Clauses 2 and 3 were added to the Bill.

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

DR. K. N. KATJU: Sir, I beg to move:

"That the Bill be returned."

3 P.M.

MR. CHAIRMAN: Motion moved:

"That the Bill be returned." Any comments, observations?

SHRI H. P. SAKSENA (Uttar Pradesh): I have just one observation to make, Sir, in reply to a question by my hon. friend, Shri Rajagopal Naidu, He was very anxious to know who discovered that mistake that the State of Manipur did not belong to Assam in the matter of court-fee. I think it was Columbus who discovered it!

SHRI RAJAGOPAL NAIDU: Thank you very much, Mr. Saksena.

MR. CHAIRMAN: Any other comments? The question is:

"That the Bill be returned."

The motion was adopted.

THE TELEGRAPH WIRES (UNLAWFUL POSSESSION) AMENDMENT BILL, 1953

THE DEPUTY MINISTER FOR COMMUNICATIONS (SHRI RAJ BAHADUR) : Sir, I beg to move:

"That the Bill to amend the Telegraph Wires (Unlawful Possession) Act, 1950, as passed by the House of the People, be taken into con-, sideration."

Sir, this small amending Bill has been brought here on the basis of our experience of the operation and working of the parent Act. In section 5 of that Act the provision was: "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."

It is well known that in certain areas of our country, particularly in Bihar, Orissa, Bengal and Mysore, large scale thefts of copper-wires used for overhead land lines for telecommunications were committed and that resulted not only in national loss but in the disruption of communications. It was because large quantities of copper-wire were disposed of by the Disposals Department that it became difficult for the Government officers to distinguish between those wires disposed of by the Disposals Department and the wires stolen from the telegraph lines. Naturally a Bill was brought and as early as 1950 the parent Act was passed which amongst other things made it incumbent on all concerned that in case they had got telegraph wires of specified gauges in their possession they should declare their stocks within six months. It is a very significant fact to note in this connection that section 4 of the parent Act also made it incumbent upon all concerned that if they had got any quantities of such copper-wires which are used for telegraph lines, they shall get them converted into ingots in case the quantity was more than ten pounds. So these two things were incumbent on them. Any person who did not comply with these provisions of the Act was punishable under section 6 of the original Act. Now, Sir, in actual practice, when some people found guilty of committing thefts of these telegraph wires were prosecuted in law courts a real and genuine difficulty arose because under the provisions of section 5 of the parent Act it was necessary in the first instance to prove that the telegraph wire found in the possession

[Shri Raj Bahadur.] of the accused was telegraph wire, that is, that it was of the particular gauge used as the telegraph lines. Over and above that it was also to be proved that such telegraph wire which constituted the stolen property was the property of the Telegraphs Department. Unless this last part of the provision in section 5 was satisfied, nobody could be punished. The result was that the very purpose of the main Act was frustrated and the criminally minded people, of course, continued to indulge in these activities and committed thefts almost with impunity. The result was that we had to do something about it because practically it is impossible for any piece of copper-wire to be proved that it is the property of the Telegraphs Department. We could prove only the gauges, and it became impossible to prove that that particular piece of telegraph wire which had been recovered from the possession of an accused person was the property of the Telegraphs Department and that is so because there was and is no mark of identification on it. The accused person could very well say: "I got it from the Disposals or from other places. There is nothing on it to show that the telegraph wire seized from me bslonged to the Telegraphs Department. So how can I be guilty?" That was the real difficulty. Sections 3 and 4 of the parent Act prescribed it as a duty of the citizen that he shall declare possession of telegraph wires if he had any and further to have such telegraph wire converted into ingots if the quantity in his possession exceeded ten pounds. This was to be done within the prescribed periods of six months and one year respectively. That being so, nobody could be in possession of copper-wire of those particular gauges which have been specified in the parent Act as also in the new provisions which have been set out in the present amending Bill in order to overcome the difficulties encountered in practice. If in spite of the provisions contained in sections 3 and 4 of the parent Act any one came ito possess copper-wire of particular gauges the natural and inevitable conclusion that could be drawn from the possession of such wires against any person was that he had stolen it from the telegraph lines or that he came to possess it unlawfully somehow, and at any rate he must account for it. The onus is on him to prove that he came to possess that quantity of copper-wire lawfully. So that onus we propose to fix on him in a reasonably certain manner by this amending Bill and the words that occur in section 5 of the principal Act, namely, "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" are sought to be deleted by this amending Bill. Of course the onus was shifted on to the shoulders of the accused even under the parent Act and that was decided by the then Provisional Parliament. Now because of this particular phrase "which the qourt has reason to believe to be, or to have been, the property of the Posts and Telegraphs Department of the Central Government" occurring in section 5 of the parent Act it became impossible to prove it in all cases and so all the prosecutions did not result in convictions. Therefore this amending Bill has been brought forward. Apart from the amendment to section 5 of the Act, some consequential amendments have also been sought to be made in section 2(b) of the Act where we have tried to give reasonable tolerances in regard to the gauges of the telegraph wire, and clause 2 of the Bill seeks to replace the present section 2(b) of the Act as follows: " 'telegraph wire' means any copper wire the gauge of which, as measured in terms of pounds per mile, is between 147 and 153, or between 196 and 204 or between 294 and 306." We have given these tolerances of the various gauges and it is a patent fact that copper-wire of these gauges is not used by any other person except the Telegraphs Department. So it is obvious that anybody who is found in possession of such wire should account for it and prove that he came to possess it lawfully.

Again, Sir, we have provided another section, section 4A. It is for 'Prohibition of sale or purchase of telegraph wires' and it reads: "No person shall, after the commencement of the Telegraph Wires (Unlawful Possession) Amendment Act, 1952, sell or purchase any quantity of telegraph wires except with the permission of such authority as may be prescribed", so that if there is any importer he will import for our purposes. We shall first tall the Director-General of Disposals and Supplies that we require such and such quantity of telegraph wire. "Please get it for us or please find some importer who could get it for us. We will arrange a licence for him." Secondly, if he wants to transfer it to anybody else, a contractor or somebody, he could only do so with the permission of the prescribed authority.

At any rate the procedure has been made, as far as possible, perfect in this manner and no innocent person can be affected. Apart from that, Sir, as provided in section 7 of the Act, an offence under this Act is not cognizable and it is triable only by a Presidency Magistrate or a magistrate of the first class and the court can take cognizance of the offence only on the complaint made by the proper authority as prescribed in the Act and therefore to say that it will affect innocent people will not be correct.

With these words, Sir, I move that the Bill be taken into consideration.

ME. CHAIRMAN: Motion moved:

"That the Bill to amend the Telegraph Wires (Unlawful Possession) Act, 1950, as passed by the House of the People, be taken into consideration."

_/DR. P. C. MITRA (Bihar): What is unlawful possession and what is lawful possession?

MR. CHAIRMAN: Government are having the definitions.

SHRI B. K. P. SINHA (Bihar): Mr. Chairman, the statement of the hon. mover of the Bill that this is a very simple measure with an extremely limited purpose, the purpose being to delete a few words from a particular section, reminds me of a Hindi couplet. That couplet, Sir, is:

सतसैया के दोहरे अरु नावक के तीर ।
देखन में छोटे लगें, घाव करें गम्भीर ।।

About 700 couplets have been written by the great poet of Hindi known as Bihari. They are known as gr^fr (Satsaiya). It means that though the couplets of the Satsaiya and the arrows of the hunters are very small, they are small only to see but in consequences they are very effective. They make deep wounds. This Bill, I am afraid, comes under that description. It makes a violent and revolutionary departure from the law of evidence that this country has so far followed. In every criminal action the presumption is that the accused is innocent. It is for the prosecution to prove, and prove conclusively, that the person arraigned before the court is guilty. The onus of proof in every criminal action is on the prosecutor and not on the accused. That,- Sir, is the general law and this law is the basis, to a great extent, for the liberties of the people. This Bill makes a violent departure in this respect.

SHRI RAJAGOPAL NAIDU (Madras) : Even the parent Act had made a violent departure.

SHRI B. K. P. SINHA: It had not made it because in the parent Act the presumption had to be initially raised by the prosecution that that was their property. It was only then that the onus of proof shifted to the accused that he came into lawful possession of the wires. The parent Act was midway between the law in general and the position which this Bill would like us to adopt. It is midway. There are.....

SHRI RAJAGOPAL NAIDU: My lawyer friend should know that there are only two things in criminal matters. Either the onus is on the prosecution or on the accuseds There can be nothing midway.

SHRI B. K. P. SINHA: There are so many cases. If my hon. friend will refer to me at leisure, I can point out to him so many provisions in so many Acts where the onus is in between, where the presumption has to be raised by the prosecution and the onus is thereafter on the accused. But the general law is that the onus is always on the prosecution and this, as I have already said, is the basis of our liberties. If we do not have this procedural protection, we do not know what shall become of the liberties of the people. The Bill in itself may not be very important. It makes a departure only in respect of one type of offence, but all the same it is a bad precedent and in the context in which this Bill is brought, it is rather ominous in my opinion. The talk of judicial reforms is in the air. The Government want to introduce judicial reforms. The rumour is that they propose to introduce drastic changes in the law of procedure, the law of evidence and the substantive law itself. I am afraid that this may be taken as a precedent. The area in which the onus is put on the accused is widended and the more we widen it the greater the danger to the liberties of the people, the greater the danger which the people would be faced with. The Preventive Detention Act has a sting; but it is rather limited. It is only some people, maybe a handful, maybe a hundred ori a thousand, but it is only a limited! number who is affected by the abrogation of the law of procedure and the substantive law. But if we make a drastic change in the rules of evidence, the number of people whose liberties will be affected would be very much larger. It may have to be counted in thousands or lakhs. Everybody who comes before a criminal court in that case would come with the apprehension that unless he proves his innocence conclusively, he would be put in jail. I therefore feel that there is no necessity for making this great departure in such a small matter. The hon. Minister has very well said that the problem is not very great or the circumstances are such as.....

