But you said you will try to convince us.

SHRI T. S. PATTABIRAMAN: Yes, but not people who refuse to be convinced. I can only try, I cannot convince people who are ignorant.....

SHRI K. L. NARASIMHAM: You don't say it.

SHRI B. GUPTA: I am not interested in having a competition of wisdom. I only want to know whether there is not a fundamental departure from the provisions of section 411 in this particular case.

SHRI T. S. PATTABIRAMAN: My hon. friend is very impatient. Let him read the Evidence Act of 1872, of which I hope he is aware of.

SHRI B. GUPTA: We have read it. But then.....

SHRI T. S. PATTABIRAMAN: I refuse to yield, Sir. He might have read it but he seems to have forgotten what he read. If only he would brush up his memory a little and read again section 114 of the Indian Evidence Act and the illustrations given there, he will find this:

"The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."

And then you have the illustration:

"(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession,".

And that is exactly what has been reproduced here.

KAZI KARIMUDDIN: But it has to be established that it is stolen.

SHRI B. GUPTA: The hon. Member has misunderstood me.

SHRI T. S. PATTABIRAMAN: It can be presumed that it is stolen.

KAZI KARIMUDDIN: No.

SHRI T. S. PATTABIRAMAN: According to my hon. friend there, it cannot be presumed, that the man who is in possession of the stolen goods is.....

SHRI K. L. NARASIMHAM: But the word "stolen" is there.

SHRI T. S. PATTABIRAMAN: It must be proved that it has been lost. The railways must prove that the goods were lost.

KAZI KARIMUDDIN: It is not necessary under this Bill.

SHRI T. S. PATTABIRAMAN: The sections can be interpreted. This is

not an essay or a thesis. I can take the relevant clause and tell you how the Act will be interpreted in the court. Here, in the illustration, they say:

"Court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession."

And here, instead of the words "stolen goods" you have got the words "railway stores".

MR. DEPUTY CHAIRMAN: There they have to prove that it is theft.

SHRI B. GUPTA: But can the court.....

MR. DEPUTY CHAIRMAN: Order, order. Please don't disturb.

SHRI T. S. PATTABIRAMAN: Sir, I am not prepared to enter into an argument here.

MR. DEPUTY CHAIRMAN: Please go on.

SHRI T. S. PATTABIRAMAN:

"Where property sufficiently identified to be the property of one person is found to be in the possession of another person without leave or license or any legal permission of the owner, it is for the party in whose possession the property is found duly to account for its possession, and, unless he can do so, a jury might fairly infer in such circumstances that it was with a guilty knowledge that the accused took that which he knew to be not his own."

So the presumption is there. This was the ruling in the case of *Shuruffooddeen vs. Ramjoy Kurmoker* (1876). Similarly the prosecution has to establish that the property was recovered from that particular house or person, or a place in the occupation of the culprit.

SHRI K. L. NARASIMHAM: It is the prosecution that has to prove it.

SHRI T. S. PATTABIRAMAN: With due deference to my hon. friend, Shri Narasimham, I have to submit that he has not understood the section.

SHRI K. L. NARASIMHAM: I am sorry my hon. friend has not read the law properly.

SHRI T. S. PATTABIRAMAN: My hon. friend cannot claim to have legal knowledge, whatever other knowledge he may have. He has never been a lawyer and he does not know the law. They have never been law-makers, they have always been law-breakers.

SHRI B. GUPTA: But for the present we are all law-makers, you, myself and all of us here.

SHRI T. S. PATTABIRAMAN: Again, Sir, in the case of Baidyanath Mahanty of 1940, they have held that "If however, the person gives a reasonable explanation of the possession the Court should not find him guilty". So the proof is always there. Further they state:

"Where the accused was found in the recent possession of some stolen sheep, of which he could give no satisfactory account, and it might reasonably be inferred from the circumstances that he did not steal them himself it was held that there was evidence for the jury that he received them knowing them to have been stolen."

Therefore, it is clear that the onus of proof is there.

SHRI K. L. NARASIMHAM: But who is to prove it?

SHRI T. S. PATTABIRAMAN: The defence.

KAZI KARIMUDDIN: No, that is wrong.

SHRI T. S. PATTABIRAMAN: Then in the Ram Pershad case of 1924 this is what happened:

"Where valuable jewellery which was stolen or otherwise lost to the owner was found under circumstances of grave suspicion in the possession of the accused about two years after the theft or loss, and the accused refused to disclose the name of the person from whom he received the same or to give the particulars as to the origin of his possession, the Court drew an inference of guilty knowledge on the part of the accused."

These rulings go clearly to show that the onus of proof with regard to the stolen property, or property which belonged to another, is always on the defence and it is for the defence to show that he got it by legal means. So there is no departure here from any principle. Existing principles have been accepted and existing law has been strictly adhered to and there is no innovation in this Bill.

My hon. friend there said that I have not read the Bill. May I respectfully draw his attention to clause 3 of this Bill where it is stated:

"Whoever is found, or is proved to have been, in possession of any article of railway stores shall,....."

The words used are "articles of railway stores". So these things must be proved by the prosecution. That is the fundamental factor of this law. First of all it must be proved that the property of the railway was found in another's possession. That must be proved by the prosecution. If no witness was taken at the time the articles were taken over, then the Court will never hold that the articles were found in the man's possession. The manner in which the articles were found in some other place must be according to the Criminal Procedure Code. Suppose a railway officer or a police officer prepares a "mahazar", that will not be enough for the Court. It will never accept it. The Court will say that you have not proved that the goods were found in the possession of the particular person, according to the law. Suppose there are three tenants in a particular house. The prosecution

[Shri T. S. Pattabiraman.]
will say that one of the tenants is in possession of a certain property. It is the duty of the prosecution to prove that the person was actually in possession of that property.

KAZI KARIMUDDIN: In exclusive possession.

SHRI T. S. PATTABIRAMAN: The prosecution has to prove that in that particular house, though there were three persons, the man in possession of it.....

KAZI KARIMUDDIN: He should be in exclusive possession of it.

SHRI B. GUPTA: May I ask my hon. friend.....

SHRI T. S. PATTABIRAMAN: I am not prepared to answer any interruption.

SHRI B. GUPTA: I want only a clarification

SHRI T. S. PATTABIRAMAN: You can put all your questions to the Railway Minister.

SHRI B. GUPTA: But you have taken upon yourself to speak for the Minister.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI T. S. PATTABIRAMAN: It must be proved that the article was found there—it should be a proper “mahazar”—that the man was in exclusive possession of it. And then a third thing also must be proved. My hon. friend said that so many articles, articles from A to Z are being used by the Railways and so how are you going to know, he asked, that a particular piece of property belonged to the Railways? The law says that the onus of proving that it is a property belonging to the Railways is on the prosecution. Suppose a bolt or a nut is found in my possession. The railway administration cannot straightaway say that I am in possession of it illegally and that I should be convicted according to this Act.

SHRI K. L. NARASIMHAM: It says that it must be stolen property.

KAZI KARIMUDDIN: Sir, my hon. friend has not read the next clause in the same section, namely, “if the court sees reasonable grounds for believing such article to be or to have been the property of any railway administration”.

SHRI T. S. PATTABIRAMAN: Sir, the first three sentences are together and they must be taken together. The other three sentences come later. It should be first proved that the article is a railway store and the court must agree that it is a railway store. The presumption will not be that the article belongs to the railway. The presumption will be otherwise. The prosecution must prove that it is the property of the railways and the court must see reasonable grounds for believing that. The onus of proof is on the railway administration. It is for the railway administration to prove that the article is the property of the railways, and then if the court concludes on evidence, that there are reasonable grounds, then only punishment will be awarded. Supposing the court does not believe that it is a railway store, then the case will be discharged. If the prosecution does not prove that it is a property of the railways, then the case will be immediately discharged. No further evidence will be taken. The prosecution must prove, first of all, that the article was found in the man's possession; secondly, that he was in exclusive possession of it (there is no doubt about it); and, thirdly, it must be railway store, that is, it must be proved that it belongs to the railways. Sir, “possession” in this context means “exclusive possession”. We have to accept certain interpretation of the courts.

SHRI B. GUPTA: You cannot import another word here unless there is some ambiguity in it.

SHRI T. S. PATTABIRAMAN: Sir, I do not think so. The court has inter-

preted the word "possession" and it means "exclusive possession", not doubtful possession.

(Interruption.)

MR. DEPUTY CHAIRMAN: Order, order.

SHRI T. S. PATTABIRAMAN: Sir, I am not prepared to prove my legal knowledge to these gentlemen. So, Sir, these three things ought to be proved by the prosecution and the only thing to be proved by the defendant is that he came in possession of the article by lawful means. It is not as if every man who is in possession of railway stores will be prosecuted.

Then, one hon. friend raised the point that the Railway Board is auctioning property every year. Take the example of railway scrap sleepers. The defence can prove, if it is a *bona fide* transaction, that the property was obtained from a particular auction. If he can show the auction notice, or the relevant document, and if he proves that the railway store was purchased at an auction, then the case will be discharged. If it is proved that the material was purchased through local channel, even though he knew that it was stolen property, then the court will convict him.

Sir, I do not want to take much of your time. As I have said, these are the three fundamental principles in this Bill and there cannot be any objection. Only one word more and I have finished. There is no doubt about it that a large number of thefts are going on. If my hon. friend wants information, I shall give him. Recently, at Erode Junction fans and other articles were found removed from the trains and these were sold outside. My hon. friend Mr. Narasimham knows, as a labour leader, how many articles of railway stores are being stolen.

SHRI K. L. NARASIMHAM: Tons of cement are used by officers

SHRI T. S. PATTABIRAMAN: He may not connive at it; that is not my

opinion. He knows that there are black sheep in every department; they are not confined to the railways alone.

SHRI B. GUPTA: It is the duty of the officers to take action.

MR. DEPUTY CHAIRMAN: Order, order. Mr. Gupta, you are disturbing too much.

SHRI T. S. PATTABIRAMAN: Sir, this Bill is not directed against officers or railwaymen. It is in the interests of positive legislation. It is positive in the sense that it seeks to prevent anti-social elements—whoever they may be, —from taking advantage of the laxity of the railway administration and then make use of the stolen property for their own benefit. It is only with this good object that this Bill has been brought before the House and I am sure the Bill will have the support of all, and absolutely no person, whether interested in labour or in the administration, shall have any apprehension. It is the national asset that is sought to be safeguarded. It is the national asset that is sought to be made safe from the anti-social elements. So, Sir, in the interests of the national railways, and in the interests of honesty among our own men, it is necessary that this legislation should be extended to all the States and it should have a fair and easy passage. Thank you, Sir.

SHRI N. C. SEKHAR (Travancore-Cochin): Sir, I rise to oppose this Bill as it is before this House, particularly because of clause 3 which says: "Whoever is found, or is proved to have been, in possession of any article of railway stores.....etc." I consider this Bill very harsh and the crudest of measures this Ministry has ever brought before this House for passage. In the Statement of Objects and Reasons, it says that this piece of legislation has been brought in continuation of the special Ordinance which was promulgated in 1944 by the then Viceroy or Governor-General. No other reason has been mentioned in the Statement of

[Shri N. C. Sekhar.]

Objects and Reasons to show why this should be continued and as to why it should be extended to other parts like Part B States. Also, in the speeches of the Minister or in any of their reports proper reasons have never been stated as to why this measure should be enacted.

MR. DEPUTY CHAIRMAN: I would like to remind hon. Members that an identical Bill regarding telegraph wires was passed during the last session.

SHRI H. C. MATHUR (Rajasthan): But, then, Sir, if you will remember, the Minister himself made it absolutely clear that it was a very distinctive thing, because the wires which were concerned in the Bill were not available for sale or anywhere else and that they bore exclusive distinctive marks. In the case of the railway stores, these are articles which are used in every household, and at all times.

SHRI N. C. SEKHAR: Sir, here it says that the reason for the promulgation of the Ordinance on the 13th May, 1944, was with a view to preventing persons from having unlawful possession of articles of railways, a thing of frequent occurrence towards the end of the last war. The Railway Ministry, or the officer who is responsible for this measure, has not made it clear before this House that the same situation still prevails all over the country, including the Part B States. But one will wonder how a store in Part A State is pilfered into Part B State and by whom and in whose interests—is it by the railway worker?

MR. DEPUTY CHAIRMAN: The railways in Part B States are part of the Indian Railways and we have got railway stores in Part B and Part C States also.

SHRI N. C. SEKHAR: That I understand, Sir. There is no question of

taking railway stores from Part A to Part B States.

