

Shri U. M. Trivedi (Chittor) rose—

Mr. Deputy-Speaker: We have already exceeded the time allotted. I will put the motion to the House.

The question is:

“That the Bill, as amended be passed.”

The motion was adopted.

An Hon. Member: One hon. Member is standing, Sir.

Mr. Deputy-Speaker: He is standing for another Bill.

RAILWAY STORES (UNLAWFUL POSSESSION) BILL

The Deputy Minister of Railways and Transport (Shri Alagesan): I beg to move:

“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, passed by Rajya Sabha and as reported by the Select Committee, be taken into consideration.”

The House will remember that almost all the implications of the Bill have been gone into very thoroughly on the previous occasion when this Bill was before this House. In fact, during that discussion several doubts and apprehensions were expressed by hon. Members who participated in the debate saying that the definition is too wide and innocent persons may be put to difficulty and they may be harassed. It was with a view to remove those apprehensions and doubts that I agreed to the motion for reference to a Select Committee and it will be found that the Select Committee has made very considerable changes in the wording of the Bill. In fact, the objections raised have been sought to be met by the Select Committee and I should say the Bill as it

has emerged from the Select Committee should be considered much more satisfactory even by those hon. Members who previously expressed doubts regarding this measure.

There are only two clauses in this Bill. I shall just point out the changes made by the Select Committee. Clause 2 of this Bill seeks to define the term “railway stores” more clearly. With regard to clause 3 it was apprehended that it put a great burden on the accused because he had to prove that he came in possession of the article lawfully. Even that has been modified and a certain responsibility for proof has been thrown on the prosecution now. So, if the prosecution has to establish its case now it has to prove three definite things which were not in the Bill previously. Now, they must prove: (i) that the property is the property of the railway administration, (ii) that the accused was in possession of such property and (iii) that the property is reasonably suspected of being stolen or unlawfully obtained. If the prosecution proves these things then it is for the accused to prove that the article lawfully came in his possession. Unless he is able to prove that he suffers the consequences of the law. It would be noticed that some hon. Members—perhaps I should say that they have been unkind enough—have appended dissenting minutes. But, even they, I should point out, have admitted that the Select Committee has certainly improved upon the original Bill. Shri Nambiar and Shri K. K. Basu have said: “We recognise that substantial improvement has been made on the original Bill by the Select Committee.” Even my friend Shri Raghavachari says: “The modified definition is certainly an improvement.”

Shri Kamath (Hoshangabad): Why “even Shri Raghavachari”?

Sardar Hukam Singh (Kapurthala-Bhatinda): He had an objection in the first stage.

Shri Alagesan: I am prepared to omit the word “even” if my hon. friend takes exception to that.

Pandit Thakur Das Bhargava (Gurgaon): He said "even" and not "add".

Shri Alagesan: Now, I would certainly add that even Pandit Thakur Das Bhargava.....

Shri U. M. Trivedi (Chittoor): The hon. Minister could have used the word "even" for Pandit Thakur Das Bhargava.

Pandit Thakur Das Bhargava: And add for some other Member.

Shri Alagesan: Pandit Thakur Das Bhargava has said: "The Railway Stores (Unlawful Possession) Bill has, I recognise, emerged from the Select Committee in a greatly improved form." So, it will be seen that whatever objections were there in the minds of hon. Members have been sought to be removed and they should be satisfied with this.

One or two things have been said in the dissenting minutes. Shri Nambiar and Shri K. K. Basu have said that if the railway claims that the property belongs to the railway then the burden of proof shifts to the accused. It is not so. As I said the prosecution has not only to just claim the property so that the proof shifts to the accused, but it has also to prove that the property actually belongs to the railway administration and also prove several other things. It is not merely a claim that will suffice.

Again, the implications of section 410 I.P.C. are sought to be brought in by my friends Shri Raghavachari and Pandit Thakur Das Bhargava. This being a special measure I should not like to bind myself with it. Then the whole rationale behind this special law goes. I can as well go to the common law of the land to punish people who come to be in unlawful possession of railway property.

So, I would only point out that I am unable to accept the implications of the dissenting minutes or the various amendments that have sprung from the implications of the dissenting minutes.

Pandit Thakur Das Bhargava: Mr. Deputy-Speaker, I should think that it is not right on the part of the hon. Minister to dismiss all the amendments without hearing us. After all an hon. Minister cannot come to a definite view without hearing the Members. I think he is open to conviction.

Shri Alagesan: I am prepared to hear. I am only giving my first reaction. I do not set a limit to the hon. Member's persuasive capacity. It is almost limitless.

Shri Kamath: And you said you are open to conviction.

Shri Alagesan: But, I should like to remind the House....