SHRI RAJ BAHADUR: I did not say so.

SHRI B. K. P SINHA: All right, then the circumtances are such that whenever a man is in possession of wires of certain strength, of certain weight, the presumption would be that he is in possession of telegraph wires. If there is validity in his argument, this argument can very well pass muster with the courts. Why change the law then? If the circumstances are' such that anybody who is in possession of wires of a certain type must be in possession of telegraph wires, this argument should appeal to the courts as well. Why then change the law? Why not leave everything to the discretion of the courts? I therefore feel that this departure is not justified by the dangers which this Bill seeks to meet.

Moreover, I am extremely afraid if this Bill is not hit hy article 14 of the Constitution which gives every Indian citizen equality before law and gives every Indian equal protection of the law. For a particulSr offence, you are prescribing a procedure, a rule of evidence, which is in violent opposition to the rule of evidence prescribed for all other offences. That means whoever is arraigned for that offence ia put out of the pale of the common or the ordinary law of the\anfl. Article 14 no doubt permits som\ classifications. The classification in this case is there. JThe classification is that whoever is in possession of telegraph wires shall be deemed to be guilty unless he proves otherwise. But then that classification should also be reasonable. It is not warranted by-the exigencies of the case.

[MR. DEPUTY CHAIRMAN in the Chair!

I am reminded, Sir, in this respect of a similar ease which came before

the Pakistan Federal Court. They passed a similar law. A certain gentleman—probably an Honorary Magistrate in East Pakistan—was involved. In his house were found telegraph wires. The scope of their law was much wider. It dealt with Government property as such—military stores and all that—and it dealt with telegraph wires as well. The onus, as in this case, was on the accused to prove that he had come into possession of those wires lawfully. In that case the gentleman was convicted by the East Pakistan court. He appealed to the East Pakistan High Court and that conviction was upheld. But when he went in appeal to the Federal Court, the Federal Court quashed the conviction and set aside the sentence. Their opinion was that the law was in violent conflict with the general law of evidence in the •country and therefore was null and void. And you must remember that in Pakistan there are no Fundamental Rights because the Constitution is not still there. Even in the absence of Fundamental Rights, the Pakistan Tederal Court held a similar provision to be absolutely null and void. I do not know what will happen in our country where we have our Fundamental Rights and article 14 dealing with equal protection "of laws and equality before law. One cannot tre" very sure about these matters, but rrry fears are there. Here also in the Supreme Court in the case of Anvar Ali Sarkar, the Supreme Court has taken a view which lends strength to my opinion that this law may come under the mischief of article 14. I am again reminded of a case in the United States. There a particular law of Oklahoma provided that whoever was guilty of felonies of particular types twice or thrice would be subjected to •compulsory sterilization! A man there was convicted twice or thrice. Then the order was issued that he should be sterilized compulsorily. That man moved the Oklahoma courts who refused. Then he moved the United States Supreme Court.! The Supreme Court held that the law made a distinction between felonies and telonies. The law had laid down that whoever committed felonies, twice or thrice, would be subjected to compulsory vasectomy or sterilization. The law though it included larceny, petty or great, omitted embezzlement, forgery, etc., which were also felonies under the law. The Supreme Court, therefore, held that though the quality of the crime was the same, certain types of felonies were to be penalised while certain other types were not. The Supreme Court held that that ltJw" of Oklahoma was null and void. It is on these grounds that I have my misgivings. I will appeal to my hon. friend to consider this question. I am not, however, very much worried about this measure which is a very small measure. I am worried about the tendencies that this measure indicates. Why is it that Government property should be treated on a different level? Our liberties are based on the principle that there is no distinction between individual and individual, no distinction between a citizen and an officer, and no distinction between the property of a citizen and the property of an officer or government. It is on that principle that we have based our Constitution We are putting Government property, by this Bill, on a footing different from the properties of the people at large. To that extent we are falling a prey to I what is called in a certain sense [1] 'administrative law'; and the more the encroachment of administrative iaw the more dangerous it is for our liberties.

MR. DEPUTY CHAIRMAN: Once it I is proved that the property belongs to» Government, the onus is on the person to prove how he came by it.

SHRI B. K. P. SINHA: Once it is proved that it is telegraph wire, the onus of proving his innocence shifts on to the accused. *(Interruption.)*

SHRI RAJ BAHADUR: Perhaps it | will save the time of the House if I j explain the position. In the first in- I stance, the onus will be on the prosecution to prove that the wire ig a

[Shri Raj Bahadur.]

stolen property and that it is of the particular gauges whose sale and purchase have been prohibited under the new section 4A. There is one thing here. This particular type of wire is not used by any other department. This is used by no other bodies, institutions, etc. We say on authority that this particular gauge of wire is used by the Telegraphs Department only.

[1] MR. DEPUTY CHAIRMAN: Once the accused is proved to be in possession of stolen property, he must justify how he came by it. The telegraph wire is defined in the Act. Once it is proved to be a telegraph wire, the person in possession should prove how he came by it. Section 5 of the original Act says: "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." Here, the words sought to be removed are these: "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". The words are redundant once it is proved that it is telegraph wire. The House may consider this deletion?—H

SHRI RAJAGOPAL NAIDU: The proof should be to the satisfaction of the court and not to the satisfaction of the prosecution.

MR. DEPUTY CHAIRMAN: Once the prosecution shows it is telegraph wire, it is a simple thing even in regard to stolen property.

SHRI RAJ BAHADUR: It can be proved that it is telegraph wire but not that it belongs to the Telegraphs Department.

SHRI B. K. P. SINHA: My hon. friend says that he is pretty certain that these wires are.....

SHRI RAJ BAHADUR: Absolutely certain that nobody else uses them. It is also certain that nobody else posses ses them. They are the only men (the Telegraphs Department) who use these types of property, and who are in possession of this type of pro perty. Whenever somebody else is found'in possession.....

MR. DEPUTY CHAIRMAN: ..... the presumption is that that man is in unlawful possession.

SHRI B. K. P. SINHA: Then, where is the necessity for this Bill?

MR. DEPUTY CHAIRMAN: The original Act contains these words: "whoever is found or is proved to have been in possession of any quantity of telegraph wires". If it had stopped there, there would have been no necessity for amending it, but there are these words which are now sought to be omitted by this amending Bill— "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". These are redundant because the term "telegraph wire" is denned in the Act itself. So, you may argue from that angle.

SHRI B. K. P. SINHA: When the original Act was passed, the presump tion was that apart from the Posts and Telegraphs Department, others also would be in possession of wire of that type. My hon. friend has just now said that 'Disposals' sold wires of that type to so many people. That clearly indicates it is not the Telegraphs Department only who had the mono poly of ownership and possession of this particular type of property. There are others.....

MR. DEPUTY CHAIRMAN: But he has to prove that he came by it lawfully

SHRI B. K. P. SINHA: I have nothing more to say. I feel that this shifting of onus should not be treated as a •precedent for future legislation and I am extremely worried on that ground.

MR. DEPUTY CHAIRMAN: There are several legislations which shift the onus; for example, the Prohibition Act.....

SHRI H. C. MATHUR (Rajasthan): The Arms Act.

MR. DEPUTY CHAIRMAN: Yes, each law, as it is enacted, has to consider all this. You cannot say that there cannot be any further legislation at all.

SHRI B. K. P. SINHA: My contention is that the power of shifting of the onus should not be used unless it is demanded inevitably by the exigencies of the situation.

SHRI RAJAGOPAL NAIDU: Sir, "I did not want to take part in tlhe debate, but I feel I have to do it after hearing the interpretation of the hon. Minister regarding onus when he moved this amending Bill. Sir, this parent Act has already departed from the accepted principles of criminal law^. namely, that in cases of theft of telegraph wires the onus will be on the accused to prove that he came into the possession of these telegraph wires in a lawful way. But by this amending Bill, I feel that the discretion of the courts is fettered; I feel, Sir, we are not justified in fettering the discretion of the courts by bringing forward a Bill of this kind. We find that in this amending Bill the 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" are sought to be deleted. That means, Sir, that if the prosecution witness comes into the box and says that such and such wires belong to the Telegraphs Department, then you do not allow the court to form its own opinion as to whether what the witness has said is true or not. The court will have simply to frame a charge.

MR. DEPUTY CHAIRMAN: But, Mr. Naidu, telegraph wire is defined. And nobody else can be in possession of such wire. And if it is found that the accused is in possession of such wire, is not the court competent to presume that it is Government property? That is the main thing.