MR. DEPUTY CHAIRMAN: That is why I have just said that when the Ordinance was passed in 1944, Part B States were not a part of India and the Indian Railway Act did not apply to them. In Part B States also there are railways; they are all part of the Indian Railways.

SHRI N. C. SEKHAR: I understand that position and only because of that I am mentioning about it. What I suggest is that there is no necessity for such a piece of legislation as is proposed now. It might be, the measure is intended to check the thieving of the railway stores or any other unlawful acts that may be perpetrated on railway stores but this is not the measure to be taken for protecting Government property from being stolen. In the Audit Report of 1953, the Auditor has pointed out specific instances of how the public money was being lost and by whom. Even in spite of specific mentioning, the Department concerned never took any steps to avoid such things happening again. About the contracts, the Audit Report mentions about several instances in which there was a loss of about Rs. 11½ lakhs in one case and a loss of Rs. 9 and odd lakhs in the other. The Report also mentions the names of the officers of the Purchasing Mission at Washington. It is also mentioned in the Report that the officer who was responsible for this loss of Rs. 11½ lakhs was forced to resign from the 31st December, 1952. No other action was taken against him; he was only forced to resign. In fact, for that great loss that officer should have been sent to prison for life. The Government did not do that. The Report also mentions about the existence of officers who are yet to be proceeded against.

MR. DEPUTY CHAIRMAN: That is a different matter. We have a small Bill. Probably you will be relevant when the Railway Corruption Enquiry Committee's report is discussed.

SHRI N. C. SEKHAR: I am relating this matter to the facts of loss and all that.

MR. DEPUTY CHAIRMAN: This is a very small Bill; please confine yourself to the Bill.

SHRI N. C. SEKHAR: It is not a very small thing. The point I am making is that certain things which require serious action are left without being attended to. At the same time, measures like this.....

MR. DEPUTY CHAIRMAN: You may speak on this when the Railway Budget comes up. We are concerned only with railway stores. Whatever is relevant to that Bill may be touched.

SHRI N. C. SEKHAR: The Auditor's report contains instances of.....

MR. DEPUTY CHAIRMAN: We are not concerned with the Auditor's Report. If there is anything about the railway stores, I will allow it.

SHRI N. C. SEKHAR: Here there are given instances of thefts, pilferages, etc. That is what I am making out.

MR. DEPUTY CHAIRMAN: About railway stores?

SHRI N. C. SEKHAR: Yes. The summary of losses mentioned in the Appropriation Accounts for 1951-52. That is the heading on page 48. Here, certain items are given.....

MR. DEPUTY CHAIRMAN: Appropriation is not loss; it may be misappropriation.

11 A.M.

SHRI N. C. SEKHAR: In that list certain items are shown in which losses have taken place. The Audit Report mentions something about a total of 10,650 cases which entailed a loss of Rs. 47,59,809 out of which 1,472 are cases of theft which entailed a loss of Rs. 1,17,000. When compared with the other items of loss, the loss by way of thefts, pilferage etc., is far less. This does not mean that I am in

any way prepared to say that this should not be checked. This must be checked, but how to check it is a problem. Experience goes to show that the thieving of railway stores and other things connected with the railway is going on on a large scale, but who is doing that? That has to be found out by the Government. I am also connected with railway labour in a way and I could understand it; so many instances of theft are recorded, the workers are proceeded against and punished. Actually they are not the persons who committed the theft; such thefts are committed by the high-ups in certain departments but they are saved and the poor workers are made the scapegoats. This is how things are going on, and over and above all that, when the powers are extended to the other parts, how can it improve the situation. The passage of this measure can give a handle to such officers who are in such a position to make poor workers scapegoats.

MR. DEPUTY CHAIRMAN: You are a responsible Member of Parliament. If you have got definite allegations you have to give them to the Railway Minister and you should not make vague allegations. If you have any of these instances, give concrete instances to the Minister and he will make enquiries.

SHRI N. C. SEKHAR: They are not vague; when occasion demands, I shall represent those things.

MR. DEPUTY CHAIRMAN: You should be responsible for the allegations.

SHRI B. GUPTA: Sir, I think we can certainly refer to such things. We are not making allegations; we are not even naming individuals.

MR. DEPUTY CHAIRMAN: As public workers, you are all responsible to give information.

SHRI B. GUPTA: But the other side should also discharge its responsibility.

MR. DEPUTY CHAIRMAN: You can say so but you cannot make vague allegations.

SHRI N. C. SEKHAR: They are not vague allegations; I am prepared to cite instances, if you want.

SHRI B. GUPTA: Very well, Sir, from now on, I shall cite the names.

MR. DEPUTY CHAIRMAN: You should send the names to the Minister.

SHRI B. GUPTA: We have not come here only to write letters. We have come here to make public allegations and to get redress.

MR. DEPUTY CHAIRMAN: But not to make vague allegations.

SHRI B. GUPTA: That is a matter of opinion, Sir.

SHRI N. C. SEKHAR: It is not a question of making vague allegations, this is what is happening all over the country and that is why we have been mentioning about it.

Now, this piece of legislation is brought forth for enactment. I say this is simply to save the high-ups who commit theft. If we examine the reports relating to the railways, we will come across instances of high-ups who evade taking action simply to save themselves from being caught. So, many such examples can be cited in the Bombay Yard, in the Madras Yard and so on but for want of time I do not want to bring forth all those things before this House. Those who are concerned, can go through the Report once again and find out the persons who are chiefly responsible for these thefts. My suggestion is that this sort of legislation will never help the department to do away with what they want to do away with. Rather, it will increase the thefts. Government have taken steps to check prostitution in all cities but what really is happening in the city itself by that legislation? Has prostitution been prevented? No. It is growing on a mass scale in another form. What has been the fate of that law? Likewise this piece of stringent legislation may not help prevent thefts unless the condition of those who are employed in the railways is very much

improved and improvement of the conditions of the employees of the railways will make them feel that this is also their property and that it is their duty to look after it as their own, that railway property is public property belonging to the people and that it is the duty of the workers as well as the people to look after these things and to protect them from being pilfered or stolen. So, such measures towards the improvement of their condition are necessary to stop these thefts etc. and not stringent measures like this. Criminal law had never lessened the number of cases in India. Since its passage, from 1898, it has rather increased the number of cases to the advantage of the rules and to the disadvantage of the people. So these stringent or harsh measures will never help the people from commission of crimes; rather it will help in another way for the increase of crimes. So what the Ministry has to do is to put forth such measures, I mean to put the employees in an advantageous position, give them their due, give them the right of trade union organization and meet their reasonable demands. Then ask them to look after these things. Then you will see that so many high officers are being caught redhanded for pilfering so many valuable stores which we know. And even stores like cement, nuts, bolts, even oil, bulbs and such other things are being stolen and they can be found out very easily without the help of the police but only with the help of the employees. That is one point.

Now I will come to another point in the Bill which was referred to and explained by certain lawyer friends. I mean clause 3, which reads: "Whoever is found, or is proved to have been, in possession of any article of railway stores shall, if the court sees reasonable grounds for believing such article to be or to have been the property of any railway administration, unless he proves that the article came into his possession lawfully, be punishable with imprisonment for a term which may extend to five years, or with fine, or with both."

This is a very harsh kind of treatment. Here, in fact—whatever wording is there—those who are prosecuted or who are brought before the court are not given sufficient facilities to defend themselves. Rather if the court sees on the spur of the moment that the man came into unlawful possession of any article of railway stores, the court can punish him, send him to jail for five years, or fine, or both. Even the most cruel criminal law gives facilities to the accused to defend himself, to take sufficient time to prove that he is not guilty of particular offences. Here it does not give such facilities.

MR. DEPUTY CHAIRMAN: The right of defence is not taken away.

SHRI N. C. SEKHAR: But unless the wording of the provision is put in a suitable manner so as to give facilities for those who are brought before the court to defend themselves, to prove that they are not guilty of unlawfully possessing railway articles, it is no good.

MR. DEPUTY CHAIRMAN: That right is not taken away by this Bill.

SHRI N. C. SEKHAR: This Bill does not, in my opinion, give such facilities as are given by the sections of the criminal law.

MR. DEPUTY CHAIRMAN: He can engage defence counsel; it is allowed here also.

SHRI N. C. SEKHAR: Kazi Karimuddin said that unless the clause is amended in a suitable manner this Bill should not be accepted by the House and that is my appeal also.

SHRI MAHESH SARAN (Bihar): Mr Deputy Chairman, most of the hon. Members are in agreement with this Bill, but all the same we have to see that the wording of the Bill is such that a person found in possession of railway stores or railway articles is given the proper consideration when

the case is taken up. My submission is that the wording is very loose and if the wording remains as it is, it will be a great hardship because in a criminal case the guilt must be proved beyond all reasonable doubt and if this is not so, no conviction is possible. Therefore it should be proved that the property is railway stores; something to that effect must be proved and unless it is proved, no person can be convicted. Let us see the wording of this Bill. It says: "Whoever is found, or is proved to have been, in possession of any article of railway stores shall, if the court sees reasonable grounds for believing such article to be or to have been the property of any railway administration,".....

MR. DEPUTY CHAIRMAN: On such proof.

SHRI MAHESH SARAN: Where is that?

MR. DEPUTY CHAIRMAN: "Whoever is found, or is proved to have been"

SHRI MAHESH SARAN: I am referring to the clause which says "if the court sees reasonable grounds for believing such article" etc. why is it added here?

MR. DEPUTY CHAIRMAN: It means that the prosecution must lead sufficient evidence so as to give sufficient reasonable grounds for the court to believe that it is railway property.

SHRI MAHESH SARAN: "Reasonable grounds" are not enough.

MR. DEPUTY CHAIRMAN: Then what else is proved?

SHRI MAHESH SARAN: The question is, it must be proved beyond all reasonable doubt

MR. DEPUTY CHAIRMAN: Mr. Saran, first of all possession must be traced to the accused. Then there must be sufficient prosecution evidence to give sufficient proof for the court to presume that it is railway property.

SHRI MAHESH SARAN: May I submit that if you read

MR. DEPUTY CHAIRMAN: That is the plain meaning, as I see it.

SHRI MAHESH SARAN: "Whoever is found in possession of any article of railway stores" seems to be enough.

MR. DEPUTY CHAIRMAN: One is that and the second is "or is proved to have been...." and "shall, if the court sees reasonable grounds for believing" So how can the court convict unless such proof is established?

SHRI MAHESH SARAN: My submission does not agree with your interpretation.....

MR. DEPUTY CHAIRMAN: If the defence counsel is able, he goes scot-free.

SHRI MAHESH SARAN: Then there is another flaw and that is, there is no guilty mind. He must know that these are railway stores. Unless he knows this how can he be careful in his purchases? Now for example take some shops that are behind the Jumma Masjid. I go and purchase some articles without knowing that they are railway stores. But if it is found that they are railway stores I am convicted. It is really not the proper thing to do. I must know that such and such are railway stores and so long as I do not know that how can I be hauled up for being in alleged unlawful possession of railway articles? I may have got it without knowing that it is railway store. I might have bought it in any shop. Because the guilty mind is not there, no criminal case should be brought against a person unless he has that guilty mind and I wish to emphasise this point. Of course it is for the hon. Railway Minister to consider whether it should be there or should not be there, but I think it is a great flaw that I buy a thing somewhere and I am to account how I got it and I have to prove that I bought it correctly and establish that it is not railway property. Well, I cannot know all these things. I go and buy every day. The

offence I shall commit only if I know that it is railway store and I buy knowing it to be so. Therefore I do hold that this is a great flaw so far as this omission of a provision like that is concerned. I must have a guilty mind, I mean, it is very difficult to prove how I came by it. Suppose after six years or four years or five years something is found with me which is railway property but I never knew it, I in all good intention bought it, now I have to find out where I bought it, what was the date, and all that. Well, I do not think, Sir, that is the proper way of dealing with this matter. You must prove the guilty mind. If I bought it honestly without knowing that it is railway store, I should not be run in. So this is one of the provisions which I think is very necessary to be put into this Bill. Otherwise every person will be faced with the possibility of being run in without his having any criminal intention or any intention to defraud the railway.

Then, Sir, what I find is that this Bill does not go into the root of the thing. There is nothing regarding the railway thefts that take place in the factories and other places in the railway itself. Things are taken out from these places and then they come in the open market. Of course there are certain things in the railway coaches which a person can remove, but most of the things come out from the railway stores themselves. Now what is the Railway Minister going to do for that? There is nothing about it here in the Bill. It is only for unlawful possession—of course if it is proved that it is railway store—I am convicted. But what happens to the real theft that is taking place? What steps are going to be taken in that direction? These are some of the points which I wanted to bring to the notice of hon. Members, before this Bill was accepted by the House.