Mr. Deputy-Speaker: Were all these amendments brought in at the Select Committee stage?

Shri Alagesan: I was going to tell you that. Many of these amendments have been put forward at the Select Committee stage and it was not possible for the Select Committee to accept them. But the hon. Members have every right to again present them here, appeal to the House to accept them and so on.

Pandit Thakur Das Bhargava: Some of them were raised by you, Sir, while sending the Bill to the Select Committee and many of them have urged at the time when the Bill was sent to the Select Committee. The Select Committee did not consider all these things.

Mr. Deputy-Speaker: I was not a member of the Select Committee.

Pandit Thakur Das Bhargava: You were present here in the House during the debate, you took part in the debate and you pointed out the defects at that time. These defects still continue.

Shri Alagesan: I would like to remind the hon. Members that I almost succeeded in convincing the House about the necessity of this measure as it was and the need for passing it. It was only in a moment of weakness or

[Shri Alagesan]

generosity—whatever it is—that I agreed to the motion for Select Committee moved by my hon. friend. But I am not sorry for that.

Sardar Hukam Singh: Members feel that you must show that kind of weakness again!

Shri Alagesan: I should not call it weakness. In fact, they are the strong points of democracy. They go to strengthen the democratic traditions. So, I am not sorry for what I have done but I should only appeal to the Members that having gone so far with them they would be a little kinder....

Shri Kamath: You want to retreat now?

Shri Alagesan:..and would reciprocate and do the same thing to me by approving it. I agreed to the reference to the Select Committee because I not only want the consent of the House in anything that I do but the willing consent of the House. Not only do I want the approval of the House but the hearty approval of the House for anything that I do, and it was for that reason that I agreed to go to the Select Committee and accept the modifications that the Select Committee thought fit to effect.

Mr. Deputy-Speaker: Motion moved:

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, passed by Rajya Sabha and as reported by the Select Committee, be taken into consideration".

Pandit Thakur Das Bhargava: I do not know whether I should thank the hon. Minister when he says that it was in a moment of weakness that he agreed to accept the motion for reference to the Select Committee. As a matter of fact, so far as the report of the Select Committee is concerned,

it also points out that some improvements have been made. It is not only that the dissenting Members who recognised this but the hon. Minister himself recognised this and he was pleased to give us a better definition of railway stores property. Therefore, he should not be sorry and should not say that it was in a moment of weakness that he did so. He is so sweet and reasonable that my difficulty is, I cannot find words to say anything to contradict him. When he said that it was in a moment of weakness, I took him at his word. But I think, at the same time, that it was a very good weakness and that he would show a similar weakness today also!

Shri Kamath: It is mutual!

“परस्परम् भावयंतः”

Pandit Thakur Das Bhargava: I think we will all reciprocate the desire that the Minister has just evinced. Now, when Shri Alagesan speaks in this House, we all forget that he is sitting there as a Minister. We do not see that he is a Minister sitting there and we are all humble Members. As a matter of fact we are all at one with him in saying that so far as the railways are concerned, it is the national property of the whole of India in every way and at the same time its property rights and possessing rights should be respected and may be protected. All the same, while saying all this, the hon. Minister has reminded us of democracy also. He has just told us that it was in a democratic spirit that he accepted the motion and improved the Bill. May I again very humbly remind him of that democracy? In our law there is no difference between the Government and an ordinary individual so far as civil litigation is concerned. Both go to the same courts, both apply in the same way and the rules of evidence and procedure are the same for both. Even in criminal law, Government is a party and accused is also a party and both are parties to the cases. The law of the land as propounded by Dicey holds good for every democracy

Bill

and for every democratic country and for us also. I would like, therefore, to say that so far as the property of the Government is concerned, it may be on the same basis as private property. If you cannot find a better law than it is today, for private property there is absolutely no reason for your swearing by democracy for making a distinction between Government and private property. Both must be protected and the laws must be the same and the accused must be punished in the same way.

Now, what do we do? Last time, our friends in this House criticised the Government when they wanted that sanction should be obtained in case a public servant is involved in the case. We know that in France, there is a different law in this matter, but in India, the law is the same. It is on this ground that I base my argument—on the basis of democracy—to which my friend has just referred. May I humbly point out that today, if a person commits theft of railway property, what is the position? He is in the same position as the thief who commits theft of private property. There is no difference whatsoever. Section 380 is the same. The punishment is the same. But in regard to this unlawful possession of railway stores, my friend wants to make a distinction. He wants that the punishments may be enhanced to five years and at the same time the presumptions in relation to the proof may be changed. So far as the punishment is concerned, in spite of his swearing by the democratic spirit, I can understand that punishment may be a bit enhanced, because, as a matter of fact, the railway property can be stolen in a number of ways. The railways extend to about 34,000 miles and their property is lying here, there and everywhere and lends itself of being easily stolen. Therefore, if the punishments are at a bit tightened, I have got no objection, though, at the same time, I do want that if the railway servants themselves, who ought to be the protectors of this property, commit the same offence the punishment should be greater in their case. Therefore, I