SHRI RAJAGOPAL NAIDU: Sir, if the telegraph wires have the same gauge throughout the country and nobody can have that kind of wire, then why should the Government labour under such a great difficulty to prove that this particular wire belongs to the Posts and Telegraphs Department? The very fact that there is no such wire available anywhere would clearly go to show that this kind of an amending Bill which we are bringing forward would be absolutely an unnecessary Bill and absolutely redundant. If other private agencies also can possess such wire, then there is some point. Sir, my point is only this that by this amending Bill we are fettering the discretion of the court, because under the parent Act, under section 5, a discretion was given to the court to come to the conclusion whether what the prosecution witness says is true or not, and that the court has to form an opinion that this particular wire belongs to the Posts and Telegraphs Department. But now you are trying to delete that provision That means that we are not giving even that much of protection'to the accused and that much of discretion to the court which is fundamentally necessary under law.

MR. DEPUTY CHAIRMAN: I want to know from you one thing. Once the prosecution proves that the wire in possession of a particular accused is of the specification mentioned in the Act which defines telegraph wire, is not the court competent to presume that it is the property of the Government?

SHRI RAJAGOPAL NAIDU: It may be that a particular man may say that this particular wire belongs to him. Then it is left to the court to frame a charge. The court may even discharge the accused at the initial stage if it does not believe the prosecution witness. But now according to this amending Bill the court is bound to frame a charge. That is what it comes to. And I do not think, Sir, that we will be justified in passing this amending Bill. And I feel that there is a safeguard now given by the introduction of this section 4A which deals with the prohibition of sale or purchase of telegraph wires. So when that provision is made and when section 4A is being introduced, I do not think there is any necessity to amend section 5. And I would earnestly request the hon. Minister to consider this point once again as to whether having already departed once from the accepted principles of law, we can further depart and fetter the discretion of the court.

SHRI KISHEN CHAND (Hyderabad) : Mr. Deputy Chairman, I think you are labouring under a difficulty as to the nomenclature. By the word 'telegraph wire' it does not mean that that wire is the property of the Posts and Telegraphs Department. It only means that that wire has got a certain specification. I wiH try to explain my point of view by giving an illustration. During the last war khaki cloth was not available for civilian use. It was used only for military dresses; and any dress made of khaki cloth could have been called a military dress, Supposing in those days the Government had brought forward a Bill thai anybody possessing a khaki dress must prove to the satisfaction of the court how he came into possession oi that dress in a lawful way, that would have been quite a similar thing, Sir Here the telegraph wire is defined as having a certain gauge. That only means that it is a name given to the wire of certain thickness; it does not mean that it is the property of the Telegraphs Department. What I am submitting, Sir, is that by simply giving it the name of 'telegraph wire' it does not become the property of the Government. I will give you another illustration, Sir, of the navy blue cloth. Now 'navy blue' is any cloth having the navy blue colour. It does not mean that .....

MR. DEPUTY CHAIRMAN: Is it defined in any Act of Parliament?

This telegraph wire has got a particular meaning under the Act.

SHRI KISHEN CHAND: Particular meaning defines a particular gauge, a particular thickness, it does not mean anything else. Therefore, Sir, to transfer the onus of proof from the prosecution to the accused is very unfair. That is the contention. So far as the Government has, by law, made it compulsory on everybody to declare what quantity of copper wire of a particular gauge he possesses, it is all right. But to draw the conclusion that every copper wire of that gauge, whether a man has declared it or not Heclared it, automatically must belong to the Government and therefore the onus of proof lies with the accused is not fair. My only contention is that because of the similarity of name and because a previous law has enjoined declaration, you should not do this. It is quite possible that a person did not read it in the newspaper and he did not know that such a notification had been passed.

MR. DEPUTY CHAIRMAN: Ignorance of law is no excuse. That is a simple maxim.

SHRI KISHEN CHAND: All the same, this will be a great hardship on our countrymen who are mostly illiterate. .

MR. DEPUTY CHAIRMAN: It is three years since the Act was passed, but the time limit given for declaration is only six months.

SHRI KISHEN CHAND: When the matter is so minor and when this Parliament has so many other important matters to consider, to bring in a

legislation of this type which changes the very fundamentals of our judicial system and the Law of Evidence is not fair, and therefore, Sir, I think that it requires further consideration.

SHRI C. G. K. REDDY (Mysore): Mr. Deputy Chairman, in this Bill there has not been any further departure from the departure already made and accepted by the parent Act, from the general principles of justice, but I should like to ask the Government as to why other action should not be taken to see that the same object is achieved. So far as Army stores are concerned, their rifle gauge is a prohibited gauge. No one can possess a rifle of the gauge which is used in the Army. No one can import it; no one can sell it; no one can buy it; and no one can manufacture it in this country. In this case, I do not recall any Act or provision whereby wire of that particular gauge is banned and there is no law which says that it cannot be sold or it cannot be bought, except that, after the parent Act came into operation, those who were in possession of such a gauge must have declared it. What I say is that before the parent Act was passed, Government could have taken other measures to achieve this end. For instance, as I have said, rifles and cartridges used in those rifles cannot be imported, cannot be sold and cannot be possessed by any one.

MR. DEPUTY CHAIRMAN: Section 4 says:

> "Every person in possession of telegraph wires which exceed ten pounds in weight shall, within one year from the commencement of this Act, have the whole of the quantity as is in excess of ten pounds converted into ingots:
>
> Provided that it shall be open to any such person to sell the whole or any part of the telegraph wires in his possession at such price and to such authority as may be prescribed."

So, sufficient elasticity has been given for conversion and selling.

SHRI C. G. K. REDDY: I am not protesting against the time given. I say that even before the parent Act was passed, Government should have considered other measures without taking recourse to a departure from the fundamental principles of law. So far as the Defence Department is concerned, they have never come forward with a Bill like this, asking for special protection of Government property in the Defence Department, because those goods cannot be imported. They cannot be possessed, and so **there** is no chance of their coming into the possession of anybody, except by theft or by unauthorised use.

Similarly, before passing such a law which departed from the normal course of justice and the normal procedure for evidence, Government should have taken other measures to see that in no way people come to possess telegraph wires. I think there was a lapse on the part of the Government to see that people did not get wire of that particular gauge from Disposals or otherwise. If they had taken other measures, then it would not have been necessary to pass this measure and go beyond the normal procedure and try to get special protection for Government property not only in this case but in other cases also.

Of course, Government property has to be guarded. I admit that Government property is more sacred than private property. As a matter of fact, I should like all property to be State property, but what I say is that Government should have taken other measures, more effective measures. And therefore, although there is no question of opposing or supporting this Bill because this does not differ very much from the parent Act, I am i throwing out this suggestion so that ! in future for the protection of Government property, Government could adopt other and more effective mea-. sures without having recourse to this

[Shri C. G. K. Reddy.] sort of Bill, which, I do think, goes against the fundamental procedure laid down in respect of evidence.

SHRI H. C. MATHUR: Mr. Deputy Chairman, I strongly deprecate this unhealthy and unhappy tendency on the part of the Government to come forward with such cheap legislations in order to cover their inefficiency or incompetence. Sir, the hon. Minister, while moving this Bill in the Lower House, very clearly stated what the purpose of this Bill was. He said that the purpose of this was very simple, that the Bill was very innocent and inoffensive.

> "Therefore it has been proposed in this Bill that the onus of proving that the copper wires (of certain gauges mentioned in the Bill) were not the property of the Posts and Telegraphs Department will lie on the person found in possession of these telegraph wires,"

SHRI RAJAGOPAL NAIDU: On a point of order. Can an hon. Member read from the proceedings of the other House?

SHRI H. C. MATHUR: We cannot refer to what ordinary Members of the other Houst- said, but we can certainly quote what hon. Ministers have enunciated and 'aid there. If this is not correct, I want your ruling, Sir.

SHRI B. K P. SINHA: In Parliament, no distinction is made between an ordinary Member and a Minister. All Members aie on the same footing.

SHRI C. G. K. REDDY: There is no rule. The convention is that you should not quote speeches made in the other House.

MR. DEPUTY CHAIRMAN: That is the convention.

SHRI H. C. MATHUR: A ruling was given in this very House that you could refer to the speeches of Ministers in the other House.

MR. DEPUTY CHAIRMAN: If any statement is read.

SHRI H. C. MATHUR: The purpose' of this Bill is to shift the onus of proof from the prosecution to the accused. This has been very clearly stated by the hon. Minister himself. Sir, I might submit that the original Act did go to a reasonable length which was enough to safeguard the interests of the Department. When I am making these comments, I am quite conscious of the fact that in certain enactments, a departure has certainly been made and the onus of proof has been placed on the accused, but they are very exceptional circumstances, and those exceptional circumstances have been mentioned and emphasised, and mostly they were either to stop a strong wave of corruption or some such thing, or in the interests of social security. Such a thing has been resorted to in some of these enactments as a matter of exception. I am aware that in the Arms Act, the onus of proof has been shifted from the prosecution to the accused in certain circumstances. In this particular case the Government's case has further been weakened even from what the hon. Minister has mentioned on the floor of this House. He has stated that there are certain peculiar circumstances which attach to the property of this Department that these particular wires of particular specifications' are called the telegraph wires and that there is no reason that any person can lawfully be in possession of these wires because they are made exclusively for the department concerned. If it is so and he emphasised that it is so, then I think the Evidence Act is there—section 114 is very clear which gives the court the discretion to make a presumption in certain sets of circumstances.