PANDIT S. S. N. TANKHA (Uttar Pradesh): Mr. Deputy Chairman, I am inclined to think that the House, or at least many of its members, seem to think that this is a new law which

is being enacted by us, while that is not the case. We know that this law already exists although it does not exist in the form of a statute but exists under an Ordinance—Ordinance No. XIX of 1944—which is still in force under sub-section (3) of section 1 of the India and Burma (Emergency Provisions) Act, 1940. Therefore, Sir, if this is not a new Act and if we are not making any new enactment and if it is found that since 1940 up till now it has not worked against the interests of the public, why should we think that if we now place this Bill on the Statute Book great harm will be done to anybody, or any great hardship will be caused to the people?

Now, Sir, coming to some of the criticisms which have been made by hon. Members against the provisions of this Bill, I will first of all take up the criticism of my hon. friend Kazi Karimudd'n Sahib. He asked as to why it is that we have provided under this Bill: "Whoever is found or is proved to be in possession of any article of railway stores" will be punishable with five years' imprisonment, whereas the general law provides under section 379 I.P.C. that a person who is proved to have stolen any property shall be punishable with only three years' imprisonment. Likewise while section 411 of the Indian Penal Code provides that whoever is found in possession of stolen property shall be punishable with imprisonment for three years only whereas under the present Bill we are now providing for an imprisonment of five years. Now, Sir, to my mind there is a great deal of difference between ordinary property covered under section 379 and this class of property which is being covered under clause 3 of this Bill. We must realise that this Bill does not relate to ordinary private property but it deals with public or Government property which is stolen or which is retained in possession of by persons illegally. Therefore, Sir, realising that there is a great deal of difference between being in unlawful possession of ordinary private property and being in unlawful possession of public pro-

perty, if we make any differentiation between the punishment for these two offences and if we make the latter offence a graver one, I see no harm in doing so. On the contrary Sir, I think it is absolutely justified and that it is very necessary that thefts of public property should be checked and stopped with as deterrent punishments as possible. Therefore if this Bill provides for a maximum imprisonment of five years instead of three years as is provided under the general law, I think we are doing no wrong. On the contrary I am of the opinion that we have proceeded on the right lines and as such there is nothing in this Bill which should be objected to by the House.

In this connection I would like to remind you, Sir, of another similar Act regarding being in possession of another class of public property, namely, telegraph wires. That Act was passed in 1950 and I think it was last year or in 1952 that we amended that Act in certain respects, but.....

MR. DEPUTY CHAIRMAN: It was last session.

SHRI H. C. MATHUR: December, 1953

PANDIT S. S. N. TANKHA:but regarding the punishment provided under the Act we made no modification or difference under the amending Act. The wording of section 5 of the Telegraph Wires (Unlawful Possession) Act, 1950, is as follows: "Whoever is found or is proved to have been in possession of any quantity of telegraph wires which the court has reason to believe to be, or to have been, the property of the Posts and Telegraphs Department of the Central Government shall, unless he proves that the telegraph wires came into his possession lawfully, be punishable with imprisonment for a term which may extend to five years, or with fine, or with both." Therefore, Sir, you will see that it is not a novel departure from the general law that we are now providing that the offence of being

[Pandit S. S. N. Tankha.]

in possession of or stealing public property shall be punishable with imprisonment for a term of five years. If such a provision has not only been tolerated but has been approved of by Parliament in respect of another class of property, I do not see any reason why it should be objected to by the House in respect of an offence relating to another property of the same class.

Now, Sir, another main criticism of my hon. friend Mr. Karimuddin was that the burden of proof has been wrongly placed on the accused under the present Bill. In this regard I do not agree with the interpretation placed by my friend Mr. Pattabiraman that under the general criminal law also the burden of proof is on the accused. There can be no denying the fact that the burden of proof in this case has been placed on the accused but I say, Sir, that this has been specially done. It is not a thing which we are going to do unknowingly. We have deliberately placed the burden of proof on the accused with a particular object in view, and that object is that stealing of public property must not go unpunished and must be stopped and that the many cases which are let off for want of sufficient prosecution evidence may not in future go unpunished on that account. However, I cannot deny that this is a departure from the general law. It certainly is a great departure and a very vital departure from the principles of the general law. But what have we done here is what we did in the other Act, namely, the Telegraph Wires (Unlawful Possession) Act. How have we placed the burden there? You will see, Sir, from section 5 of that Act which I read out just now that "whoever is found or is proved to have been in possession of any quantity of telegraph wires. shall be punishable with imprisonment of five years." Likewise we have provided in clause 3 in this Bill that "whoever is found, or is proved to have been, in possession of any article of railway stores shall, if the court sees reasonable grounds for believing such

article to be or to have been the property of any railway administration, unless he proves that the article came into his possession lawfully, be punishable with imprisonment for a term which may extend to five years, or with fine, or with both." There is no difference between clause 3 of the present Bill and section 5 of the Telegraph Wires (Unlawful Possession) Act. Both place the burden on the accused and they do so, I maintain, Sir, knowingly and with a view to making such an offence a graver offence and in order that it could be easily proved by the authorities. It is true that the general law presumes a person to be innocent so long as the crime is not brought home to him while under the present Bill the mere fact that a person is found in possession of a certain class of goods shall make that person liable to be found guilty unless he proves that he came into *bona fide* possession of those articles. But that too, Sir, I maintain, has been done, because this stealing of, or being in possession of this class of public property has been considered to be a graver offence than the offences of stealing or being in possession of other classes of properties punishable under section 379 or section 411. My friend, Mr. Pattabiraman, I am afraid, is wrong in saying that in the case of trials under sections 379 and 411, the Government or the prosecution has not to prove anything more than that of a person being in possession of that property. No, Sir, that is not the correct interpretation. What the prosecution has to prove in those cases is that that person came into possession of the property dishonestly, or with a dishonest motive. Unless that is proved, the accused person will not be held guilty. But in cases of those covered under the present Bill, the mere fact that that person is in possession, will presume him to be guilty unless he himself proves that he came into a lawful possession of those articles. But, Sir, as I have already said, since Parliament, in its wisdom, has seen it fit to make a provision of this character in another Act, I do not think such a provision should be objected to by us under the present

Bill, and as I have said earlier I believe this has been done because the gravity of this offence has been considered to be greater than that in any other ordinary case. Therefore, Sir, I am of the opinion that the provisions of the Bill before us are quite suitable, and should be adopted by the House. Further Sir, we must remember, that by the passing of this Bill we merely extend the provisions of this Act to those territories of India which were excluded from its operation so far, namely, the Part B States, because the Ordinance which we are replacing by the present Bill, namely, the Ordinance of 1944, provided in section 1, subsection (2), that it extended to the whole of India except Part B States. And now, under the present Bill sub-clause (2) of clause 1 extends the operation of the Bill to the whole of India, namely, inclusive of Part B States. And, therefore, Sir, I commend the Bill for the acceptance of the House.

श्री कन्हैयालाल डी० बेंद्य : उपसभापति महोदय, मैं इस बिल का हृदय से समर्थन करता हूँ। इस सदन में इस बिल पर जो वाद-विवाद हुआ है उसमें कुछ इस प्रकार की भी दलीलें आई हैं कि यह बिल अनावश्यक है। मैं नहीं समझता कि यह बिल किस तरह से गैर जरूरी हो जाता है। अभी एक माननीय सदस्य ने काफी विवेचना के साथ बतलाया कि कानूनी दृष्टि से यह बिल आवश्यक है। माननीय सदस्य मुकर्जी ने इस विषय में बहुत कुछ गलतफहमी पैदा करने की कोशिश की है परन्तु स्टेटमेंट आफ आबजेक्ट्स ऐंड रीजंस में बहुत साफ लिखा हुआ है कि इस प्रकार का माल पार्ट बी स्टेट्स में चोरी से स्मगिल किया जाता रहा है और वहां मुकदमा चलाने में गवर्नमेंट को कठिनाई का अनुभव होता है इसलिये यह जरूरी हो गया है कि इस आर्डिनंस को कानून का रूप दिया जाये और पार्ट बी स्टेट्स में भी यह कानून लागू किया

जाये। इस सदन में इस तरह के भी बातें की गई हैं कि जिन लोगों के पास इस तरह का चोरी का माल पकड़ा जायेगा उन पर मुकदमा चला कर उनको सजायें की जायेंगी तो इससे मजदूरों के हितों पर बड़ा आघात होने वाला है। मैं समझ नहीं पाता कि इस दलल के पीछे कौन सी मनोवृत्ति काम कर रही है। रेलवे हमारा एक राष्ट्रीय सम्पत्ति है और रेलवे की किसी वस्तु का चुराना एक राष्ट्रीय अपराध माना जाना चाहिये। हमें इस सदन में इस तरह के बातें कहनी चाहियें और ऐसी मनोवृत्ति पैदा करनी चाहिये कि लोगों का कैरेक्टर बने लोगों में मारेलेटी बड़े और इस देश में राष्ट्रीय सम्पत्ति को इस प्रकार से चोरी कर के राष्ट्र को नुकसान पहुंचाने की जो प्रवृत्ति है उस प्रवृत्ति को अन्त करने की मनोवृत्ति देश में पैदा हो। हम इस सदन में जो कुछ बोलते हैं वह सब बातें संसार भर में पहुंचती हैं। इसलिए इस तरह की मनोवृत्ति पैदा करने के बजाय यदि हम इस प्रकार की दलीलें दें जैसी कि दी गई हैं तो वह ठीक नहीं है। हां, जहां तक कानूनी नुक्ताचीनी का सम्बन्ध है, यदि कानून में कोई कमियां हैं तो उनके ऊपर सदन में अवश्य ही विचार होना चाहिये और इस विषय में दो एक माननीय सदस्यों ने बहुत से अमेंडमेंट भी रखे हैं। जो भी कानून हम बनायें वह पूर्ण होना चाहिये और मैं नहीं समझता कि यदि कोई खाम इस बिल में है और वह खाम माननीय मंत्री जी और रेलवे बोर्ड के समक्ष लाई जायें तो वे उसको ठीक करने में और संशोधन को मंजूर करने में कोई दिक्कत का अनुभव करेंगे। मैं अनुभव करता हूँ कि इस देश में यह एक बहुत बड़ा

[श्री कन्हैयालाल डी० वैद्य]

राष्ट्रिय अपराध हो रहा है। मैं जब रेलों में मुसाफिरी करता हूँ और अधिकतर ट्रेनों में इस तरह का व्यवस्था देखता हूँ तो मुझे बहुत दुख होता है कि आज भी, राष्ट्रिय रेलें होने के बाद भी, रेलों में अंधेरा छाया रहता है।

पिछली बार सेशन के बाद जब मैं गया तो आप मुन कर आश्चर्य करेंगे कि देहरादून एक्सप्रेस की साग, ट्रेन में दिल्ली से रतलाम तक करीब करीब मैं अंधेरे में गया। गेशनी बुझो हुई थी। जब मैंने इस बारे में गार्ड से और दूसरे लोगों से कहा तो उन्होंने बताया कि यह बात आज ही नहीं है बल्कि १८ गोज से ऐसा ही चल रहा है। मैंने बहुत सी लोकल पैसेंजर ट्रेनों में अंधेरा देखा और उसके बारे में रिपोर्ट की लेकिन एक्सप्रेस ट्रेनों में भी अंधेरा रहे, यह तो बड़ा खराब बात है। अब मैं सेशन के लिए आया तो आप आश्चर्य करेंगे कि देहरादून एक्सप्रेस में डिब्बों में लाइट नहीं थी। यह १९ तारख की बात है। गार्ड के डिब्बे के पास औरतों का डिब्बा था लेकिन उसमें भी रोशन नहीं थी। मैंने गार्ड से कहा कि यह तो बड़ा अंधेरा है, कम से कम औरतों के डिब्बे में तो अंधेरा नहीं होना चाहिये। गार्ड ने कहा कि हमने कोशिश करके बल्ब लगवाया था लेकिन कोई निकाल ले गया है।

SHRI H. P. SAKSENA: It was the dark fortnight of the month perhaps.