have submitted an amendment for the consideration of the hon. Minister that the possession of stolen property must come within the meaning of section 410 of the Indian Penal Code. I have also suggested four years for five years as regards punishment for ordinary thieves, five years for thieves who are railway servants. But, at the same time, I am loath to change the other aspect, namely, the manner of proof and other presumptions in regard to theft, whether it is railway property or ordinary property. Though it is true that in some respects the definition of railway property has been changed, the Bill has returned from the Select Committee in an improved form. To quote myself, "the amendment suggested by the Government has limited its wide scope and the potentiality of harassment to innocent persons has been to an extent minimised". This is true so far as it goes, but, at the same time, even now, if you kindly consider the provisions of the Bill, you will come to the conclusion that, as a matter of fact, it is still of such a wide scope that many innocent persons will be brought in and there will be great harassment to the accused.

I have submitted some suggestions also in my dissenting note to which, with your permission, I would like to refer. But before I do so, I would rather like to say a few words, even on the definition of railway property, for your consideration. In the first place, at the time when the Bill was referred to the Select Committee, I took objection to the words "or intended to be used". May I humbly ask you as to who is the person whose intention to use the property is to be found? "Intended to be used" is too wide. We know some items are bought by the railways and some things are manufactured by the railways today, and tomorrow, an expert says they are unusable. There are improvements made from day to day and therefore they go out of use. Then those properties are sold in public. They are not destroyed and then the public come to possess it. So, whose intention is to be looked to?

[Pandit Thakur Das Bhargava]

The intention at a particular period of time—the intention in 1955—may not be the same as the intention in 1957 or 1960. Therefore, these words are too vague. These words should not be allowed to remain here. They are not only vague but my humble submission is that they are not capable of being proved; they cannot be proved. In fact, the words in clause 2(a) are: “which is the property of any railway administration.” In a case of this nature, you have to save the railway from itself. The Government have taken too much burden upon themselves. It will be impossible to prove that it is railway property. To prove that it is railway property will be impossible. Therefore, my humble submission is that, though the hon. Minister has made such a provision, he has taken too much burden upon himself. In practice we will find it is difficult. When the accused persons are brought into the meshes of the law, he will not be able to discharge his burden ordinarily. It will be most difficult to discharge the burden of proof. He has made it impossible for himself or for the prosecution to prove the offence against the accused. This is the result of the change in the definition. As a matter of fact, the whole thing is such that it could not be improved. The railways have imposed too much burden upon themselves and they will never be able to discharge it. Mr. Deputy-Speaker, you really struck the right point when we were discussing this and pointed out to the hon. Minister at that time that it might have been the property of the railways to start with 50 years before, but the railways must prove that at the time the stolen property was found in the possession of another man or sometime near that, it was the property of the railways. If it cannot be proved, that the railways were in possession of that property up to that time, it is impossible to secure a conviction. The objection that you yourself had pointed out is of such vital importance to this case that on this point every case shall be shattered. After

all, theft or receiving or possession of stolen property knowing it to be stolen is an offence under the ordinary law. But here possession itself becomes an offence. Unless the possession of the railways is proved up to the time that it was stolen, it is futile for the railways to say that “we shall prove that it is our property.” What is the use of proving that it was the property of the railways ten years ago?

Mr. Deputy-Speaker: If at any time within a period of 5 years it has been proved that the property has been in the possession of the railways, will that be a reasonable case?

Pandit Thakur Das Bhargava: Let the time limit be 2 years, 3 years or even 6 years, I do not mind. But the reality is this. If the property was in the possession of the railways say 50 years ago, and if the railways still say “we do not know when the theft took place; but it is our property” how can they prove this offence? They cannot prove it. Therefore, your objection and my humble objection do remain, namely, that it is impossible to prove these things.

Mr. Deputy-Speaker: It cannot become the property of some other man because the theft took place 100 years ago; but still, unless there is a reasonable time-limit, it may be rather difficult. The time-limit may be, say, 5 or 6 years. For instance, in income-tax law, they say “if there is an evasion for 8 years...” etc.

Shri U. M. Trivedi: There is no limitation in criminal laws. Crime knows no limitation, except under the provisions of the mercantile law.