SHRI K. S. HEGDE (Madras): The court may presume.

SHRI H. C. MATHUR: Certainly. So there is no reason why you should' fetter the discretion of the court.

Those people who enacted the Evidence Act were wise enough to make a provision in that Act to meet such cases and such contingencies and that original Act went sufficiently far to state the circumstances and if those circumstances are proved here we have in the Evidence Act section 114 under which the court can make the necessary presumption. Now, to bind the presumption of the court, to deny the court the discretion in these circumstances is almost preposterous. I wish we realise that the Telegraphs Department is intrinsically a commercial department. This nation is now on its way of industrialization and if we adopt such laws, I am sure When this country is industrialized, when the industry is nationalised, possibly the Government will have to come forward with any number of such laws to protect this property here or that property there and all sorts of funny things would happen. We are definitely making a departure in the fundamental principles of jurisprudence by shifting the onus from the prosecution to the accused in circumstances which do not warrant it. I repeat it is not warranted in this particular case because the circumstances are such. I don't know under what circumstances in those particular cases to which my hon. friend referred, the accused have been let off. If the prosecution or the Telegraphs Department had taken particular care to produce the necessary evidence, if they had put in the witness box two witnesses who would say that "under such and such law these are the wires of the department, this wire is of particular gauge and these are the circumstances and as such this can be nothing but our property"—and all those circumstances are very easy for the Department to prove—and if those facts had been proved to the court, the court would certainly have made the necessary presumption under section 114 and there would have been a conviction. I feel it is only because of the incompetence of the prosecution or there are certain failures in the Department that in certain cases our friends could

I not secure prosecution and it is very easy for them to come with a law and have an easy course for all times. As a matter of fact it is to cover the incompetence and inefficiency thac they are taking resort to this cheap method of coming to Parliament and having a law whereby they want to shift the onus of proof from the prosecution to the accused. This tendency arises out of the fact that they know that they can have it easily put through the Parliament. Have we not observed that speeches are made not only by the Opposition but even by the Congress side against the Government? We saw yesterday that not one spoke in favour of the Bill and yet the Bill was passed. It is this sort of state of affairs which gives rise to this most unhealthy and unhappy tendency on the part of the Government to venture to come with such sort of enactments. As a matter of fact, I see and I particularly wish to appeal to the Government that they should be content with the ordinary law of the land. There is absolutely no reason and there are no circumstances which warrant a departure from that and if they only take a little necessary care to prove their cases, there would be no difficulty in securing prosecutions. Of course, if they are careless and if they don't know how to prove their cases, certainly the accused will be let off. There are a hundred and one cases. Tomorrow the Home Minister may tell us that in eighty per cent, of the murder cases the accused are let off. Now I think we are going to have another enactment whereby it will be up to the accused to prove that he must be hanged because in 80 per cent, of the cases the accused are being let off by the courts ! Is that any argument? And particularly in this case I wish to emphasise that it should be much easier for the Government to pass the guilt on to the accused because the circumstances are such, because of the set of circumstances which they had created that these particular gauges cannot be available to any person and only if he goes and proves in the court that this is a wire of this particular gauge

[Shri H. C. Mathur.]

and an expert goes and gives evidence and says "This is a wire of a particular gauge, here is a notification and the rule is here and it cannot be in the possession of anybody else unless it is a stolen property." I am sure under the Evidence Act the court will make the necessary presumption against the accused. I again appeal that this unhealthy tendency . should not grow.

MR. DEPUTY CHAIRMAN: If the amendment is accepted, the position that you enunciated just now will not in any way be disturbed. Once the prosecution proves that it is a wire of a particular description, that it is a telegraph wire, etc., then your posi tion.....

SHRI H. C. MATHUR: I don't want to quibble with these.

MR. DEPUTY CHAIRMAN: That is what you are doing now.

SHRI H. C. MATHUR: How?

MR. DEPUTY CHAIRMAN: You said that if the prosecution proves that the wire is of a particular description or a particular gauge the court will presume. The Government's case is that the courts have not done so in one or two cases and so they have come with this.

SHRI H. C. MATHUR: Exactly, there my quarrel comes with the Govern ment. If they think, as I stated my self and my hon. friend stated, that r there can be no other .....

MR. DEPUTY CHAIRMAN: I have read the original section. I will read it again.

"Whoever is found or is proved to have been in possession of any quantity of telegraph wire".

The telegraph wire has been defined by the Act and the initial burden of proof that he was actually in possession of telegraph wire is still there.

SHRI K. S. HEGDE: That it is a telegraph wire must be proved.

MR. DEPUTY CHAIRMAN: Yes. Once the court can measure its width they can find out the weight per mile. The court can easily find out. The case of the Government is even in such cases the accused have been let off in some cases.

SHRI H. C. MATHUR: Am I to understand that the courts have gone off their heads? There is no other conclusion left if you state that the circumstances are such.

MR. DEPUTY CHAIRMAN: Please read the Objects and Reasons.

SHRI H. C. MATHUR: If the circumstances are such and if the set of circumstances are before the court that there can be no other conclusion but this and still the courts are coming to the conclusions which are entirely different, then there is no other conclusion for you or for me to draw than that the courts have gone off their heads.

MR. DEPUTY CHAIRMAN: In in- terpreting this section the courts have held so in one or two instances.

SHRI B. C. GHOSE: The matter is simple. The hon. Member is justified. If the position was so, the courts would have held in favour of Government.

MR. DEPUTY CHAIRMAN: But one or two courts have not held so. That is why the Government have come with this amending Bill.

SHRI H. C. MATHUR: That is what I say. Simply because one or two courts have not held, it has prompted the Government to come with this.

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SHRI K. S. HEGDE: May I intervene for a minute?

MR. DEPUTY CHAIRMAN: Not now, afterwords.

SHRI S. BANERJEE (West Bengal): Not only ridiculous, it is preposterous.

SHRI H. P. SAKSENA (Uttar Pradesh) : I want one clarification, Sir.

MR. DEPUTY CHAIRMAN: Let Mr. Mathur finish.

SHRI H. C. MATHUR: I have hardly anything to add, Sir. I only have to submit that we are now in free India. As a matter of fact, when the Bill was being discussed, the hon. Minister in charge of this Bill flung a remark that you should take note of the changed ^circumstances. I wish to know what are those changed circumstances. So far as I know, the changed circumstances are that we are a free people. I think that is the only change in the circumstances and we are going to build a welfare State.

SHRI RAJ BAHADUR: Sir, which remark is the hon. Member referring to? In this House I did not say anything.

SHRI H. C. MATHUR: In the other House you said it. I think .....

SHRI RAJ BAHADUR: I do not know the context.

SHRI H. C. MATHUR: It is not you, Sir; it is the hon. Minister himself, toot the hon. Deputy Minister who said it.

THE MINISTER FOR COMMUNICATIONS (SHRI JAGJIVAN RAM) : I don't think I spoke on that Bill, Sir.

SHRI H. C. MATHUR: He said about the changed circumstances. One of the hon. Members of the House was criticising this Bill and .....

MR. DEPUTY CHAIRMAN: Let us not discuss what happened in the other House, because we have not got the proceedings.

SHRI H. C. MATHUR: I only want to know what are those changed circumstances that the hon. Minister who represents the Government, has in mind. What are those changed circumstances?

MR. DEPUTY CHAIRMAN: The Bill has been passed by the other House.

SHRI H. C. MATHUR: I think when one of the hon. Members was arguing on the same lines as I am doing now, the remark was flung by the hon. Minister. So I certainly want to know what the hon. Minister means and what are the changed circumstances which have prompted him to bring this Bill.

SHRI JAGJIVAN RAM: I may be permitted to clarify the position. My hon. friend is very much perturbed .....

SHRI H. C. MATHUR: Not in the-least, Sir.

SHRI JAGJIVAN RAM: If my hon. friend will kindly permit me to finish my sentence. He is perturbed that an established convention of the onus of proof being always on the prosecu tion is being disturbed here. It is not for the first time that it is being dis turbed .....

SHRI H. C. MATHUR: Yes, Sir, when I spoke here, I was quite alive to, and quite conscious of, the fact that it was not being disturbed for the first time. As a matter of fact, in my own speech, I have quoted instances and cases where it has been disturbed. Even before, I have said that this is an unhealthy thing and I would like to know what are the circumstances. Not that I am agitated over-it.

SHRI JAGJIVAN RAM: I do not remember what exactly I said in the other House, but what I do hold is that there may be cases where we have to throw the onus of proof not on the prosecution, but on the accused.

SHRI RAJAGOPAL NAIDU: What, are those cases, Sir.

SHRI RAJ BAHADUR: I shall explain them.

SHRI H. C. MATHUR: The hon. Minister said that hon. Members should adiust themselves to the changed circumstances.

PROF. G. RANGA (Andhra): What -does he mean?

SHRI RAJ BAHADUR: The hon. Member is questioning remarks and •observations made in an entirely unknown context and in another House.

SHRI H. C. MATHUR: It is an abso lutely known context. Now at least if the hon. Minister.....