श्री कन्हैयालाल डी० वैद्य : तो मैं आपसे निवेदन करना चाहता हूँ कि रेलवे चीजें इस तरह से निकाली जात हैं। बम्बई में जो सेंट्रल रेलवे एडवाइजरी

कमेटी है उसमें भी मैंने इस प्रश्न को रखा था। बम्बई में चोर बाजारी से लोग चीजें खरीदते हैं और वे चीजें बहुत सस्त मिलत हैं। वहाँ चोर बाजार में रेलवे का अधिकांश माल बिकता है और रेलवे के स्टोर में हा यह माल वहाँ जाता है। जो आज कल पंखे लगे हुए हैं उनके पार्ट्स वहाँ बिकते हुए मिलेंगे। तो जो चीजें रेलवे के पजेशन में हैं वे इस तरह से वहाँ जाती हैं कि कुछ कहा नहीं जा सकता। अभी मैंने सुना कि इम बिल में मजदूरों के ऊपर बहुत प्रहार होगा। सन् १९४४ से यह आर्डिनेंस है लेकिन अगर अब यह बिल पास कर देंगे तो मजदूरों पर प्रहार शुरू हो जायेगा, यह नई दलील दी गई जिसका समझना मेरे लिये बहुत मुश्किल है।

मैं क्या बताऊँ, चोरी के न मालूम कितने तरीके हैं। कितना पतन लोगों का हो गया है कि वे दूसरों की महुलियत का कोई ख्याल ही नहीं रखते। मैं अजमेर स्टेशन की बात बताता हूँ। पिछले माल वहाँ रेलवे ने प्लेटफार्म पर चार फ्लश की लैंट्रिस बनवायीं। जब मैं एक मित्र के साथ वहाँ सुबह पहुँचा तो हमने देखा कि फ्लश की लैंट्रिस हैं और उसकी जो वहाँ व्यवस्था है उसको भी हमने देखा। आपको मुन कर आश्चर्य होगा कि हमने देखा कि फ्लश के ऊपर जो ढक्कन रहता है वह ढक्कन गायब था। इसके अलावा जो दरवाजा था उसकी चिटखनियाँ गायब थीं। पास में ही दो जनानी फ्लश की लैंट्रिस भी थीं जो कि खुली हुई पड़ी थीं। हम लोगों ने उनको भी देखना चाहा कि उनकी क्या हालत है तो हमने देखा कि उनका भी बिल्कुल वही का वही नक्शा है।

हमने स्टेशन मास्टर में जा कर कहा कि "श्रीमान्, आप यहां किम लिए विराजमान हैं, क्या यहां आप हजामत कर रहे हैं ?" इस पर उनको आश्चर्य हुआ। मैं तो चाहता ही था कि उनको फील हो कि आखिर क्या बात है। तो सब कुछ सुनने के बाद वह वहां तशरीफ ले गए और उन्होंने सब कुछ देखा। मैंने कहा कि श्रीमान् जी, यह कोई रेल के इंजन या रेल के डिब्बे की बात तो है नहीं जिसके लिये रेलवे मिनिस्टर सहब कहते हैं कि ये जब देश में बन जायेंगे और बाहर में आ जायेंगे तभी मिल सकेंगे। यहां तो हिन्दुस्थान में करोड़ों रुपये की चिटखनिया बनती हैं और यह प्लेटफार्म आपके दफ्तर से आधा कलंग भी नहीं है, तो आप यहां करते क्या हैं ? तो आप देखें कि यह हालत है, यह परिस्थिति है। तमाम परिस्थिति इतनी बिगड़ी हुई है कि जो धाराएं इस बिल में रखी गई हैं कि अगर किसी के पजेशन में चोरी का माल हो तो उसको सजा दी जानी चाहिये, मैं कहता हूं कि इसको राष्ट्रीय अपराध घोषित करना चाहिये और हमें इस बात की कोशिश करनी चाहिये कि हम एक प्रकार का ऐसा मारेल् सेंस पैदा करें कि कोई राष्ट्रीय सम्पत्ति को, चाहे रेलवे की हो चाहे और किसी विभाग की हो, चुराने में या चोरी का माल खरीदने में हम प्रोत्साहन न दें। अभी यहां सदन में कहा गया कि दिल्ली में जामा मस्जिद के पास एक ऐसा मार्केट है जहां इस प्रकार का माल खुले आम से बिकता है। इस कानून के बनने के बाद जो रेलवे के वाच एंड वार्ड के कर्मचारी हैं उनको चाहिये कि वे जा करके ऐसी दुकानों पर भावा बोलें। एक माननीय सदस्य ने

कहा कि मैं जामा मस्जिद वाली मार्केट में जाऊंगा और वहां में कोई चीज खरीद लाऊंगा और अगर वह रेलवे का माल है तो मुझे क्यों सजा होनी चाहिये। रेलवे विभाग के लोगों को इस विषय में काफी मस्ती में अपने डिपार्टमेंट में सुधार करने की आवश्यकता है। यहां १० घंटा, २० घंटा, २४ घंटा या ४८ घंटा गाड़िया पड़ी रहती है। उनमें सफाई या दूसरे कामों के लिये लेबर क्लास या हरिजनों को जाने का मौका मिलता है। अब अगर कोई हरिजन चोरी करता पकड़ा जाय, तो यहां हरिजन सदस्य कहेंगे कि हरिजनों पर अत्याचार हो रहा है। मैं नहीं चाहता कि यहां सदस्य इस प्रकार की बात कहें। वे यह क्यों नहीं कहते कि राष्ट्रीय सम्पत्ति का चुराना उचित नहीं है। आर्थिक परिस्थिति के कारण वे चोरी करते होंगे, लेकिन इसका अर्थ यह नहीं है कि मारा राष्ट्र चोर बन जाय और भ्रष्टाचार और बेईमानी पर हम सारा काम चलायें। इस सदन में जो कुछ माननीय सदस्य बोलते हैं उससे कानून में अगर कोई खामी हो उसका सुधार हो जाय तब तो ठीक है, लेकिन यहां इस प्रकार की बातें कही जाती हैं मानो हम चोरी का समर्थन करने के लिये हैं। बहुत सी बहस जो यहां हुई उसमें मैं यह समझा हूं कि हम गलत दिशा में बहे जा रहे हैं और उससे न देश का कल्याण होने वाला है और न रेलवे की चोरियां रुकने वाली हैं।

श्री किशोरी राम (बिहार) : क्या यह कानून उसी लिए बनाया जा रहा है ? यों तो सभी चोर बराबर होते हैं।

श्री कन्हैयालाल डी० वेंद्य : सब बराबर हैं और बराबर होने चाहियें। मैं चाहता

[श्री कन्हैयालाल डी० वेंच]

हूं कि अगर कोई पोझीशन का आदमी भी रेलवे का माल चुराता है तो उसकी पोझीशन का लिहाज किये बिना उसको चोर समझना चाहिये जिस प्रकार से छोटे आदमियों को चोर समझा जाता है।

श्री किशोरी राम : आपने सिर्फ हरिजनों का ही नाम मंशन किया।

श्री कन्हैयालाल डी० वेंच : मैं घटनाओं के क्रम में जाना नहीं चाहता। परन्तु भौका मिलन पर ऐसी घटनाएं होती हैं।

श्री एच० सी० माथुर : क्या माननीय सदस्य यह बताने की कृपा करेंगे कि जो दिक्कतें श्रीर मुसीबतें वे बतलाते हैं वे इस बिल के बन जाने से किस तरह से दूर हो जायेंगी ? जिन जगहों की उन्होंने मिसाल दी है वहां पर यह बिल पहले से लागू है और इसके लागू होते हुए भी वह हालत है जो उन्होंने बतलाई है इस लिए वहां इस बिल के पास होने से क्या लाभ होगा जबकि यह बिल वहां पहले से लागू है ?

MR. DEPUTY CHAIRMAN: He has been arguing the same point, Mr. Mathur.

SHRI H. C. MATHUR: His whole argument and his whole speech is due to this reason. He has given illustrations. I say that this enactment is already there. His arguments have no relation to this.

MR. DEPUTY CHAIRMAN: Please proceed.

श्री कन्हैयालाल डी० वेंच : यह फैसला माननीय सदस्यों को करने के लिए मैंने निमंत्रण नहीं दिया था।

श्री एच० सी० माथुर : फैसला नहीं, मैं ज़रा रोशनी चाहता हूं।

श्री कन्हैयालाल डी० वेंच : रोशनी तो इस बिल के पन्ने पन्ने में मिलती है। सन् ४४ में आर्डिनंस का राज्य चल रहा था। स्वतंत्रता प्राप्ति के बाद से हम आर्डिनंस के खिलाफ हैं। पार्ट बी स्टेट्स में यह कानून नहीं था, इस लिये हम इसे बनाने जा रहे हैं। इसके स्टेटमेंट आफ आब्जेक्ट्स एंड रीजन्स में लिखा हुआ है :

"In order to check smuggling of railway stores of considerable value to Part B States where the said Ordinance is not in force and to meet certain other difficulties which are being experienced in launching prosecution against smugglers or culprits in those States, it has become necessary to extend the scope of the said Ordinance to these States."

तो लाइट हर पन्ने पर मिलती है। इसके अतिरिक्त जब एक चीज यहां सदन में कही गई थी, तब मैंने भी यह चीज यहां कही।

जहां तक चोरियों का सम्बन्ध, चोरी करने वालों के गैंग्स कायम होते हैं। कोयले के सम्बन्ध में जो व्यापार करने वाले लोग हैं उन्होंने चीखें ऊपर के अधिकारियों के सामने रखी हैं। मैं डिटेल्स में जा करके सदन का समय नहीं लेना चाहता। चोरी करने के तरीके कई प्रकार के हैं। माल बिना रसीद व हिसाब किताब के बुक हो जाता है और बिना रसीद व हिसाब किताब के उसका भुगतान भी हो जाता है। यह भी रेलवे रेवेन्यू के चुराने का एक तरीका है। इसके अतिरिक्त यह होता है कि जब बिना रसीद का माल उतारने के लिये माल गाड़ी खड़ी होती है तो उसमें से दूसरा माल भी उतार लिया जाता है। जो मैं कह रहा हूं उसकी

घटनायें हैं और जब पुलिस को उनमें ऐक्शन लेने के लिये कहा गया, तो पुलिस ने ऐक्शन लेने के बजाय कुछ ढिलाई दिखाई। तब कुछ अधिकारियों के सामने यह प्रश्न रखा गया कि यह अप्रत्याचार है, आपको अपने कर्तव्य का पालन करना चाहिये, अगर आप अपने कर्तव्य का पालन नहीं करेंगे तो मामला ऊपर तक जायेगा। उसके बाद उनमें कुछ कार्यवाहियां हुईं। ये सेंट्रल रेलवे की घटनायें हैं। अगर रेलवे बोर्ड ऐसे केसेज की जांच करे तब जितना मैं कह रहा हूं उसकी गहराई में उनको जाने का मौका मिलेगा और उस रिकार्ड से मालूम हो जायेगा कि किस प्रकार रेलवे के कर्मचारी भी ऐसी तमाम बेईमानियों और चोरियों में शरीक होते हैं और पुलिस और वाच एंड वार्ड के कर्मचारी भी किस प्रकार ऐसी कार्यवाहियां करते हैं। चोरियां रोकने के लिए जहां यह कानून लाया जा रहा है, वहां मैं रेलवे बोर्ड और रेलवे मंत्री से यह निवेदन करूंगा कि विभागीय तौर पर भी वे चोरियां रोकने की व्यवस्था करें। रेलवे डिपार्टमेंट वालों की जानकारी में जो चोरियां होती हैं उनमें करोड़ों रुपये की सम्पत्ति चोरी चली जाती है, लेकिन उसका कोई उल्लेख नहीं होता है। दूसरी प्रकार की चोरियों का उल्लेख होता है। बल्ब निकालने और पंखों का चीजें निकालने की जो घटनायें होती हैं, उनका उल्लेख नहीं होता है। वह चोरियां ऊपर ही रह जाती हैं। इन शब्दों के साथ साथ मैं इस बिल का हृदय से स्वागत करता हूं।

SHRI K. L. NARASIMHAM: Sir, I rise to oppose this Bill. I feel that this Bill is unnecessary. The main argument advanced by the supporters of the Bill, as I find, is only based on

one thing, that there is already an Ordinance in operation in Part A States and we are introducing this so that this may be in operation throughout the country. That is the main argument.

Now I have to say at the first instance that even when this Ordinance has been in existence, this problem of pilfering or theft of the railway stores has not been tackled. The advocates of safeguarding the national property or the sacred property, as called by hon. Members, are missing one point. The hon. Minister's object may be lofty and laudable but he is not tackling it properly and he is not doing it the way he should do it. So this piece-meal Bill is only allowing mismanagement by the railway officers and allows them not to take the responsibility for mismanagement and throw the blame on others and allows them to go scot-free by saying that there is pilferage in the railway stores. To support my argument, I shall only read one statement from the audit report of 1953 that deals with thefts. I shall deal only with the thefts. The report says on page 29 in Chapter II as follows:

"Western Railway: Theft of Electrical Material from Coaches: Certain coaches were marked "Sick" between February 1949 and March 1950, at the Bombay Central Station. As they could not be sent to the shops for lack of space, they were sent to a Marshalling Yard at Bandra, in May 1950. There they were stabled in an out of the way siding, unprotected. This resulted in a loss by theft of batteries costing Rs. 6,811 and other electrical fittings valued at Rs. 4,340. The total loss of Rs. 11,151 was written off under the sanction of the General Manager in June 1951."