Pandit Thakur Das Bhargava: There is no limitation for bringing a case; that is all. But, at the same time, if you say that 100 years ago, it was the property of the railways, will that do? According to section 110 of the Indian Evidence Act, a person in possession is deemed to be the owner of it. There is a presumption that good title is referable to possession.

Suppose a person is in possession of any railway property. The presumption of law is that he is the owner of it. It might have been the railway's property 100 years back; but today I am in possession of it; that means I am the owner of that property under section 110. You know that the railways auction their property, and it has come to my possession. There are a hundred and one ways of possessing railway property. Under any law, can possession by itself be an offence? It is only when there is a certainty that it is stolen property or when there is a reason to believe that it is stolen property, that it will give rise to a presumption. It may be that the person is in possession of the property in the meaning of section 411. But what does this section say? It merely says "possession"; not even "recent possession". I draw the attention of my lawyer friends in this House to section 114, illustration (a), according to which, unless the possession is recent, no presumption whatsoever arises. All possession is deemed to be lawful, unless it is recent possession of stolen property. First of all, it must be proved that it is stolen property. According to section 410, if it is a property in respect of which theft, robbery, dacoity, crime, breach of trust or misappropriation has taken place, then the question arises about its possession. So, if the possession is recent, then the courts can raise a presumption under the particular circumstances of the case that he may be regarded as a person who is a thief or receiver of stolen property. What happens in the present case? Possession by itself is made an offence. This is an extraordinary piece of legislation. In 1944, the circumstances were different; it was an emergency legislation. But today they want to change the law of the land and at the same time they want to make it obligatory upon the courts; they really want to change the illustration of section 114 (a). It is quite wrong in principle. According to that, the court has got the discretion to raise a presumption or not to raise a presumption, according to the

particular circumstances of the case. But here they make it obligatory. Not only that; I can understand that there will be some sense if the word "recent" is there. But it is missing. Therefore, it means that when possession has taken place at howsoever distant a time, presumption becomes compulsory.

I find every word here is objectionable. For instance, the words are "reasonably suspected of being stolen or unlawfully obtained". I would ask the hon. Minister to be kind enough to explain whether "reasonably suspected" applies to both "stolen" and "unlawfully obtained", and whether the person in possession reasonably suspects that it is stolen property of which he has come into possession or whether it is the court's suspicion. Whose suspicion is this?

Shri S. V. Ramaswamy (Salem):
The prosecution is there to...

Pandit Thakur Das Bhargava: I am sorry the hon. Member has missed the point. I am humbly asking whether the words "reasonably suspected" refer to the accused person or whether they refer to the article. If it refers to the article—as it did in the original Bill—the courts must come to the conclusion that the property can be treated as reasonably suspected stolen property. The article may be reasonably suspected of being stolen, but it might not have been stolen; the property may be reasonably suspected of being unlawfully obtained; but it might not have been unlawfully obtained. The murder may not be committed; but the accused may be hanged. That is what it comes to. Unless and until it is proved, can any property be called stolen property? Reasonably suspected of being stolen is quite different from being stolen. If it is only reasonably suspected, then the position is absolutely indefensible. If it refers to the article, then, though it might not have been stolen in fact, the position is absolutely indefensible. I under-

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stand the Select Committee in its wisdom wanted to substitute these words "reasonably suspected" to correspond with the words in section 411 and impart the element of *mens rea*.

In section 411, I.P.C. the wording is: "Whoever dishonestly....."—the word dishonestly is not here—whenever dishonestly receives or retains any stolen property knowing or having reason to believe the same to be stolen. This is the *mens rea* for the case. Unless the man knows that it is stolen property which is in his possession, unless he has reason to believe that it is stolen property, he is not guilty. If a person honestly comes by certain property, if he does not believe that it is stolen property, there is no offence whatsoever. These words 'reasonably suspected' can refer to the accused. When he is in possession, for that possession to be such as would bring him within the clutches of the law, must be of an article reasonably suspected to be stolen property. It must be an article which is being reasonably suspected as stolen property. If that is the meaning, I can understand that though the law is not clear, it is not as good as section 411. The words there are knowledge, etc. Knowledge is quite different from reasonable suspicion. The other wording is, having reason to believe that it is stolen property. Believe is also a much stronger word than suspicion. There is a world of difference between believe and suspicion. Therefore, there is absolutely no reason why we should substitute the words 'knowing or having reason to believe' by the words 'reasonably suspected'. My difficulty is, I am fighting with a phantom. According to the original Bill, it was for the courts to come to the conclusion whether the property is stolen or not. I can understand, and it must be the experience of every person, in courts—though it happens very rarely—that a person supposed to be dead comes into the court alive after the accused has been ordered to be hung. Therefore, in a case in which

theft is not proved, it is not only idle but it is absolutely wrong in principle to hold that the court can come to the conclusion that the property was reasonably suspected of being stolen though as a matter of fact, proof of theft is being dispensed with. Therefore, my submission is, if these words refer to the person, these words should be substituted by, 'knows or having reason to believe'. If these words refer to the article, there is every reason to change these words. Instead of proving theft, we only say there is reasonable suspicion of the property being stolen property. In both these ways, it is wrong and these words should not be kept here.