MR. DEPUTY CHAIRMAN: Mr. Mathur, we need not go into all that. Whether the observation was made at all or not, we are not concerned with that now.

Well, Mr. Hegde.

SHRI H. C. MATHUR: Sir, I have not yet concluded.

MR. DEPUTY CHAIRMAN: Not concluded? All right.

SHRI H. C. MATHUR: Sir, what I mean to submit is that if at all we have a change in the circumstances, • the change should be for the better. We have to go ahead and we have to carve out a welfare State. If thp circumstances have changed, then we have to be more liberal-minded; we should be more reasonable and we should have more understanding and better sympathy. Therefore it is that I submit "Don't let us, by a legislation, shift the onus of proof from the prosecution to the accused." It is no argument to say that there is one case where you have already done it. If that argument were to hold good, then the natural consequence would be, the natural result of that would be, that we would be having a series of cases. Here we have had only three instances, before long there will be a fourth and so on it will go. Let us see the circumstances. Let us see •whether this change is warranted and let us see, when certain sets of facts and circumstances are placed before the court, why the court should not make this presumption when the Evidence Act and the law that is there is so clear. I do not see why the discretion of the court should be fettered and I do feel that the circumstances of this case do not warrant any change and there is little or no case for shifting the onus from the prosecution on to the accused.

Thank you, Sir.

SHRI K. S. HEGDE: Mr. Deputy Chairman, I am surprised at the course this debate is taking.

SHRI H. P. SAKSENA: Sir, I want only one explanation as to.....

MR. DEPUTY CHAIRMAN: You can have it after Mr. Hegde has linished.

SHRI K. S. HEGDE: Before I proceed, let me say that so far as the course of justice is concerned, I am one with the hon. Mr. Mathur and hon. MI. Rajagopal Naidu. But, so far as the change in law is concerned, it is not a fundamental change from the law that is prevailing in this country. Let us make up our minds as to what exactly are the points involved in this case. You should remember that "telegraph wire" is not an ordinary term. It is a term of law. It has been denned in the Act. You should also remember that nobody can possess telegraph wire except the Government., So anybody who is in possession of telegraph wire is in illegal possession per se, because he cannot be in possession of it. That has to be admitted. Further, the Government department will have to prove first, that it is telegraph wire as defined in the Act and secondly, that the accused is in possession of the telegraph wire. Normally, as the law originally was interpreted, probably that was sufficient to shift the burden to the accused, under section 114 of the Evidence Act. A decision of the Madras High Court also went

to the extent of saying that it was the knowledge of the Judge, the common experience of the Judge that had oftentimes to fill up the gaps in many mattens. If supposing there was a murder of a child and a man was found last in the company of that

• child and later on the man was in possession of certain jewels of the child, then normally there would be presumption that that person murdered the child unless there are inconsistent circumstances. That, to my mind, ought to be the law. Unfortunately, very recently the Supreme

' Court overruled this decision. They said, unless the statute very clearly laid down the presumption, the burden never shifts on to the accused, the burden will always be on the prosecution, at every stage of the case.

' That is to say, not merely should there be *mens rea,* but there should also be proof of every link in the case and there can be no question of presumption as against the accused at any stage, unless the statute lays down the contrary principle in an unequivocal manner. That is the decision of the Supreme Court and that is the latest law on the subject. Now, according to the original Act, the court should have reasons to believe that it is the property of the Postal Department. For that reason, you must produce evidence before the court, that this telegraph wire found in the posses-
sion of A is the property of the Postal Department.

If it is merely the property ur somebody else or was stolen prior to 1950, then that presumption would not arise so that again the prosecution has got to prove that it is its property. How is it to prove? It is an impossibility. No piece of wire can ever be proved to be the property of the Posts and Telegraphs Department. It is for that reason that the Government has come forward with the Bill saying, "Well, under these circumstances normal common-sense is that there should be the presumption." Because of the legal technicality, the burden is always on the prosecution. That difficulty is there and that is why some acquittals have been there. It is merely an extension or rather, may I say, elucidation of section 114 of the Evidence Act. Much is talked about the burden of proof. In most of the countries, the burden of proof is being very seriously shifted. In India also, very recently there has been an attempt whether it should not be shifted on to the accused in certain circumstances, I am not saying in all circumstances. Will, my friends on the other side say that we do not put down thieving, cheating or corruption but when it comes actually to tackling that particular thing they say, "Do not touch anything that is old. Old is gold". That quotes the law in England. For. my friends' satisfaction, I can say that several legislations have been passed in England not merely during the war but even after the war whereby the burden of proving certain aspects of the case is put on the accused. So, the law is changing but you must be cautious in changing it, undoubtedly. But, if there is one phase where law could be safely changed and the burden could be safely passed on to the accused, it is in this case—none but the Government can possess a piece of wire.

PROF. G. RANGA: Supposing it is planted by somebody not necessarily by the Government but by an enemy of a particular person? Should we not make certain exceptions? It happened between 1940 and 1942.

MR. DEPUTY CHAIRMAN: In the original Act, six months were given for declaration, one year for conversion and three years have passed now when this Bill is being enacted. Sufficient time has been given for all persons.

PROF. G. RANGA: My question refers not only to the past but at any time in the future, supposing telegraph wire, which cannot be mistaken to be private property, which can be possessed only by the Government, comes to be planted by one particular

[Prof. G. Ranga.]

person.....*(.Interruptions)* ..... foisted or planted .....

MR. DEPUTY CHAIRMAN: Do you mean that the Government will foist it?

PROF. G. RANGA: Not necessarily.

SHRI RAJ BAHADUR: The hon. Member, with all his experience, knows that there are thousands and thousands of cases of planting of stolen property. They are proved either way, in favour of the accused or in favour of the party of the prosecution.

SHRI K. S. HEGDE: I would meet the difficulty of my hon. friend.

PROP. G. RANGA: I only want to know whether you can possibly meet that point

SHRI K. S. HEGDE: I would place certain material for the satisfaction of my hon. friend, Mr. Ranga. There is a provision of law to the effect that whatever fact is in the special knowledge of a party, the burden of proving that fact is on that party. Suppose you are in possession of certain property. You know how you got it and it is your special knowledge and you must be able to prove how you came by that property. If in my house there is telegraph wire, it is my duty to prove that it has been planted. It is not for the other party.

PROF. G. RANGA: That is the difficulty.

SHRI K. S. HEGDE: That has been the law even as it is, otherwise there will be *no* justice at all. It is for that reason that the law is framed in a particular manner in a Bill of this nature where the whole thing is practically put in cast iron, where none but the Government can be in possession of this wire. What exactly is the difficulty in the presumption? What is the difficulty in putting the burden on the other party, the accused?

SHRI KAJAUOFAL *NAIUU:* Do not fetter the discretion

SHRI B. K. P. SINHA: Why rorce them to presume something?

SHRI K. S. HEGDE: My hon. friend,. Mr. Naidu, says: "Do not come in the way of the discretion of the courts". Even now, under the Act, the court. has still got the discretion.....

SHRI RAJAGOPAL NAIDU: How?

SHRI K. S. HEGDE: If it is proved that it was planted or if it was foisted but the court has got only to raise the presumption and put the burden on the accused on two things being established by the prosecution, that is, (i) that it is a telegraph wire and (ii) that the accused was in possession of it.

SHRI RAJAGOPAL NAIDU: Lawfully.

SHRI K. S. HEGDE: Unlawfully, not lawfully. The accused cannot be tn lawful possession; if it is so, then there will be no difficulty. On having proved these things, the burden is cast on the accused. If you do not adopt this principle not merely in the case of telegraph wires but probably in many others also, all our talk of putting down corruption, putting down thieving, putting down cheating is altogether out of question. In fact, I myself sent a letter to the Railway Department in which I had suggested certain changes in the Railway Act more or less on these lines.

SHRI H. C. MATHUR: What is tbe present difficulty? Why should not the courts presume in those circumstances?

SHRI K. S. HEGDE: Well, Sir, it is rather an easy matter to explain law to a lawyer but it becomes a little • difficult to explain it to others. I would still make an attempt.

SHBI H. C. MATHUR: That is the, easiest way to explain, Sir.

SHRI K. S. HEGDE: Still I would make an attempt.

SHRI B. C. GHOSE: But the laws are made by people who are not lawyers, who do not understand law.

SHRI K. S. HEGDE: That, is the virtue of it.

SHRI H. S. MATHUR: The hon. Mr. Hegde may know that I have had eminent lawyers arguing before me and have been giving judgments.

SHRI K. S. HEGDE: 1 am conversant with all the difficulties, Sir, but I would try to convince the hon. Mr. Mathur. The present difficulty is that unfortunately the hon. Mr. Mathur did not follow the line of argument that I had adopted.

SHRI RAMA RAO (Andhra): He must have been a bad judge, Mr. Hegde.

SHRI K. S. HEGDE: Fortunately, he is not a judge now. The difficulty comes this way: "The court has reason to believe to be or to have been the property of the Posts and Telegraphs Department." Because of that wording the burden is still on the Government to prove that it was their property. Which is impossible.

SHRI H. C. MATHUR: Impossible?

SHRI K. S. HEGDE: Impossible to discharge. Supposing you find IO yards.....

SHRI H. C. MATHUR: That is the work of lawyers.