(When this Ordinance was in operation and that too in a State like Bombay).

"These thefts, which seem to have occurred over a period of time, were

[Shri K L Narasimham]

first noticed on 25th May 1950, and reported to the General Manager on 3rd November 1950. The Police, however, were not informed of these thefts, as required under the rules. On 27th April 1951, the General Manager decided that it was too late to report the case to the Police. He issued instructions in April 1951 to the Department concerned to take adequate precautions to remove the fittings and guard all coaches when they were stabled at out of the way places, but detailed instructions were issued by the Department only on 24th March 1954. In July 1953, the General Manager reported that for omission to report the case to the Police, the Inspector, Watch and Ward, has been censured, and the Assistant Electrical Foreman and his staff have been warned to be more careful."

Here is an instance where they found that certain things were pilfered and the officials in charge of them never reported to the Police and then they were written off saying that it was too late. This happened when the Ordinance was in operation. My first question is this. When you are not able to use it for the lofty object mentioned here in introducing this Bill, why do you bring a Bill like this with false sections and with words which can be used against an innocent person? So my advice to the Minister is to withdraw this immediately and think afresh of other ways of tackling this problem properly.

My next reason why this legislation to tackle the theft is unnecessary is because there are already laws in the Criminal Procedure Code and cases can be proceeded against person for stealing. That means the person in charge of the railway stores should be made responsible for the stores and he should report any loss or any pilferage to the police and must prove that it is stolen from his stores under certain circumstances and the responsibility is fixed on him. Now by this Bill you leave out the responsibility of the offi-

cial. You take it away and make an innocent man prove that he is not guilty. So it is not tackling the problem properly. It is only misusing your powers to harass the innocent persons. One hon. Member pointed out that we recently passed a Bill regarding the telegraph wires. I agree with him regarding telegraph wires. It is a different matter. Telegraph wire is a special thing which is not used by any common man for common purposes. It is a special wire and special material is used for special purposes and that is taken as such but here Railway Stores are defined in this Bill as follows:

'In this Act, 'railway stores' includes any article used or intended to be used in the construction, operation or maintenance of a railway'

So all the consumer goods come under the term railway stores. The audit report mentions the loss of typewriters. Now under this Bill suppose a typewriter is lost and the person in charge says that he finds it with somebody and that it is railway property, and if the court has reasonable ground to believe that statement then the accused has to prove that he purchased the typewriter from such and such place under such and such circumstances. That means you will make an innocent man to prove his *bona fides*.

MR DEPUTY CHAIRMAN: Typewriters can never be declared as Railway Stores.

SHRI K L NARASIMHAM: Here in the audit report it is mentioned as such. I can give many instances where typewriters are lost from railways. If locomotives can be lost from railway workshops.

MR DEPUTY CHAIRMAN: Typewriters can never be called a railway store.

SHRI K L NARASIMHAM: Here the railway material is defined. I am unable to understand it. It says here:

"'railway stores' including any article used or intended to be used in the construction, operation or maintenance of a railway."

MR. DEPUTY CHAIRMAN: Typewriters cannot be used for the maintenance of the railways.

SHRI H. C. MATHUR: There may be thousand and one things.

MR. DEPUTY CHAIRMAN: We are dealing with typewriters.

SHRI K. L. NARASIMHAM: 'Railway stores' is a vague term and it includes the consumer goods and when you deal with all these goods, you must be very careful in drafting a Bill and here the burden of proof is not on the prosecution but it is placed on the accused. Of course the right of defence is not taken away and cannot be taken away unless it is a special law and here under the ordinary law of the land the right of defence is there but you are making an innocent person to defend himself before the court that under certain conditions he came into possession of the stores. That means this will be used for harassing innocent persons and it is not tackling the problem of pilferage or theft. It is essential that the official in charge of the railway stores is made responsible.....

MR. DEPUTY CHAIRMAN: This Ordinance has been in use for 10 years. If you can give one instance where this Ordinance has been misused, then I can understand your argument.

SHRI K. L. NARASIMHAM: My point is this that this Ordinance has not tackled the problem and that is found useless in practice. Why do you want it?

MR. DEPUTY CHAIRMAN: You read about 1400 cases.

SHRI K. L. NARASIMHAM: Will he say that it is under this Ordinance? They are only cases where the Railway Manager has not referred the matter to the Police at all.

MR. DEPUTY CHAIRMAN: So there are cases of thefts.

SHRI K. L. NARASIMHAM: Yes, but your Bill does not tackle the problem. It only saves the Railway official or higher-ups, who are responsible for the stores and whose responsibility you are taking away and you are throwing it on an innocent man, and that means you are saving the person who steals and at the same time you are going to use this Bill, after it comes into law, against innocent persons. I can give an example. Recently, a few months back at Bezwada there was an allegation against a P.W.D. Section-mate or against some officials that they were in possession of railway sleepers and there was a Departmental Enquiry by the anti-corruption section. The result was the persons who made the allegations were transferred from that place and the persons against whom the allegations were made were safeguarded by retaining them there and even now there is harassment by the high-ups against the persons who pointed out these things.

So this Bill, in practice will not be able to tackle the problem. The Ordinance has not been able to tackle the problem. Even during the period of the Ordinance thefts were increasing and the pilferage is still there. The right way is to hold the man in charge of the stores responsible. He should be responsible for the stores. The man in charge of the railway property should be held responsible for that property. You should have effective watch and ward department, effective security arrangements, effective systems of internal checks. In that way you can save the materials. Already you are increasing the watch and ward staff. I understand you have an idea of changing the name of the staff to railway security force. There is the criminal law of the land and with proper internal checks and the introduction of efficient systems of supervision you can tackle the problem and this Bill is not necessary. Therefore, Sir, I oppose this Bill.

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): Mr. Deputy Chairman, I will not take up much time of the House for I am conscious of the shortage of time at this stage of the debate. I only want to make one point and it is this. A Bill like this is required not only for one department, say, the railway department, but for many others. Some time back we passed in this House a Bill dealing with telegraph wires. It is not only the railway department that possesses government stores. The postal department possesses such stores. There is the Public Works Department which also has such stores. There is the Defence Department, though the military rules are very strict, they too have this problem of pilferage. Therefore, such a measure is necessary in all these cases. So rather than taking up the time of the House over such piece-meal legislations for one particular department, why not refer to all the departments to find out their requirements and then bring in a comprehensive legislation? Government is always very anxious to point out to Members about their intention to bring in a comprehensive Bill to deal with a matter, particularly when private Members bring in a Bill on any subject. And they say that, of course, with the laudable object of saving time and that is good. But I want Government to apply that golden rule to themselves. They could have considered the needs of other departments and then brought in the necessary provisions in, say the Criminal Procedure Amendment Bill or the Penal Code Amendment Bill that will be brought before us soon, amplifying for instance section 379 where there is provision to deal with theft; and whatever exceptions Government wished to have with regard to the territory or jurisdiction in this particular respect, that also could have been brought in there; also provision with regard to imposing the onus of proof on the accused which is perhaps contrary to what is the case in ordinary offences. If he had done that, the Minister could have had the whole-hearted support of every person.

I also feel that the hon. Minister in his speech did not clarify to us the

urgency of this Bill. He has not given us much guidance beyond what is stated actually in the Statement of Objects and Reasons. Whatever is stated there does not make one feel, particularly when we take into consideration the fact that the amount that is pilfered is not so extensive, or when we consider that in spite of the Ordinance, the Government has not been able to stop pilfering, that anything real would be gained by just now taking up the time of the legislature. Sir, the hon. Minister or the Railway Department might have thought, that this was just a small Bill and could be passed soon. But our experience here in this House has proved it clearly that even such a fragmentary piece of legislation very often takes a long time. I would, therefore, emphasise on the Government the need for better co-ordination in all its different departments so that the needs of a similar type felt in all the different departments could be provided for—for instance, stopping pilferage in government stores and we all know that it does exist—could be taken into consideration and a proper piece of legislation brought forward. The House would then get a better picture of the needs of the country and you would also be creating a better sense of duty in all with regard to national property.

12 NOON.

There is just one small thing which I would like to mention here. All of us know that a large number of these items are stolen by the passengers also, though it was not mentioned in so many words by the speakers. As for instance, small pieces of linoleum cloth or oil cloth were being taken away. I did not know what it was used for, but now it appears it is used for keeping "pan". Similarly mirrors, bulbs and such other things are stolen. So I would like to know what provision is there to check passengers' luggage for these things? I am very sorry to point out that not enough thought seems to have been given to the real utility of this Bill and it has been unfortunately

a hasty piece of legislation and our time and the time of the legislature and the money of the country have unfortunately not been put to proper use.

SHRI AKBAR ALI KHAN (Hyderabad): Mr. Deputy Chairman, this Bill has taken up much more time than was expected and I think the time has been rightly taken up, because this involves a question of principle. I do not think that the point of view that has been represented by my hon. friend Shri Pattabiraman is not the right one, and that for obvious reasons. If these things could be brought under the general law, in the law of evidence or in the law of crimes, then there was no occasion for the introduction of such a Bill as the present one. The very fact of the introduction of this Bill amply establishes that the Government, or the Minister, wants something more than what is normal or ordinary. So that point, I do not think, can come into the discussion that it is in line with the general principle of the law. That is not so.

Secondly, the doubts that have been placed before this House by my learned friend Kazi Karimuddin and Mr. Dasappa were absolutely genuine and substantial. You cannot ignore those points and say, "well, we will ride rough-shod over them."

But my objection goes beyond all this. I submit that as a result of the experience of generations in this country, and of all the modern civilized countries, certain principles of law of evidence and law of crimes have been formulated. There must be a very, very strong case to warrant, to justify a departure from those established principles. I feel this is not the case of the Railways. Last session there was a Bill about telegraph wires. There may be a Bill from the General Stores Department which purchases crores and crores of Rupees worth of things. Then there may be a Bill from some other Department, say for instance, the Medical Department. And ultimately it may be that from the

Parliamentary Secretariat, there comes a Bill to say that the things stolen from this august House should be treated very seriously and the persons should be summarily punished. So there will be no end to this kind of piece-meal legislation of each Department bringing forward a special law in modification of the general law of the country. Of course, we fully appreciate the difficulties. There is nobody in this House who does not feel that the way in which railway property is being stolen is abominable, it is shocking. But the question is, what is to be the remedy? Is this law that we are about to make the real remedy? I submit that if the administration is more strict in respect of those who are under its control, and takes definite steps to stop the evil, I am sure this Bill is not at all necessary and by administrative measures it could be checked. If the administration is slack, then even stricter laws will not help us.

So, my submission, Sir, is that this being a question of principle, I entirely agree with some of my friends who have advised the Ministry to reconsider this matter—reconsider it coolly and dispassionately. Ordinances and emergency measures are entirely different. It is unfortunate that a measure that was passed as an emergency measure during the war is still continuing without any thought over it. I say, Sir, that there is no question of any emergency, there is no question of any measure being taken exceptionally and against the normal law of the country. So, Sir, I respectfully submit for the consideration of this House that this Bill be not approved but be rejected.

SHRI H. C. MATHUR: Mr. Deputy Chairman, I fully share the sentiments expressed by certain hon. Members and I also very much appreciate the concern which they have expressed about the national property, about the State property. It is true that we all feel—and feel very much—that all necessary care should be taken and State property should be protected. I also concede, Sir, that there is a necessity

[Shri H. C. Mathur.]
for correcting the position, because the present position cannot be maintained. It is not possible that we have a separate piece of legislation and a separate practice and procedure for the areas covered by Part A States. Railway is a Central subject and we must have a uniform law. I quite appreciate that this necessity of having a uniform law has prompted the railway administration to bring forward this piece of legislation. I also am fully aware of the fact, Sir, that this Ordinance has been there in operation for over ten years. But I do not think we should forget that this Ordinance was put into force under certain emergent circumstances during the war and this certainly is no justification for our giving approval to this piece of legislation. This Ordinance may have been there for ten years, but that is no justification that we should give our approval to it. Now that this piece of legislation has come before us, we must examine it on merits and we must express our opinion—our considered opinion—about it.