May I refer to article 20 of the Constitution which says....

Mr. Deputy-Speaker: May I submit for the consideration of the hon. Member, all this was said and he had an opportunity to speak about these matters in the Select Committee also. I am not preventing him from saying them again to convert this House which is already thin.

Shri Kamath: Lunch thinness.

Mr. Deputy-Speaker: If the hon. member intends moving any amendment, he may say something more there. I leave it to him. If he converts the Minister, he converts, otherwise, not.

Pandit Thakur Das Bhargava: Am I to understand that only such points as have been referred to in the Select Committee can be referred to again?

Shri Kamath: The Minister himself said that he is amenable to conversion.

Pandit Thakur Das Bhargava: Is there any rule....

Mr. Deputy-Speaker: There is no rule at all. All these points were urged before reference to the Select Committee. I agree that this House

is not committed to the principle of this Bill because it has emanated from the Rajya Sabha any more than a motion for reference to a Joint Committee. We are not in any way committed and the whole thing can be argued again. The same points have been argued at length at an earlier stage. I am leaving it to the hon. Member to choose the more important points. If he considers all the points important, he can do so. I do not want to stand in the way. But, if it is a point which has already been considered, some consideration may be given to that also. That is all.

Pandit Thakur Das Bhargava: In fact, I am not quoting those authorities which I quoted then. I have got them before me. I do not want to take the time of the House on them. At the same time, I am raising some new points which, though I raised them in the Select Committee, did not find favour with them or were not considered by the Select Committee. At the same time, I submit that the fact that the Rajya Sabha has passed this Bill is absolutely no reason why I should consider that what the Rajya Sabha has done is right. This is an independent House.

Mr. Deputy-Speaker: This House is not even committed to the principle of the Bill. This is a matter of first impression—not first impression—we have thought about it. This House has to decide upon the question whether it will adopt or not the principle of the Bill. The hon. Member may go on.

Pandit Thakur Das Bhargava: Even in regard to the Select Committee, may I point out, 20 Members were appointed. On the last occasion, 7 Members were present. Even on the first occasion when there was a general discussion 12 Members were present. When these changes were made, ten Members were present. Five out of those Members have given their minutes of dissent. This is what has happened in the Select Committee. I do not want to take my stand on this. I beg to submit that if I am

right in my principles, I have full faith in the hon. Minister. Even in the Select Committee he was impressed by the arguments. We have found that he was so good as to change the definition and limit the scope of the definition also. I am convinced that he is amenable to conversion. Therefore, I would beg of you to allow me to submit that this is a very important point which goes to the root of the case. This is an offence against possession and possession is taboo in this Bill on the definition of 'Railway stores.'

Mr. Deputy-Speaker: I am also one among many. Possibly I have no vote unless there is a tie. These are the difficulties.

Pandit Thakur Das Bhargava: We have votes; I know the worth of the vote. You are sitting in the Chair there and you can direct the discussion. Any suggestion from you must be accepted by the Government. Even if they do not accept, it carries great weight at least with us. Perhaps you do not know how weighty your opinions we take to be. I have seen in many discussions, in the case of the Criminal Procedure Code and on many other occasions, a word from you has turned the fate of the Bill....

Shri Kamath: Not yesterday.

Pandit Thakur Das Bhargava: I say, in our favour. I did not mean yesterday. Yesterday also, you do not remember. I would have gone to the other side if the hon. Deputy-Speaker did not say the last words. That explanation was accepted which the Deputy-Speaker suggested. Many of us would not have voted in favour of the Government if the other view was not put forward by the Deputy-Speaker as the right view. Any word or suggestion from you is of very great consequence and very great benefit to us.

I was submitting about article 20 of the Constitution. Suppose we pass this Bill, and the law is changed. Will it refer to possessions which

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have already been transferred? What was not an offence will become an offence by force of this Bill. Will any cases be there in which conviction will take place in respect of possession which was transferred before this Act came into force? This is a very important question. According to article 20 of the Constitution, such offences as involve transfer of possession before we pass this Bill should not come within the purview of this Bill. If that is so, it is all the more necessary that we make a declaration that only such possession will be the subject matter of prosecutions, which take place after this law has come into force. Otherwise, we will be punishing people in respect of offences which were not offences at the time when the possession was transferred.