SHRI K. S. HEGDE; I can only advance arguments; I cannot advance understanding to my friend.

SHRI H. C. MATHUR: Impossible.

SHRI RAJ BAHADUR: That also is impossible.

SHRI K. S. HEGDE: I do not think we must make much fuss about it. There are very many Important matters where you may and can rr.ike

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a fuss. If there is some fuss, it ls due to too much of fetish about certain elementary things which we consider as over-essential or probably because of lack of proper understanding of the provisions that are placed before the House

I would commend this Bill to the House for its acceptance,

MB. DEPUTY CHAIRMAN: Mr. Saksena has some doubts?

SHRI H. P. SAKSENA: Yes, Sir; the doubt is this and it will be very much cleared up if the Government spokesman kindly gives a reply to one preliminary question of mine. It is this. Supposing some of the wire which the Posts and Telegraphs Department have in their stock gets, by moisture or due to rust, absolutely unfit for use. Do they ever dispose of this type of material which becomes unfit for use or do they not dispose it of? That is the first question that I want to ask.

Now, the second question is, suppose the Department disposes of this type of material. Now, it is sold to some one; let us take it, for example, that A purchases 200 yards of this type of wire from the Posts and Telegraphs Department in an auction or just as an individual. Now, he in his turn, sells it to various other people and in this way this material changes hands. I happen to have some quantity of this wire and suddenly the police pounces upon me and says. "You are in possession of telegraph wire. It must be presumed that you have stolen it." Now, what is the remedy in a ease like this?

MR. DEPUTY CHAIRMAN: You have to prove that you came by lawful possession, that you purchased it from your predecessor who in turn purchased it from someone else.

SHRI H. P. SAKSENA: How am 1 to search out the man when this man has sold it to certain others?

SHRI RAJ BAHADUR: This Bill is there.

MR. DEPUTY CHAIRMAN: Mr. Saksena will not purchase it without the title deeds.

SHRI H. P. SAKSENA: I do not know.

SHRI RAJ BAHADUR: Mr. Deputy Chairman, I am grateful to the hon. Member, Shri Hegde, for the brilliant exposition of the legal aspect of the whole matter. As a matter of fact, it does give a reply to the hon. Mem ber opposite who said that the Govern ment carries through its Bills only by the mute or silent acquiescence of the Members on this side. This proves, to the hilt, if any proof was needed, that they are intelligent and able people.....

PROF. G. RANGA: More capable people than the Treasury Bench.

SHRI RAJ BAHADUR: ..... who can face with confidence hon. Members opposite who level all sorts of baseless accusations against the Government for nothing.

(Interruptions.)

Now, so far as the merits of the case are concerned.....

SHRI H. C. MATHUR: My hon. friend does not know that the hon. Mr. Hegde is making up for yesterday.

SHRI RAJ BAHADUR: Please let me proceed, Sir. It is just a fitting reply to the hon. Member opposite. Diwan Chaman Lall was one of the most ardent supporters of the Bill that was moved by the hon. Mr. Biswas yesterday; there were other hon. Members also who supported him.

(Interruptions.)

It is by such sort of things only that my hon. friends can speak against the Congress Party and the Congress discipline, etc., they have nothing better. But I can tell them they cannot break the Congress discipline by such phrases. It is impossible to break it. We give you the challenge.

SHRI H. C. MATHUR: We are not at all interested in your affairs.

SHRI S. BANERJEE: The Congress will disintegrate; disintegration has already set in, no necessity for breaking it.

SHRI RAJ BAHADUR: It is only wishful thinking which will never come to fruition. The Congress will live and kick all its opponents who are reactionaries

Excuse me, Sir, for going a little out of my way.

PROF. G. RANGA: Nobody is a reactionary.

SHRI RAJ BAHADUR: But. Sir. he alone should take it ill who himself is a reactionary and none else.

• MR. DEPUTY CHAIRMAN: It is a question of 'give and take'

SHRI RAJ BAHADUR: Now, coming to the merits of the case. Sir, I am grateful to the Members who have supported and opposed the Bill because that shows that they have considered the matter quite seriously and have made observations in a spirit of constructive contribution to the debate. I do not at all fight shy of confessing that we are very anxious to protect and safeguard from theft and des-truction our State property which is national property and telegraph wire is not only State property. It is something more. It is a special type of State property on the continued safety and security of which depends the entire security of our national life. If there are ordinary thefts committed of other Government property we would not perhaps care so much. Some of the hon. Members themselves have sometimes complained that their telegrams reach late, that telephone trunk calls are not going quickly. But they do not know that there are people whose acts they are going to cover up—the

Government is not going to cover up anything—by attributing the thefts to the so-called inefficiency or incompetence of the Government—at least their speeches might be taken to cover up the actions of those thieves who are still stealing copper wires. They were and they are still disrupting the life-lines of the community, of the nation. That is the background of this measure. Now I will give you the financial side of it. When we installed them in 1946 or 1947 or earlier than that, the book value was 6 annas per pound. The issue price was 9 annas per pound and now In the open market it is Rs. 4 per pound. So it is very good business for anybody who could lay his hands on these telegraph wires by theft and take them away, disrupting at the same time the communications. He could then go to the market to sell them and make good profit out of them. I would just now give the figures also to show What the volume and magnitude of these offences are from year to year. I would repeat for two or three years only. In 1951-52 the value was Rs. 3,94.283. Now, supposing, Sir, copper wire of that value is stolen it must have been stolen at many places or at many points, and to that extent so many lines are disrupted and valuable property is lost. In 1952-53 there was Rs. 3,84,764 worth of copper wire. The telegraph wire that was stolen in 1953-54 up to August, for five months only, is of the value of Rs. 3,90,980. So these thefts are *on* the increase. I would say, Sir, that it is not only because the judgment was adverse against the prosecution in one or two cases that we have brought this Bill. We have brought this Bill because we have got to take care that these lines are not disrupted and that thefts are not committed. It is for a bigger purpose, Sir, not because some cases failed for want of evidence to prove that the property belonged to the Posts and Telegraphs Department, and they did not result in conviction. That is one point.

My friend **also** said, Sir, that my hon. colleague, **the** Minister for Communications, Shri Jagjivan Ram, happened to have said that "we should try to adjust ourselves to the changing circumstances." I think, Sir, that is a very pithy remark of his, but in another context; it has been quoted here and I would fervently request my hon. friend opposite, Mr. Mathur, to heed the advice that was tendered to him by an elder and I think that if he does so he will also find that the remark was relevant to the context in which it was made. I remember in the House of the People an hon. Member, Shri Chowdhry was talking of Warren Hastings, the Rowlatt Act and othei things of the past and in that context the Minister, considering that much water had flown down the Ganges since then, said. "Please adjust yourself to the changing years." Sir, it is upon our shoulders that the responsibility for the defence of the country rests of which we are fully aware as custodians of the national interests. We, sitting here as Members of Parliament, have got to see that national property is not wasted that national telecommunication lines are not disrupted or stolen away by thieves and anti-national activities are not committed by anti-social elements and they do not get protection of any law to commit such acts. It is somewhat on these lines*that the hon. Minister's remark should be taken.

SHRI H. C. MATHUR: Will you kindly give the full context?

SHRI RAJ BAHADUR: I have seen J that. I know the context in which he was speaking like that. There can be no comparison and no parallel comment in this House.

MR. DEPUTY CHAIRMAN- It is t not relevant here.

SHRI RAJ BAHADUR: Shall I read | it out, Sir?

MB. DEPUTY CHAIRMAN: It is I not necessary here.

SHRI C. G. MISRA (Madhya Pradesh): In the proposed new section 4A it is provided: "No person shall, after the commencement of the Telegraphs Wires (.Unlawful Possession) Amendment Act, 1952, sell or purchase any quantity of telegraph wires except with the permission of such authority as may be prescribed." It means that. it is contemplated that telegraph wire may be sold. I think it would be better if the words "sell or purchase" were not there.

SHBI RAJ BAHADUR: The back-ground is that as long back as 1950 we passed the Act providing therein that anybody in possession of telegraph wire of those particular gauges shall declare his stock and that he should do so within six months. The second provision was that every person in possession of telegraph wires which exceed ten pounds in weight shall within *one* year from the commencement of the Act have the whole of the quantity as is in excess of ten pounds converted into ingots. Failure *to* do either of these two things was made punishable under the Act. That was the background and it is to be pre-sumed that anybody who even purchased it from Disposals or elsewhere in good faith should, as an honest and vigilant citizen of India, have declared his stocks or in the other case converted it into ingots. Nothing else could be presumed. That fact is there. Secondly, Sir, we also know, as has been observed just now by another hon. Member, even" in future it may happen. Let me take a particular instance. Supposing somebody commits theft of telegraph wire from a particular line, unless there ls some eye witness to that particular offence it will be impossible to prove that a theft was committed at all or that the particular quantity of stolen telegraph wire is the property of the Telegraphs Department. Once it is recovered from the possession of any particular offender how is it possible for the Telegraphs Department to prove that it is the property of the Telegraphs Department? It is impossible.

SHRI H. C. MATHUR: On a point of clarification, Sir. Have you secured any one single conviction?

SHRI RAJ BAHADUR: We have secured many convictions. The total number of cases instituted in the courts under the new Act was 40. . The number of persons prosecuted was 71 and the number of persons convicted was, however, only 31.