Coming to the merits of the Bill, Sir, I have not the least hesitation in saying that it is not only unnecessary—unnecessary I say because it has been proved by facts and the way in which it has been used—but I have not the least hesitation in saying that it smacks of great levity and lack of a sense of responsibility on the part of the Government. This is a sort of legislation which can never find any support in this House. It certainly violates the principle which has been held sacred by us, about which we have spoken in the strongest possible language; and it is really very unkind now just to quote another piece of legislation which had been passed with all the resistance from most of the Members of this House. Sir, even that piece of legislation which has been quoted so much here and which you, yourself, had some reason to quote and draw our attention to—I wish to maintain—is entirely different. On a reference by you, I have brought this copy of the proceedings just to invite your per-

sonal attention to the fact that I raised a very strong objection to that piece of legislation being passed. I made a very strong speech, but one of the arguments which was very strongly and ably put forward by the Minister for Communications was that the Bill was restricted only to telegraph wires and even those telegraph wires, he said, were of a particular grade and they were used only by the Telegraph Department. He also said that the telegraph wires were a particular commodity; they were of a particular specification; and that specification was not to be used by any other department or by a private individual. Not only that; he made it clear how even the possession of such telegraph wire or the sale of such telegraph wire was an offence. So the case was absolutely on a different footing. One can easily understand that this particular gauge of wire is always and necessarily a property of the State. Nobody ordinarily should have anything to do with it. But here where railway stores are concerned, railway stores comprise a thousand and one sorts of commodities and to throw the burden of proof in such matters on the accused is simply ununderstandable. Let us, as a matter of fact, be very clear in our minds. Are we revising the basic conception of criminal jurisprudence? Let us be clear about it. If we think the whole conception has changed—the circumstances are such that we are living in an absolutely emergent situation; that the morale of the country has gone down; that the morale of the country is such that everybody should be considered to be a criminal and he should be considered as such until and unless he proves himself to be an honest man—if we have come to that conclusion, then certainly we have nothing to say against this legislation. But if the conception is this that anybody who is in possession of railway stores is considered to be guilty, that is something, Sir, which is not understandable. We should not treat things very lightly. If necessary, we should have sociological and scientific research in these matters. The expression of a sentiment—and a poor sentiment at that—

is a different matter. We should think a hundred times before we just go round and revise our conceptions of jurisprudence, and, therefore, Sir, I very strongly oppose this piece of legislation on this particular ground.

There is only one more point, Sir, which I would like to urge. There is another fundamental issue which is involved in this Bill and that fundamental issue is what sort of differentiation we are going to make between public property and private property. The hon. Minister has thrown no light on this. I wish he would let us know if a thorough investigation has been made in this matter; whether this Government attaches greater sanctity to public property; and whether there should be a greater punishment for its theft. I am myself not very clear on the subject, because I think this is also a matter which requires very great research as to what the repercussions are going to be—repercussions on society, on our way of thinking. We should know whether we are going to attach greater importance to public property than to private property. I think, Sir, there has been absolutely no justification for this Bill. I think, Sir, there has been absolutely no justification for making this differentiation. I should like the hon. Minister to convince this House that the punishment of three years does not meet his requirements. Is it so that in so many cases the punishment of two or three years awarded has been considered not to be sufficiently deterrent? I think no such case has been made out and until and unless such a case is made out, until and unless by illustrations or by enunciating certain principles, he convinces this House that there is a necessity for providing enhanced punishment, I think it would not be proper for us to agree to this.

I hope, Sir, that the hon. Minister will deal with these two points and throw some light. I think the Government should think twice before they press with this Bill.

THE DEPUTY MINISTER FOR RAILWAYS (SHRI O. V. ALAGESAN): Mr.

Deputy Chairman, I confess that the discussion on this very small measure has dragged on much longer than I expected. I was going to say, Sir, and thank the House for the unanimous support that it has extended but after hearing the strange logic contained in the speech of my hon. friend, Shri Mahanty, who, unfortunately, is not here today, and after hearing some of the speeches delivered today I have to modify it and say, 'I thank the House for the very large measure of support it has extended'.

SHRI B. GUPTA: How do you know that it is very large?

SHRI H. C. MATHUR: That is presuming too much.

SHRI O. V. ALAGESAN: I do not know whether I presume too much or whether my hon. friend bloats himself too much and presumes too much.

SHRI B. GUPTA: I think the largeness is on our side and presumption on your side.

SHRI O. V. ALAGESAN: I know, Sir, that my hon. friend is in the habit of jumping in his seat every now and then like a spring toy. I advise that he cultivates more patience and also more manners—parliamentary, of course.

SHRI B. GUPTA: Sir, I need not learn parliamentary manners from these people, at least from this gentleman.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI B. GUPTA: He has to learn elementary manners yet.

SHRI H. P. SAKSENA: Sir, I invite your attention to the use of the word 'unmannerly' by the hon. Deputy Minister. To call the conduct of any hon. Member 'unmannerly' is, in my humble opinion, unparliamentary.

MR. DEPUTY CHAIRMAN: He mentioned only parliamentary manners.

SHRI O. V. ALAGESAN: Sir, I only meant—a word of explanation to my hon friend, Shri Saksena, he need not be offended—parliamentary manners. It is not my intention to accuse any hon Member of this august House of unmannerliness.

SHRI B GUPTA I give you another ten years

SHRI O V ALAGESAN I spoke about the strange logic contained in the speech of Mr Mahanty who, I am sorry to see, is not here I should say that it was chaotic logic, he went on to say that the railway administration picks the pockets of passengers, that we charge high fares and that they, in their turn, are justified in stealing our material That, in a measure, was his contention I should say, really speaking, it took my breath away I do not think, Sir, there is any sanction more sacred than the sanction of this Parliament, the seal of this Parliament has been put on the fares existing now This Parliament is perfectly free to say that it will reduce the fares and ask the General Finance to subsidise the railway expenditure Parliament is perfectly free, but so long as the seal of Parliamentary approval is there, I do not know how it can be questioned To say the least, it is very irresponsible talk and also betrays a certain maladjustment in one's thinking apparatus

I should like to say that this House represents the most populous democracy based on the free vote and free consent of the people This democracy will not be imposed upon either by those that are in power today or by those who aspire to be in power tomorrow It is a very enlightened and intelligent democracy in spite of the fact that it may not be so lettered as other democracies

SHRI B GUPTA Intelligent democracy in foolish hands!

SHRI O V ALAGESAN I wish my hon friend will show more patience

I shall again request him but, of course, all requests are wasted on him

SHRI B GUPTA I do not pay attention to your requests

MR DEPUTY CHAIRMAN Mr Gupta, you are only proving his charge

SHRI O V ALAGESAN The sanction behind this Parliament is not only the vote given at the time of election, in fact, it is being renewed every now and then and while instructing this democracy, we get more instructed So, to call in question the fares sanctioned by this Parliament is something astounding and I would like you to view this question in the light of an incident which took place and which was reported in the papers Some time ago Sir, we read in the papers that a certain young man went and asked for an endorsement on a ticket for being used the next day It was suspected to be a used ticket and certain action was proposed to be taken, he was taken to the police station or something like that The young man took out a revolver and shot at persons Unfortunately, one booking clerk died, and the other two, I am told, are making satisfactory progress Sir, this is taking social justice and leaving responsibility for meting out social justice in individual hands If we permit that for reasons of social justice, an individual can take it into his own hands and into his own mind to meet out social justice as per his or her likes and then certainly it will not be social justice but it will be justice of the jungle if the two conceptions could go together

SHRI H C MATHUR What is the relevance of this incident to this particular subject? I am not able to appreciate

MR DEPUTY CHAIRMAN He is speaking about Mr Mahanty's argument

SHRI H C MATHUR It seems quite strange, all the same.

SHRI O. V. ALAGESAN: Maybe my hon. friend was not here when Mr. Mahanty raised that. When he was talking or, for that matter, whenever others were talking, I never interrupted, and I hope, Sir, that I shall be permitted to proceed.

Now, Sir, as regards this Bill, there are three questions which I would like to place before this House. Is the evil that is being sought to be tackled by this measure big? Is its magnitude such as to require a measure of this kind? This is one question. The second is, are we taking adequate powers to check this evil, if the evil is big enough and, third, the legal question whether the onus of proof can be shifted on to the shoulders of the accused. I shall now proceed to briefly answer these three questions.

It is common knowledge that these thefts have been going on, to check which this Ordinance was enacted. Of course, the word 'Ordinance' has led to a lot of confusion. It was assumed that it was there to meet an emergency and that now that the emergency is over there is no need for this Ordinance at all to be continued. Some of the hon. Members took that line. In fact, it was enacted under sub-section (3) of Section 1 of the India and Burma (Emergency Provisions) Act; it had the validity of an Act but, I should say, it was not being used.

Then figures have been quoted by hon. Members from the Annual Reports, but there it does not give the whole story. Those figures relate only to cases which are above the value of Rs. 1,000, and also they relate to cases of thefts from the custody of the stores depots and they do not relate to cases of thefts on locomotives, carriages, wagons, permanent-way and so on and so forth.

The question of other departments also was brought in. Why not the Defence Department enact a similar

measure? Why not the Public Works Department enact a similar measure? These are the questions put, but I should like to tell the House, Sir, that those stores—I don't mean to say that no thefts occur there—are comparatively better secured, they are in stores depots, in well secured places, well protected, but railway property is, so to say, strewn all over the country, a wagon or a train runs all over the land, in all sorts of places where it is not possible to take these security measures, and most of these thefts are not treated as thefts; they are treated.....

SHRI B. K. MUKERJEE: The hon. Minister is referring to theft of wagons and bogies. Has there been any case like that?

MR. DEPUTY CHAIRMAN: Order, order, you have not followed him; please follow him properly.

SHRI O. V. ALAGESAN: As I said, most of these thefts are not treated as thefts; they are treated as deficiencies and again replaced, and as such we come to incur a large loss—I mean fittings, of course. So these figures do not indicate the correct position.....

SHRI RAJENDRA PRATAP SINHA (Bihar): Can we have the correct figures from the hon. Minister?

SHRI O. V. ALAGESAN: Please wait, I am just coming to that. In fact Mr. Sinha raised that point and I shall answer.

As I was saying, a special check was introduced on the Central Railway and it showed theft of equipment of the value of Rs. 3½ lakhs in 1952-53 and Rs. 4½ lakhs in 1953-54. These are rough estimates. This includes all the thefts. The petty thefts are not reported to the Railway Board. Only those thefts above the value of Rs. 1,000 are reported to the Railway Board and are mentioned in these Annual Reports. So these took place on one railway and we may safely presume that on the entire railway system consisting of six zones—this is

[Shri O. V. Alagesan.]

with regard to one zone and based on this—on the entire railway system it may come to—I am not able to give a firm figure—it may be anything between Rs. 20 lakhs and Rs. 25 lakhs. The estimate of my hon. friend Mr. Kishen Chand, I should say, fairly tallies with the actual position.

Then, Sir, another thing also should be noted and that is this. The value of these things may not be large. It may be a few annas or a few rupees, but the inconvenience that is caused to the travelling public or the impediment that is caused to the operation of the railways is something much more than what the intrinsic value of the articles stolen indicates. As an hon. Member contended, a women's compartment was engulfed in darkness and it had to come all the way to Delhi in darkness. Such things occur and often complaints have been voiced on the floor of this House. I do not mean to say that all this is due to thefts. It may be due to inattention in some cases but such things occur as a result of thefts also and all sorts of inconvenience are caused. So, unless we put an end to all this, it will not be possible to operate the railways efficiently and give satisfaction to the travelling public. At the same time, Sir, I do not want to exaggerate the state of affairs. For example, my friend Mr. Saksena said that the thefts may be anything between Rs. 20 crores and Rs. 50 crores—he mentioned some such figure. It is generally thought, Sir, that exaggeration goes to reinforce a point; it does not. Certainly here the word 'crores' cannot have the same meaning as when we say that India has got a population of 34 or 35 crores. There is no use inflating these words and presenting an exaggerated picture where it is a question of actual loss suffered. So it is no use frightening the House that the loss is of the order of Rs. 50 crores or something like that. Also, Sir, I would like to view these losses in the context of the expanding public sector in our country. I think, Sir, it will be conceded that

private enterprise may not be so enterprising as to cover the entire field of industry. The public sector is going on expanding and it is very necessary that we should create—I don't mean a feeling of fear but—a sense of sacred feeling towards public property. My friend Mr. Harish Chandra Mathur raised the question—it is a very fundamental thing—whether you regard public property more sacred than private property. Of course, Sir, legally and constitutionally I may not be able to answer the question. The legal position may not be that, but, Sir, certainly it will be quite in tune with modern social ideas if we claim and want the country to recognise that public property should be treated as certainly more sacred—I do not want to compare it with private property—but certainly it should be treated with a greater degree of sacredness, and if you view from this background, I do not think, Sir, anybody will question the need for a measure of this kind.