Mr. Deputy-Speaker: Is this law creating a new offence?

Pandit Thakur Das Bhargava: Yes, a new offence. Previously there was no offence.

Mr. Deputy-Speaker: See clause 3. It says:

"If any person is found or proved to have been in possession of any article of railway stores...."

The words in the clause are "reasonably suspected of being stolen or unlawfully obtained". Instead of the words "reasonably suspected of being stolen", if it were only "stolen" it would not be a new offence. If the words are "If any person is found, or is proved to have been, in possession of any article of railway stores stolen" it will be an old offence, or existing offence.

Pandit Thakur Das Bhargava: There was previously no law, no such offence as possession of stolen property.

Mr. Deputy-Speaker: "Reasonably suspected of being stolen"—do these words make a difference?

Pandit Thakur Das Bhargava: They make a world of difference.

Mr. Deputy-Speaker: "Or unlawfully obtained"—is that not even now an offence?

Pandit Thakur Das Bhargava: What is "unlawfully obtained"? The Indian Penal Code does not know any unlawful obtaining. It knows extortion, robbery, dacoity, cheating, misappropriation and theft. It does not know what is unlawful obtaining. There may be some other way of unlawfully obtaining. And moreover, as I have just now pointed out with your permission, there is no offence like possession of stolen property in the Indian Penal Code. It is either receiving or retaining stolen property knowing it to be stolen.

Mr. Deputy-Speaker: The original taking may not be an offence, but continued possession after this Act is passed will be an offence.

Pandit Thakur Das Bhargava: Continued possession of even stolen property is not an offence. It is only an offence when it is known by the possessor that it is stolen property. Otherwise, it is no offence. A person may not know. Supposing Shri Kamath in joke puts a pen or a knife belonging to the railway in my pocket. I have got no knowledge that it is stolen. Now mere possession is an offence.

Shri Kamath: Only a knife?

Pandit Thakur Das Bhargava: A knife or anything else.

Mr. Deputy-Speaker: Possession of stolen property knowingly, that is section 411.

Pandit Thakur Das Bhargava: Yes. Here, there is no "knowingly". This is a new offence. Even possession is not an offence. If a person receives or retains, it is quite different. I may keep any amount of stolen property, it is not an offence.

Mr. Deputy-Speaker: We are not now called upon to decide on article 20. When a man is charged with a new offence, he will invoke article 20.

Pandit Thakur Das Bhargava: This should apply only to those who commit the offence after the Act comes into force, not otherwise. I have given an amendment to this effect.

Perhaps it may be thrust on our face again as it was done in the Select Committee that there is a law in Great Britain which is analogous it is said. It was claimed in the Select Committee that when such a law is obtaining in England, why should we not protect ourselves by enacting such a law? If you kindly go through that law, you will find that its very basis is different. There are certain properties about which it can be predicted that they belong to the railways or public stores and none else. For instance, copper wires. Last time we passed the Telegraph Wires (Unlawful Possession) Bill and I supported it. If the hon. Minister could speak of any particular property that it belongs to the railways and nobody else—for instance, some property manufactured in a factory owned by the railways, or for the railways by some factory which only does work for the railways and brands it—I would have no objection, because then I would be on safe ground. It could not pass to private persons unless it is stolen. Then, they will not be able to auction it or sell it or do anything with it. That is the basis of the Act passed in Great Britain. The property has got a particular trade mark. It bears a certain indication that it is railway property. As it will be said against us that we passed the Telegraph Wires (Unlawful Possession) Act, I am replying in advance.

In fact, I am as anxious as the Railway Ministry that railway property should not be stolen. It is national property. It is wrong to say to us that we want that this law may be evaded. I want to make it as certain and as tight as possible. But, at the same time, I do not want any person who comes by any property in a lawful manner, to come in the clutches of law.

The Railways have got Rs. 800 crores worth of property including sugar, grain, bulbs, sleepers—in fact, every kind of property under the heavens. And it has got no mark. It is easily sold.

Shri U. M. Trivedi: May I ask my hon. friend to say how such property like sugar, grain etc., that he enumerated are used in construction, operation or maintenance? It is only with such property that we are concerned.

Pandit Thakur Das Bhargava: May I know what is the railway? Is it suggested that when the railway has got sugar and grain and gives it to its servants, according to law it is not used for construction? Everything is used in construction. It does not mean that only sleepers or rails will be there. You will remember, Sir, there was a committee with Shri Mohanlal as Chairman, which stopped the selling of sugar to railway servants. But even today, the railways buy all these things. There are benches and chairs in the railway schools. Can they not be said to be used in the construction of railways?

Mr. Deputy-Speaker: If it is railway, it is railway line.