SHRI H. C. MATHUR: How nave you secured these convictions without proving the necessary ingredients? When you yourself say that it is to-possible to prove, what in fact were the ingredients that led to conviction?

SHRI RAJ BAHADUR: My hon. friend, Shri Hegde, has already clarified the point. In these particular cases the property was proved. In these cases, maybe, there has been red-handed capture of the thieves. In such cases it was possible for us to do so, but then if the theft took place at some one time and then the stolen property was recovered afterwards from the possession of any particular person, it becomes impossible to prove in such circumstances that the parti-cular quantity of stolen wire is the property of the Telegraphs Department. So that is obvious, Sir.

Then my friend, the hon. Mr. Sinha, was very much concerned about the "liberties of the people" and about "equality before law," or "equal protection of law." I wonder, Sir, whether there is any question of the violation of that sacred principle laid down tn our Constitution. There will be equality before law and we are not going to make any distinction between one person who has been accused of having stolen telegraph wire in his possession and another person accused of the same thing. If he is accused of that particular offence there is no question of equality before law having been challenged or having been violated.

SHRI RAJAGOPAL NAIDU: He only meant that no distinction should be made between a property .....

MR. DEPUTY CHAIRMAN: Why do you bother? Mr. Sinha is there.

SHRI RAJ BAHADUR: About that also, for equal protection of law,' I will simply be repeating my arguments. There are special types of property and special types of circumstances and you have already got enactments and measures like the Arms Act, the Explosives Act and so on where, if a person is found to be in possession of stolen property, the onus is on him to show that he came into possession of it lawfully. Even there that is the law. Then why don't you say that this principle of equality before law has been violated in those cases? So it is not that we are doing something out of our way to seek some sort of a convenient method of prosecution by the Government and have the people punished for known or unknown offences.

Another argument was advanced by my friend opposite, the hon. Shri C. G. K. Reddy. He said that in the case of rifles and other army equipment, there was a ban on purchase or sale, import and everything and that that should have been done in this case also. As I have already pointed out, we did something, but there is one essential and vital difference. Those army stores are kept in safe custody, in safe places, whereas our telegraph lines stretch across jungles and deserts.

MR. DEPUTY CHAIRMAN: What he wanted to know was if you banned j the oale of telegraph wire to private persons.....

SHRI RAJ BAHADUR: The position is, as I have said, if anybody has got any stocks he should have declared. By this amending Bill.....

MR. DEPUTY CHAIRMAN: His objection is that you have not done it earlier.

SHRI C. G. K. REDDY: Not only have they not done it earlier, but they ' still continue it.

SHRI RAJ BAHADUR: There is Some sort of a ban now. If somebody ! has not. declared his stocks he is guilty and he will be brought before the court. Ignorance of law is no excuse. So far as the question of banning all imports or putting some restriction on the sale and purchase of wires is concerned, section 4A, the new provision, is there. Nobody can sell or purchase without the permission of the prescribed authority. And there is no consumer other than the Telegraphs Department. Only this Department uses these wires. So it will be for us to import them.

SHRI C. G. K. REDDY: If he does not mind the interruption, what I want is, just as in the case of rifles and ammunitions, you must ban the manufacture; you must ban the import. According to the amending Bill you are banning the sale and purchase Why don't you ban its import as well as its manufacture? Anybody can manufacture copper wire of that gauge. If you impose a ban on import and manufacture, then this law would not be *VPOPK*-sary at all.

SHRI RAJ BAHADUR: I think the hen. Member is aware that so far as we are concerned, in this country we do not manufacture copper wire enough for all our requirements in the Department. Anybody who is manufacturing it, they are doing so with our permission, and with our authority and on our orders, so that the question does not arise. And even if anybody manufactures it without our knowledge, he cannot sell it and why he should manufacture telegraph wires,, of those particular gauges is not understood. No ordinary man endowed with due commonsense is going to manufacture a thing if it is not going to be utilised by anybody else. Why should he manufacture tha' particular gauge? Wo are the only consumers. If he manufactures, he will do so at our orders.

SHRI C. G. K. REDDY: If you will permit me, supposing tomorrow I manufacture copper wire of that particular ?auge and then I sell it.

SHRI K S, HEGDE: You cannot sell it

MR. DEPUTY CHAIRMAN: You cannot be in possession of it, that is the law.

SHRI C. G. K. REDDY: My contention was that even before the parent Act was passed, if all these steps had been taken, there would have been no need for the law at all.

MR. DEPUTY CHAIRMAN: Even under the parent Act unless it is converted into ingots, you can neither sell or purchase, nor possess it.

SHRI RAJ BAHADUR: He cannot possess it if it is more than ten pounds. That is obvious. So far as defence stores are concerned, they are in safe custody and for them those rules and regulations are there. In our case also we have tried as best as we can to restrict the sale and purchase of telegraph wires and I can only seek the co-operation of this House in helping us and in helping the Government to stamp out a sort of threat that is there for our land-line communications or tele-communications, because with that is linked up the question of our safety; and with that is linked up the security of the country and in a way with that is linked up the very progress of the country, which is not possible if our tele-communications continue to be disturbed in that way. It is not a question of covering up inefficiency or incompetence. I am giving a sort of a reply to my hon. friend opposite that the Government did all that it could in the circumstances. We have been vigilant ever since 1950. We have not been indolent or idle about it. Still I only wish that the hon. Member opposite will kindly read the Bill and try to study the genesis and the back-ground of the present Act and then it would be easier for him to appreciate as to whether it is fair on his part to level those sweeping remarks in that particular manner against the Government. Perhaps that has become the fashion for people of his way of thinking. That is the only way perhaps in which parties that are ranged against the Government try to come into powei.

SHRI H. P. SAKSENA: Would you mind giving a reply to my question as.....

MR. DEPUTY CHAIRMAN: Oraer, order. The question is:

> "That the Bill to amend the Telegraph Wires (Unlawful Possession) Act, 1950, as passed by the House of the People, be taken into consideration."

The motion was adopted.

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

Clauses 2, 3, 4 and 5 were added to the Bill.

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

SHRI RAJ BAHADUR: Sir, I move that:

> "The Bill be passed."

SHRI C. G. K. REDDY: Sir, I want only an answer to this very simple question. Today I import some copper wire and I also manufacture some copper wire of the same gauge. It is easy to draw copper wire of the bigger gauge into copper wire of smaller gauge. And I steal some from the Indian Tele-graphs Department. I use it in my own industry. How is the Government protected? That is why I said that those two steps should have been taken. If I import it, there is no ban; if I manufacture it, there is no ban. I cannot sell or buy, but I can use it.

SHRI K. S. HEGDE: You are under a mistaken impression.

SHRI C. G. K. REDDY: I can use it for purposes of *my* own. Where is the ban against doing that?

SHRI RAJ BAHADUR: If you want to possess it, you cannot possess more than ten pounds of that particular gauge. The whole question pertains to that particular gauge. Therefore it is all right. Even in respect of that you have to declare the quantity. You cannot do without it. You may import; you may manufacture some; and you may excuse me, you will not steal, but somebody else may steal it for you.

SHRI C. G. K. REDDY: How are you so sure?

SHRI RAJ BAHADUR: But the question still remains; the quantity is the determining factor—the actual quantity in your possession.

SHRI K. B. LALL (Bihar):

श्री के० बी० लाल (बिहार) : उपाध्यक्ष महोदय, मैं इस बिल के सम्बन्ध में कुछ कहना चाहता हूं ।

MR. DEPUTY CHAIRMAN: What is it; you want to make a speech on this Bill at the third reading stage?

SHRI K. B. LALL: Yes, Sir.

MR. DEPUTY CHAIRMAN: You are not opposing it, I think.

SHRI K. B. LALL:

श्री के० बी० लाल : जी नहीं, मैं सिर्फ मिनिस्टर साहब से यह अर्ज कर देना चाहता हूं कि यह कानून किस तरह और कैसे काम में लाया जायगा ।

(Interruptions.)

MR. DEPUTY CHAIRMAN: Yes, go on Mr. K. B. Lall. Let us have some change.

SHRI K. B. LALL:

श्री के० बी० लाल : मेरा ख्याल है कि थर्ड रीडिंग के वक्त बोलने का मुझे हक है, अगर आज्ञा दें तो बोलूं, नहीं तो नहीं ।

इसमें कोई शक नहीं कि बिल के बारे में जो यह कहा गया है कि. . . . . .

SHRI M. P. N. SINHA (Bihar): Sir, he should speak in English.

MR. DEPUTY CHAIRMAN: Order, order. You are his countryman.