SHRI H. C. MATHUR: Do you consider the punishment of three years to be inadequate and have you any reasons for enhancing that?

SHRI O. V. ALAGESAN: I am just coming to that.

Then, Sir, two views were expressed on this measure. Some hon. Members said that the powers that are being taken now are not adequate to deal with the situation. In fact amendments have been given to make the measure more stringent. Others have felt that the powers that are being taken are more than enough and that it may bring in all sorts of persons. Sir, this latter argument was put forward by Members for just stressing the point that they had in mind at that moment. They said: "This has been in operation for ten years. It has not been of any use. Then why have it?" Then again, others put forward the argument: "This measure is going to bring all innocent persons into trouble. This measure is designed not to bring in the real culprits but to bring in

others who may be really innocent." When they put forward that point of view they refused to take into consideration how the law worked all these ten years. But when they wanted to plead for the dropping of the measure they put forward the consideration that this has been on the Statute Book for ten years and has not produced any result, so why have it?

Now, Sir, I think it was Mr. Bisht who wanted to know what use this Ordinance has been put to so far. It was promulgated in the year 1944, as I said, under the India and Burma (Emergency Provisions) Act, 1940 and it had the validity of an Act of the Indian Legislature, as if it had been passed by the Indian Legislature. Within six months after its promulgation there were 132 prosecutions among which 59, roughly half, resulted in convictions. Then again, in the following year, there were 437 prosecutions and the convictions came to 206. Then, Sir, after that there was a decline and the number of prosecutions was less and the percentage of convictions to the number of prosecutions was also less than what was indicated in the figures which I just now quoted. So, Sir, the railway administrations came with the request that we should have an Act like the Telegraph Wires (Unlawful Possession) Act of 1950.

Then it came to light that this Ordinance was not being used by many of the States. In fact, this has been rusting in our hands. Some of the States were under the impression—the name misled them—that this being an Ordinance, it had no more validity. That explains why the number of prosecutions has gone down in subsequent years but when we pointed out that it had the force of an Act, in the Central Railway alone in the Greater Bombay area, within the past three months, 22 prosecutions were launched of which 12 are still pending. Of the ten cases disposed of, there were eight convictions and two acquittals. This has been with reference to India minus the Part B States and now the

idea is to extend it to the Part B States as well, or in other words, to the rest of India because otherwise it leads to smuggling and all sorts of things.

Then, Sir, a difference was drawn between the Telegraph Wires (Unlawful Possession) Act and this. In fact, Mr. Mathur said that he raised an objection to that, but because the stores were specified there and because it was easy of detection he agreed to that—I think that was what he said—but here it is not possible to so specify and therefore this should not be used. That was his point. Even there, this term of five years was there and I do not know whether he agreed to it in principle. Evidently he has agreed to the principle of five years.....

SHRI H. C. MATHUR: No, no; I never raised this question; there the question was very different. When I made the suggestion about specification it was with particular reference to the onus of proof. Please do not mix up. I have raised two points here. I did not raise this point of five years at that time. This I raised today. I mentioned about the specification but that was only in relation to the onus of proof and I related that specification was one thing and the other thing was that that specification could not be used or could not be possessed or sold.

SHRI O. V. ALAGESAN: Sir, two points were raised. One was about the term of five years and the other was about the onus of proof. I am taking the first point, namely, the term of five years. Now, this Telegraph Wires (Unlawful Possession) Act which he seems to have so graciously consented to, contains a provision for imprisonment for five years. I do not know whether he noticed that at that time or not. Anyhow, five-year term is there, and of course as all lawyers know, it is not always that the maximum punishment is awarded. So what we are now proposing to do is something similar.

Regarding specification, here it is very difficult to define railway stores

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or even to put a distinctive mark which my hon. friend, Mr. Kishen Chand, wants. There are certain stores which bear a distinctive mark. Also there are cases where these marks are easy to be erased. Therefore it is not possible to put a distinctive mark on all the stores. In the other case it is only one kind of stores—namely the telegraph wires—that are lying unprotected all over the country, but as far as the railway stores are concerned, there are umpteen kinds of stores and they are all lying all over the country and it is not possible to enumerate them and put them in a schedule. That is why we are unable to specify them in order to bring them under the mischief of this Bill.

Then it was mentioned that railway magistrates may be asked to try these cases. For one thing, the railway magistrates are not functioning in all the States. They are functioning only in Assam, Bihar, Bombay and U.P. They are not functioning in the other States. Also they cannot be invested with powers to try these cases because they deal with only ticketless travel, etc., which can be disposed of more summarily. So I think I have shown that we have neither taken more powers than are necessary nor failed to take adequate powers to deal with the menace as it presents itself to us today.

Now, Sir, I come to the question of the onus of proof. I am really sorry I am not a lawyer. It is a big handicap. I have got great respect for those who are students of law because it helps in precise thinking and minute analysis. But after hearing some of my lawyer friends I got a little confused and I also began to think perhaps it was more blissful to be no lawyer than be an indifferent lawyer.

KAZI KARIMUDDIN: Question.

SHRI O. V. ALAGESAN: Sir, all sorts of questions relating to procedure, etc., were raised. I do not know how they are relevant. But my atten-

tion has been drawn to a provision in the Criminal Procedure Code. Sir, I do not have any acquaintance with these books but, however, people who know better should be able to tell me. Here there is a provision which says that "all offences under any other law shall be investigated, enquired into, tried and otherwise dealt with according to the same provisions but subject to any enactment for the time being in force regulating the manner or place of investigating" and so on. So the procedure that applies to all other cases, I am told, applies to this also and we need not make this self-contained and self-sufficient.

KAZI KARIMUDDIN: It is not a question of Criminal Procedure Code. The point raised was about criminal jurisprudence.

MR. DEPUTY CHAIRMAN: If there is no special procedure mentioned here, then the procedure mentioned in the Criminal Procedure Code applies. Unless a departure is made, the ordinary procedure will apply.

PANDIT S. S. N. TANKHA: A departure has been made in this Bill by throwing the burden of proof on the accused.

SHRI O. V. ALAGESAN: As far as this question of onus of proof is concerned, my task has been made very easy by the very cogent arguments and reasons advanced by my friend, Mr. Tankha. He has dealt with this very fully in his speech and I thought he was better fitted to reply to these points. I shall only add a few things to what he has already said.

Sir, it is true that we are putting the onus of proof on the man who possesses these articles. It is very deliberately and directly shifted on to his shoulders but that does not mean that we escape from all burden of proof altogether. It has to be established before the court that the articles that are found in the possession of any

individual are or have been the property of the railway administration. That proof is thrown on the shoulders of the prosecution. Once that is proved and once the accused is not able to prove that he came by it by lawful means to the satisfaction of the court, then that individual will be found guilty. To that extent the change is there. But then why has this change been made? Because it is very difficult to prove all cases of thefts. It is just not possible to prove these cases of thefts and if you want to put an end to this menace, then certainly some such special provision has necessarily to be taken recourse to.

Now, I shall point out the difference between this Bill and the Telegraph Wires (Unlawful Possession) Act. There the gauges of the telegraph wires are specified. But by an amendment which I think has escaped the notice of my friend, Mr. Tankha, these words "which the court has reason to believe to be, or to have been, the property of the Posts and Telegraphs Department of the Central Government" have been removed. Once the telegraph wires are of the given specification, then no proof is thrown on the shoulders of the prosecution and unless the person is able to prove that he came by it lawfully, he is found guilty and convicted. There is no proof necessary on the part of the prosecution in the case of the Telegraph Wires (Unlawful Possession) Act.

But here, since we have not specified our goods, the onus of proof falls on our shoulders, on the shoulders of the prosecution. Of course where our materials are marked with a distinctive mark, then of course the proof is there. But in other cases, the burden of proof falls on the prosecution. So, Sir, this is the difference between that Act and this Bill, and I think the House, having given its consent to the prior Act, should not withhold its consent to the present Bill.

Sir, now, I think, I have covered almost all the points. I do not mean to

say that I have covered every point that has been raised. Of course, the question of coal has been raised by somebody. It is very difficult to identify coal, unless the Railway Administration proves that this coal has been thrown out of an engine or a wagon and taken from there. The identity cannot be established, and the courts will have nothing to do with it. And also, Sir, the way in which this Act has worked, it is not as if all prosecutions that were launched proved successful. For instance, in the year 1948, the number of prosecutions was 121 and the number of convictions was only 25. So, that is the safeguard. It is not as if any prosecution that is taken is successful and the accused is punished because there are other formalities also to be gone through. It is not such an easy thing.

Sir, I think my friend, Mr. Govinda Reddy, referred to the tightening up of the system of storage, accounts, verification of stores, etc. Certainly, Sir, this does not displace all those things. All those matters—to safeguard and tighten the receipt and issue of stores—are being constantly attended to. And I do not mean to say that the present procedure or the present vigilance is enough. Certainly, greater vigilance has to be bestowed, and we propose to take action on the lines indicated by various hon. Members in their speeches with regard to the tightening up of this stores procedure.

Sir, I am glad my friends, Mr. Saksena and Mr. Vaidya, drew our attention to the moral aspect of the question. Certainly, Sir, we cannot be satisfied with passing this legislation. This is, in essence, a moral question, and the sooner we tackle this problem on the moral plane, the greater will be the success that will attend our efforts. Sir, this is an instance in which the Opposition parties can heartily co-operate with Government instead of all the while indulging in dry slogan-mongering. Here is a golden opportunity for all the parties to come together and tackle this question, because this is a question of moral

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resuscitation, a question of refinement of the social conscience. (*Interruption.*) Sir, this is my appeal to all the Members who sit on the other side, to join hands with those that sit on this side and tackle this problem which is essentially one of moral values and not of a legislative nature. Sir, I have done.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill to provide for the extension of the law relating to the punishment of the offence of unlawful possession of railway stores, as now in force, to the whole of India and to re-enact its provisions, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We now take up the clause-by-clause consideration.

Clause 2 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now we take up clause 3. There are 6 amendments.

SHRI B. GUPTA: Sir, I move:

"That at page 1, after line 17, the following proviso be added, namely:

'Provided that if the accused person merely affirms that he came into possession of such railway stores without knowing them to be stolen property, the burden of proof shall shift to the prosecution.'"

SHRI KISHEN CHAND (Hyderabad): Sir, I move:

"That at page 1, at the end of line 14, after the word 'administration' the following words be inserted, namely:—

'on account of its bearing a distinctive mark and is of value in excess of rupees five.'"

KAZI KARIMUDDIN: Sir, I move.

"That at page 1, for the existing clause 3, the following be substituted, namely:—

'3. *Unlawful possession of Railway Stores.*—Whoever is found or is proved to be in possession of any article of railway stores unlawfully or has committed theft or has abetted the commission of the offence of theft or has connived at the commission of the offences mentioned above, shall be punishable with imprisonment for a term of five years and with fine extending to rupees five thousand.'

"That at page 1, at the end of line 17, for the words 'or with fine, or with both' the words 'and with fine' be substituted."

"That at page 1, at the end of line 12, after the words 'railway stores' the following words be inserted, namely:—

'or is proved to have connived at such unlawful possession'."

"That at page 1, line 13, after the word 'believing' the words 'the identity of' be inserted."

MR. DEPUTY CHAIRMAN: The clause and the amendments are now open for discussion.

SHRI KISHEN CHAND: Mr. Deputy Chairman, I have moved my amendment to clause 3 for the addition of one line, namely, "on account of its bearing a distinctive mark and is of value in excess of rupees five." The hon. Deputy Minister, in his reply on the first reading of the Bill, pointed out that there is a similar legislation in connection with Posts and Telegraphs wire.

[THE VICE-CHAIRMAN (SHRIMATI PARVATI KRISHNAN) in the Chair.]

A certain gauge of wire is prescribed, and anybody possessing a telegraph wire of that particular gauge, which is not used commonly, and which is not available in the market, is hauled up, and then, *prima facie*, there is a case

against him I beg to submit, Madam, that this Bill is quite different from the one in respect of Posts and Telegraphs. There a particular type of wire, which is not commonly used, has been prescribed.

I will give another example. Take the case of the Defence Services in which there is a rifle 303. Nobody can possess a rifle 303, and if anybody possesses it there is a presumption that it is stolen property. But, in the case of railway stores, this is not true. The definition of 'Railway stores' extends over everything imaginable, anything and everything, from a bit of coal, from a piece of brick, to the most complicated machinery. There is no specification here at all, everything is included in the railway stores.