Pandit Thakur Das Bhargava: Many things are used in our railways—bulbs, bolts, nuts, fittings.

Mr. Deputy-Speaker: They are all used, but sugar and coffee and tea are not for construction purposes.

Shri B. S. Murthy (Eluru): For the persons who construct.

Pandit Thakur Das Bhargava: Construction and operation. What is the operation of a railway? In the railways, they have got their own catering arrangements. Is that not an operation and maintenance of the railway. We can say edible articles may be taken away. I do not object to that limited construction being put. All the same, there are a hundred and one articles which they them-

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selves buy and sell in the market. What is the guarantee that those things will not be purchased by the ordinary people and that they will not be hauled up? Therefore, my submission is that you should restrict the scope of it, and then if you make it more stringent than the ordinary law, I can understand.

Then, is it an offence against railway property? Theft etc., is an offence against possession, and I have only indicated that you put in the words "which is the property of any railway administration and is possessed by it". It is not against the proprietary rights of the railway that the offence is committed. It is only against the possessory rights. The person who keeps stolen railway property is not a person who denies the right of the railway to certain property. I do not understand why the railway wants to make possession punishable with five years and theft itself with only three years, so that the person committing theft is in a better position than the person who is only in possession of it. Both of them should be on the same level so far as this Bill is concerned.

May I then humbly ask the hon. Minister to kindly enlighten the House about the full implication and the meaning of the words "unlawfully obtained". We know of six offences which are in section 410. These are the very words in the amendment which I have taken from section 410 of the Indian Penal Code. Apart from that, what are the other ways in which property can be said to be unlawfully obtained? If these are the only six ways known to law, why not make it definite, so that we understand where we are? What is the use of having vague and meaningless expressions like "unlawfully obtained". It is much better to revert to the wording of section 410 which has been the subject of many legal pronouncements and whose meaning we know definitely.

With your permission I would like to lay special emphasis on at least two particular amendments of mine. Whatever my hon. friend Shri Alagesan may do with the other amendments, I would point out that two of the amendments at least are too important to be missed by him. In the first place, unless the words 'recent possession' are there I would not be satisfied, and I would kindly ask every Member to consider this aspect rather carefully.

In regard to recent possession, there have been many rulings already. I do not want to quote all the rulings, but at the same time, I want to read four or five lines from *The Law of Evidence* where this has been adverted to, and where the meaning has been made more than clear, and some instances also have been given. For instance, an example is given of a person who is found in possession one month after the theft of a watch; in that case, the court comes to the conclusion that there is no presumption at all against the accused.

In the case of cattle, again, if cattle is stolen and a person is found in possession thereof after six months, then there is no presumption whatsoever against him under section 114 of the Indian Evidence Act. In this way there may be many stolen properties which pass off in the market in course of time, and the articles may pass through so many hands in the ordinary course of human conduct and business; in respect of these articles, there is no presumption whatsoever attaching to the person. With your permission, I want to emphasise this particular point. I am reading from page 1275 of *The Law of Evidence* by Shri N. D. Basu:

"Where a bullock which has been stolen was sold by the accused in another place about two or three months afterwards and though the Magistrate found that there was no direct evidence as to theft, he convicted the accused by invoking the pre-

sumption under illustration (a), held that in the absence of evidence that the accused committed the theft the conviction could not be upheld."

Again, on page 1276, we find:

"No fixed time can be laid down to determine whether possession of articles is recent or otherwise. But every case must be judged on its own facts. If a few stolen articles are found in possession of a person under circumstances which may give rise to the probability of his coming by them honestly sometime after the theft, the presumption under the law might not arise against him."

On page 1274, we have an instance of an axe and a saw:

"An axe and a saw were stolen on March 1st. On June 1st, they were found in A's possession. This raises no presumption against A."

Similarly, the tools of the railways, which are used by the labourers can be stolen away, and a person can be found in possession of them. In fact, if the words 'unlawfully obtained' are put there, I am afraid no railway officer will be safe, and many persons will be victimised. Files and many other things go to the officers' residences; they are not unlawfully obtained, and no theft is committed, but in the ordinary course of business, these things take place, and if these words are there, all those officers could be punished. Even if a labourer takes the tools that he is using, to his house, to be brought the next day, he can be proceeded against under this provision.

Mr. Deputy-Speaker: Does the hon. Member mean that even in such cases the administration will launch prosecution? On the other hand, I think they usually err on the other side.

Pandit Thakur Das Bhargava: After all, when we are making a law, we must make it fool-proof and knave-proof. As long as our present Ministers are there, I do not think these things will happen, and I have too much faith in them to believe that these things will happen with their knowledge. But they are not everywhere in the railways. There are petty officers, and they can harass the people. In fact, the complaint made by Shri Nambiar last time was that generally they harass the people who belong to the other parties. That was the complaint that was voiced against the railway administration.