SHRI K. B. LALL

श्री के० बी० लाल : जनाब चेयरमैन साहब जब यहां अपनी जगह पर रहते हैं तो मैं हिन्दी बोलता हूं ।

SHRI RAJ BAHADUR:

श्री राज बहादुर : मैं भी हिन्दी बोलूंगा ।

SHRI K. B. LALL:

श्री के० बी लाल : यह सही है कहा गया है और मान्यवर हेगडे साहब ने भी बहुत सही फरमाया, कि करप्शन (corruption) को रोकने के लिये हम लोग हल्ला मचाते हैं, और जब उसका इलाज किया जाता है तो हम उसके खिलाफ बोलते हैं । मेरा भी कुछ ऐसा ही खयाल था, मैं भी बिल पर कुछ बोलना चाह रहा था, मगर मैंने यह समझ कर संतोष कर लिया कि कुछ कहना सुनना बेकार है, कोई रद्दोबदल तो होता नहीं, यहां तो हमें बकवास करके ही काम करना है क्योंकि कोई तरमीम तो यहां पर होती नहीं है । लेकिन अब चूंकि यह बिल पास होकर कानून के रूप में तैयार हो रहा है, इसलिये आशीर्वाद तो सबको देना है और मैं भी उसके लिये खड़ा हो गया हूं । हम लोग चाहेंगे कि करप्शन को बन्द करें, चोरी को बन्द करें और हमारी सरकार इस काबिल हो कि रोज बरोज उसके डिपार्टमेंट्स (Departments) में जो चोरी होती हैं उसे बन्द करने में वह कामयाब हो । परन्तु इसके साथ साथ में एक बात जो मेरे दिमाग में आई उसे अर्ज करना चाहता हूं ।

SHRI K. B. LALL

इसमें कोई शक नहीं कि कुछ सिद्धान्त भी अब बदल रहे हैं। पहले जैसा सिद्धान्त था कि सौ दोषी आदमी चाहे छूट जायं लेकिन एक निर्दोष को सजा नहीं होनी चाहिये, उसके बदले यह हो जायगा कि न एक दोषी आदमी छूट पावे और न एक निर्दोष आदमी सजा पावे। हर रोज इतने इतने उसूल बदलते जाते हैं और जमाने के साथ साथ हम लोग भी बदलते जा रहे हैं। लेकिन हमें यह भी ख्याल रखना है कि कहीं ऐसा न हो कि इस कानून के बनने से ज्यादा दोषी आदमी छूट जायं और कुछ एक निर्दोष आदमी सजा पा जायं। केवल मेरा यह अर्ज कर देना है किसरकार की ओर से या उसके डिपार्टमेंट की ओर से आज तक कितनी कोशिश हुई कि जिन जगहों में चोरियां होती हैं वहां कितने आदमियों को सजा हुई। मैं तो नहीं समझता कि सरकार के स्टोर (store) या गोदाम घरों में यह टेलीग्राफ वायर (telegraph wire) पड़ा रहता है और उसके दरवाजों को तोड़ करके चोरी की जाती है। आखिर जिन आदमियों के सुपुर्द या चार्ज (charge) में वह स्टोर रखा जाता है, उनके ऊपर भी तो चोरी होने पर जवाबदेही आती है। हम यह जानते हैं कि और भी सरकारी डिपार्टमेंट में किस तरह से लोगों की चोरी से गुजर चलती है। रेलवे में देखिये, वहां यह एक मामूली बात है कि कितने आदमियों की गुजर इस तरह चलती है। कितने ही आदमी तो कोयला कभी खरीदते ही नहीं हैं और रेलवे का कोयला घर के कामों में इस्तेमाल करते हैं। मेरा तो ख्याल है कि यह कानून तो अभी "थिन एंड आफ दी वेज" (thin end of the wedge) है, अभी इस तरह का कानून हमें और भी डिपार्टमेंटों के लिये लागू करना है, और यह देखना होगा कि उन्हीं लोगों को सजा दी जायगी जिनको पकड़ कर जुर्म साबित होगा। कितने सरकारी अमलों के घर में रेलवे का सामान पड़ा हुआ है, इसी तरह से टेलीग्राफ डिपार्टमेंट (Telegraphs Department) का सामान भी पड़ा होगा। तो एक मामूली बात सामने यह आती है कि सरकार के गोदाम में, टेलीग्राफ के गोदाम में सामान की रक्षा भी की जाती है या नहीं और यह भी देखा जाता है कि जिनके चार्ज में इन्हें रखा जाता है वे अपना कर्तव्य कैसे अदा करते हैं, नहीं तो फिर चोरी हो कैसे जाती है। यह तो लाचारी की बात है कि जब चोरी होने लगी तो सरकार को चोरी पकड़ने की जरूरत महसूस हुई और ऐसा सोचने के लिये हम उसे बधाई देते हैं।

लेकिन एक बात मुझे और बतला देनी है। अगर कोई कहे कि कौआ आपका कान लिए जा रहा है, तो आप कौए के पीछे दौड़ पड़ते हैं। एक दफा आप अपने कान पर भी हाथ रखें और यह देखें कि हमारे गोदामों में जो लोग उनकी रक्षा के लिये नियत किये जाते हैं, वे अपनी जिम्मेदारी कैसे निभा रहे हैं। बजाय इसके कि कौए के पीछे दौड़ें, आप अपने कान को पहले देखें।

कानून तो आप बना रहे हैं, वह पास भी हो गया और उसे हम आशीर्वाद भी दे रहे हैं, लेकिन मेरी प्रार्थना है कि आप जरा एडमिनिस्ट्रेशन (administration) को सख्त करें और यह देखें कि कारखानों में या गोदाम घर में चीजों की चोरी न हो और हमारे नौकर ऐसे न हों कि उनके जरिये से कोई चीज बाहर निकल जावे। जिसके घर में चोरी का माल निकला सिर्फ वही असल में गुनाहगार नहीं है, बल्कि गुनाहगार वह भी है जिसके जरिये से वह निकलता है। सवाल यह है कि हमारे गोदाम घर से वह चीज निकलती कैसे है। जिसके चार्ज से वह निकलती है,

उसको भी एक्यूज्ड (accused) बनाया जाय। ऐसी कोई पकड़ आप रखते तो ज्यादा अच्छा होता जिससे कि एक तो चोरी जल्द पकड़ी जाती और दूसरे चोरी होती भी नहीं।

इन शब्दों के साथ मैं इस बिल को सपोर्ट (support) करता हूं और सरकार को बधाई देता हूं और उम्मीद करता हूं कि आगे वह इस बात पर ज्यादा ध्यान देगी कि उन लोगों पर भी जवाब-देही आयेगी जिनके हाथ से चीज बाहर निकलती है। ऐसा करने से हमें ज्यादा कामयाबी होगी।

[For English translation, see Appendix VI, Annexure No. 122.]

SHRI B. K. P. SINHA: The Constitution prohibits discrimination; why should you, Sir, make a discrimination in tavour of the hon. Shri K. B. Lall.

MR. DEPUTY CHAIRMAN: 1 have made an exception only in the case of Mr. K. B. Lall. I have already called upon the Minister to reply.

SHRI RAJ BAHADUR:

श्री राज बहादुर : उपाध्यक्ष महोदय माननीय सदस्य श्री कैलाश बिहारी लाल जी ने इस बिल के सम्बन्ध में दो चार बातें कहीं, जिनका मैं समझता हूं, मैं हिन्दी में ही जवाब दूं। उन्होंने कहा कि न केवल उन लोगों की चोरी को हम पकड़ें, जो कि नाजायज तरीके पर तार की लाइनें उखाड़ते हैं और अपने घर में तार छिपाते हैं, बल्कि गोदाम वालों पर भी निगाह रखनी चाहिए। मैं यह निवेदन करूंगा कि जहां तक मेरे विभाग का सम्बन्ध है और जिन लोगों के पास गोदाम है, वे इस बात में बड़े जागरुक हैं कि उनके नीचे किसी प्रकार की चोरी न होने पाये और यदि कोई ऐसी बात उनके नोटिस (notice) में आती है तो उचित कार्यवाही की जाती है। मैं यह नहीं कहता कि सौ फीसदी आदमी सब एक से होते हैं। या सभी कर्मचारी ठीक हैं, लेकिन केवल इसलिये कि चोरियां हो रही हैं, जो लोग दोषी नहीं हैं, उनको मैं दोषी नहीं कह सकता।

उन्होंने कहा कि अब तक का सिद्धान्त था कि सौ दोषी अगर छूट जायं तो कोई पाप नहीं बल्कि एक निर्दोष को सजा न होने पाए और अब लोगों की भावना दूसरी तरह की होती जा रही है और उनको अधिकाधिक इस बात की चिन्ता है कि जितनी चोरियां या और बुराइयां होती हैं, उनको किसी न किसी प्रकार से रोका जाये। उन्होंने आगे यह कहा कि चोरों को देखने की आवश्यकता है और बजाय इसके कि हम दूसरी जगह देखें, अपने कान भी टटोल कर देखें। मैं यह कहूंगा कि अपने काम की हमें अच्छी तरह से सुधि है, लेकिन हम यह भी मानते हैं कि जो चोरी करेंगे उनके कान पकड़ना हमारा फर्ज है।

[For English translation, see Appendix VI," Annexure No. 123.]

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed" The motion was adopted.

THE RESERVE BANK OF INDIA (AMENDMENTS AND MISCELLANEOUS PROVISIONS) BILL, 1952

THE DEPUTY MINISTER FOR FINANCE (SHRI A. C. GUHA) : Mr. Deputy Chairman, I beg to move:

> "That the Bill further to amend the Reserve Bank of India Act, 1934, and to make special provisions in respect of certain high denomination bank notes, as passed by the House of the People, be taken into const-deration."

The main purpose of this Bill is to provide more facilities to **the** Reserve Bank for rural credit. Since the establishment of the Reserve