Then, the second thing is that the Railway Department sells second-hand things as surplus stores to the extent of several crores of rupees. Now, to make a distinction between the purchase of surplus stores and the purchase of stolen stores is a most difficult thing. I submit, Madam, that supposing a manufacturer purchases second-hand material from the railway, converts it into some useful article and then sells it, anybody possessing this article can be hauled up, and if a reasonable doubt is created in the mind of the magistrate that it has been unlawfully obtained, he is liable to prosecution and conviction.

When we are making laws, we should have some sort of idea of the relative importance of these things, and therefore my amendment is a very simple amendment. I have suggested that under the normal law, there is a procedure. If anybody possesses stolen property haul him up, prosecute him but the prosecution has to prove its case. When we want to have an abnormal law, when we want to shift the onus of proof from the prosecution to the prosecuted person, there should be special reasons and special justification for it. Therefore I have submitted that the article should bear a distinctive mark to show that it was

railway property. If this is stamped anybody purchasing it, is purchasing it with his eyes open and he knows immediately that he is purchasing railway property and that he should take proper precaution that it is not stolen property.

My other submission is that it should be of some substantial value. Normally people do not take any receipt for the purchase of articles worth four or six annas or eight annas. You cannot expect a man to keep all the vouchers and receipts for articles worth four annas and eight annas for years together. You cannot expect a man to keep his vouchers for ten years for things worth 2 annas or four annas. Is it fair for the Government to expect this type of punctiliousness from every citizen to keep every receipt with him? Therefore I submit that there should be a minimum value fixed of Rs 5. If an article is worth more than Rs 5 and if it bears a distinctive mark naturally anybody purchasing it will be very careful to go into details, and see that it has been purchased from a shop of standing and with a proper receipt for it. Therefore I have moved this amendment and I submit that the hon. Minister can easily accept this amendment and thus improve this Bill. It will remove all the hardships and yet help him in achieving the purpose behind this Bill. Sir, I move my amendment.

KAZI KARIMUDDIN The amendment which I have moved has this object in view. When there is a theft of any article, even those belonging to the railways, the sentence under the general law is three years. Here, if a man is found to be in unlawful possession of any article belonging to the Railway Department, the punishment under this Bill is five years. So, for the commission of the offence of theft of articles belonging even to the Railway Department, the punishment is only for three years but for unlawful possession of any article, it is five years. This anomaly has not been removed by the Minister in charge of the Bill, and he has not explained as to

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how the offence of theft of railway property has not been included in this. It may be said that under the general law, he could be punished for three years, but it is only for three years, while the punishment prescribed for unlawful possession in this Bill is five years. This is a very anomalous position.

Secondly, connivance as an offence is not punished under this Bill. Suppose a railway servant finds that another man is in unlawful possession of railway property but yet he does not report it. He should have been made liable to be punished under this Bill. Connivance is not an offence under this Bill.

Thirdly, under clause 3 the burden of proof is shifted on to the accused. It says, "if the court sees reasonable grounds for believing such article to be or to have been the property of any railway administration." Now, I have proposed that the words 'the identity of' should be included after the word 'believing'. The court merely believing such article to be or to have been the property of the railways has no legal validity. The real word should be the identity of that article. So, if the identity of the article is believed by the magistrate, then the burden of proof may shift to the accused. Now, Mr. Pattabiraman said that under the Penal Code the burden of proof is on the accused regarding theft and also under section 411. That is not so. The burden of proof is on the prosecution that it is stolen property under section 411 and also under section 379, but under the present law the burden of proof is on the accused. Mere believing cannot form the legal basis for conviction. Therefore I have proposed that the words 'the identity of' should be included after the word 'believing'.

1 P.M.

Then in another amendment, I have suggested that there is a departure made from the general law about sentence, that instead of three years, you

are increasing it to five years. At the same time, the words 'or fine' are mentioned. If the offence is so heinous, why do you allow any choice to the magistrate—imprisonment or fine? Therefore I have proposed that instead of the words 'or with fine' the words 'and with fine' should be inserted.

Then I have proposed another amendment that after the words 'railway stores' the words "or is proved to have connived at such unlawful possession" should be included. There are many cases of railway servants who, even though they know of the commission of an offence and even though it is their legal duty to report, do not report. This has not been punished under the present Bill. Therefore, I press all these amendments, particularly the amendment about the burden of proof on the accused, because this clause has been very loosely worded. I hope these amendments would be accepted by the hon. Minister.

SHRI B. GUPTA: Madam Vice-Chairman, in reply to the points that we raised, the hon. the Deputy Minister made certain observations and remarks. I would not try to answer them at this stage, because it may be embarrassing to you all. Therefore, I reserve it till the third reading.

Now, my amendment is very simple. I have sought to add a proviso to clause 3. My proviso is as follows:

"Provided that if the accused person merely affirms that he came into possession of such railway stores without knowing them to be stolen property, the burden of proof shall shift to the prosecution."

The object of this amendment is much too obvious. However, I wish to point out that I want to relieve the accused persons of the responsibility of proving innocence. In the circumstances they will not be able to prove it at all. Mr. Pattabiraman, who is a budding lawyer and who has been budding for a long time, has referred to certain provisions in the Indian Penal Code, and he has made much of the fact that

he is a lawyer. I can tell him that it is about 14 years that I stand separated from the system called the judicial system, and yet I would venture, even after such a long interval, to refer to section 411 of the Indian Penal Code. He seems to have totally misconstrued this section, if I may say so. Section 411 reads:

"Whoever dishonestly receives or retains any stolen property knowingly or having reason to believe the same to be stolen property shall be punished with imprisonment, etc."

Under section 411, he must receive the thing dishonestly and that will be for the prosecution to prove that he had received the thing dishonestly. The burden is on the prosecution. It says:

"or retains any stolen property knowing or having reason to believe the same to be stolen property."

Therefore, the prosecution has not only to prove that the property in his possession is stolen property but also to prove the fact that the accused person knew it to be stolen property or had reasons to believe it to be so. All these things are to be proved by the prosecution and not the other way round, i.e., not to be negated by the accused. I think he should concede after carefully reading this section 411 that there is a fundamental departure from the existing criminal jurisprudence. Now, I know Indian jurisprudence and criminal jurisprudence stand annulled now and then whenever it suits the Government Benches.

SHRI T. S. PATTABIRAMAN: Section 411 should be read with the first illustration of section 114 of the Indian Evidence Act.

SHRI B. GUPTA: The only book I could get hold of is this. It is my misfortune. But you, being a good lawyer, as I am told, and having a very good gay time at the bar, will agree that section 411 requires the prosecution to prove something, whatever the Evi-

dence Act may say. Now here of course it is not so at all—here it is only mere possession. The railway stores would not be even identified nor would there be any reasonable ground for the person to believe that it was railway stores before he received it. Here mere possession is an offence regardless of how he came into that possession. It is wrong and here is the departure from the fundamental law. Now, there are cases where the onus should shift to somebody else. Here it falls on the accused person. Now, the hon. Minister has said that he has to prove certain things and that provision is also there. He says; that he has to prove that the article is a railway store and is in possession of somebody. Then it is left to the magistrate to believe. It says:

"if the court sees reasonable grounds for believing such article to be or to have been the property of any railway administration....."

Here the court comes in. Now what happens? The accused person may not have any idea whatsoever that when he was receiving thing, he was receiving something which is railway stores or something that he was receiving unlawfully. He may be totally innocent. Even so, he would be liable if somehow or other the prosecution or the railway authorities for that matter can prove that it is railway property and the magistrate believes it to be something of that sort. In that case he is finished. It is said that if he can prove that he came into possession of it lawfully, then he may get off. But as I have told you before how can he prove it specially when it is a small article. It would be very difficult for him to prove in a court of law how he bought it in certain circumstances. That would make it absolutely difficult for him to put in a proper defence. So the accused person is left with no remedy, no protection whatsoever. He will be sacrificed at the altar of this unjust, unwarranted and obnoxious law and there is no doubt about it. Now let us be clear about it. Let us not shed crocodile tears

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here for the accused. Let us not come with that kind of phraseology that we are protecting the public property. We are all interested in protecting public property. There is no doubt about it, but at the same time we are also interested in seeing that the properties are so protected that the people are not subjected to vexatious prosecutions or any kind of difficulties at the hands of the authorities. The rights and liberties of the citizens are also in question. Now if we are to curb our civil liberties, our fundamental rights with a view to saving certain property, which may not be saved after all, it is something which nobody desires. Therefore I say that you actually give the accused no protection and whatever little protection is there in this particular clause is no protection at all.

Now, much has been said about the national property, sacred trust and what not. Now railway property is public property and we all want to protect it. There is not the slightest doubt about it but what I tell you is this that you seem to be the only beneficiary of that sacred trust. You must remember that people are also the beneficiaries of that trust and not merely you. Therefore we are all interested in seeing it protected. But when you do it, you will catch hold of the small man, you will catch hold of the small employees and wreak vengeance on them. I am not at all suggesting that all officers are bad. Far be it from me; there are very good officers, better than what many Ministers are—I know. There is no doubt about it. It is far from me to fling over-all accusations against officers. There are very good people and I know some of them will serve in our regime also..... (Interruptions.) but public feeling is raging strong against the bigger men and if you have not understood it, you have understood nothing of the present-day administration. It does not mean that the small man does not commit any crime. He may in certain cases—there are individual cases—but the fact remains that the big

people are protected by your laws, protected by your favour, protected by your nepotism, protected by your patronage, protected by your partisan considerations. It is these big people that you must go after and catch hold of.

Now I know what happened in a railway stores. In the Kharagpur Railway Department, suddenly the news leaked out that medical stores were being removed and everybody knew that it was the talk of the town. Then suddenly there was arson. A report was made to the police that this Department had caught fire—the hospital or Department where the drugs were kept—and the matter was hushed up. Now it is an arson case. Long before the fire took place the whole of Kharagpur town knew that the medicines that were being sold were coming from that hospital or Railway Department and were being illicitly sold. After the thing got out, then some stage-show was made and a fire was caused and the whole case was transformed into a police case and an arson case and not a corruption case. There were allegations made, but nothing happened. I know as long as the hon. Deputy Minister remains there, who believes in teaching manners to us all the time.....

THE VICE-CHAIRMAN (SHRIMATI PARVATHI KRISHNAN): Confine yourself to the amendment.

SHRI B. GUPTA: Therefore, I say that nothing will be done. Because you must go to the source. I know this will be used as a means of oppression against some men for the simple reason that there are certain officials in the Railway Administration who believe in persecuting the employees and these people will now be armed with this measure in order to wreak vengeance on the trade union workers and others who may not toe their line, who may not submit to their bullies, and I know what will happen in those cases. That is another fear which hon. Members have expressed and I share that fear. I am very glad, Madam Vice-

Chairman, that many hon. Members from the Congress side opposed this Bill on a point of principle and also on a point of procedure.

HON. MEMBERS: No.

SHRI B. GUPTA: They are very justified in doing so.

HON. MEMBERS: None opposed.

SHRI B. GUPTA: I know that the proceedings will tell the story. If the hon. Minister is so complacent and so dull as not to realize the opposition that was coming from them, he is only conscious of the power of the Congress whip and nothing else, I have nothing to say. Madam, it has been opposed, it has been contested and these hon. Members have spoken from the point of view of principle. I hope the hon. Minister will take note of this. So I move my amendment and I hope that this would be accepted in order to make the rigours of the law a little less harmful to the common people and to the employees. If the Government is at all interested in saving railway property, then this is what they should do. The time is up and I shall sit down because I would like to hear others also on the subject.

THE VICE-CHAIRMAN (SHRIMATI PARVATHI KRISHNAN): Does the Minister reply today or tomorrow?

SHRI O. V. ALAGESAN: My reply will be very brief, Madam, and I may give it today.

SEVERAL HON. MEMBERS: No, no.

SHRI B. GUPTA: If there is more time, then I shall speak.

THE VICE-CHAIRMAN (SHRIMATI PARVATHI KRISHNAN): No, you have already sat down.

SHRI O. V. ALAGESAN: Shall I speak?

THE VICE-CHAIRMAN (SHRIMATI PARVATHI KRISHNAN): Is it the will of the House that we finish the second reading of the Bill now?

SEVERAL HON. MEMBERS: No, no.

SHRI B. K. P. SINHA: How can we? There are so many amendments.

THE VICE-CHAIRMAN (SHRIMATI PARVATHI KRISHNAN): Then, the Deputy Minister can reply tomorrow.

The House stands adjourned to 8-15 A.M. tomorrow.

The House then adjourned at a quarter past one of the clock till a quarter past eight of the clock on Tuesday, the 31st August 1954.