Mr. Deputy-Speaker: Is there no section in the Indian Penal Code, to the effect that for civil offences, the magistrate need not take cognisance and he can simply throw it out? Can he not do so?

Pandit Thakur Das Bhargava: It is quite probable that he may not take cognisance, but there is a probability that he may take cognisance; and I want that innocent persons should be protected against that possibility, and should not be punished unless the offences have been proved to have been committed by them. My point is that 'unlawfully obtaining' has no meaning in law. That is why I want that the words 'recent possession' should be there.

Mr. Deputy-Speaker: Is there not too much emphasis that even 99 guilty persons may escape but one innocent man ought not to be punished, and so on?

Pandit Thakur Das Bhargava: If one man also escapes, so much the better. But what is the sense in keeping these words? If the hon. Minister says that this is all right, and that this is what these words mean, then I would not object to those words. But why should they not make the provision here in accordance with the Indian Penal Code, which is the general law of the land? Why should you have the words "unlawfully obtained" in this

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clause? Why should you not have the words 'recent possession' which has stood the test of time for the last sixty years and more?

Mr. Deputy-Speaker: The difficulties of the railways are also there. Everywhere things are not housed properly. In every station, things are stolen away, because they cannot be housed in any particular place. These are the difficulties that they are facing. So, one would expect some constructive suggestion as to how to safeguard these things. What happens now is that a brand new first class coach comes from the Hindustan Aircraft Factory, but in the wayside, some people get into the railway carriage, and remove a handle, or a bulb, or the oil cloth and so on. There is absolutely nothing in the Indian Penal Code or the Code of Criminal Procedure to counteract these things. On the other hand, they seem to favour more the man who steals rather than the honest man who loses his property. I am not making any general remarks, but only I...

Pandit Thakur Das Bhargava: We have just passed the Manipur Courts Bill, and if on the lines of that we do away with the Indian Penal Code and the Code of Criminal Procedure altogether, as your opinion seems to be, then I shall be quite happy, and you can take oral evidence, without writing anything, and the person can be punished. I could understand that sort of thing. But if you want to keep the ordinary law of the land for all other articles, then what is the sense in having these words in this Bill?

Mr. Deputy-Speaker: Can these articles not be stolen and...

Pandit Thakur Das Bhargava: For instance, a bulb worth eight annas may be stolen, and it may be said that since such and such a person is in possession of a bulb, the case is proved against him.

Mr. Deputy-Speaker: But in how many cases does that kind of thing happen? It happens only in a very few cases. On the other hand, I think more persons escape. The higher officer gives the benefit of doubt to the person, and the person escapes. This is what happens in 99 per cent of the cases.

Pandit Thakur Das Bhargava: When the Code of Criminal Procedure (Amendment) Bill was being discussed, the hon. Minister Dr. Katju was pleased to say that in about 87 per cent of murder cases, the accused were acquitted. So, I can see the force of your argument. In fact, I myself want that there should be stricter punishment in cases of this nature. But I do not want that we should dispense with proof or presumptions etc., for these things have been proved by a long course of human conduct and human experience to be the true bulwarks of innocent persons. I quite see your criticism. At the same time I am very sorry that taking things as they are I cannot agree to a provision of this nature. For all these years, this law was not there, and the railways have not all been looted away; on the other hand, they are still subsisting, and in fact they are making good profits, and we are hearing every year as to what they are doing. Further, there is no evidence that crime has increased very much. Only last time, the figures were given to us, and they are not at all alarming.

Mr. Deputy-Speaker: In spite of that, this is what is happening....

Pandit Thakur Das Bhargava: But may I ask this? What is happening in the land? How many thefts are taking place, and how much of robbery is taking place? But is the administration caring a bit for those things? But in regard to Government property we saw last time that evictors were being made summarily, whereas for private properties, the case goes on for three years.

and more, and yet the case is not decided. In this way why should you make a distinction between Government property and private property? I want there should be no distinction between private property and railway property or Government property. So far as offences are concerned, the same principle should apply in respect of both. The punishment may be more in the case of Government property, but at the same time, the manner of proof of an offence should not change the offence. At present, we find that there is one kind of offence for railway property, and quite another kind of offence for all the rest of Government property. Tomorrow, Sardar Swaran Singh may come and say, so much of building material is lying there, so why not make the law stricter with regard to that. If that happens, then will you have different laws for different Government properties? What is the point in having selected the railway property only for these purposes? My humble submission is that it is entirely wrong.

Shri Alagesan: All these points were met very effectively last time. So, I do not want to retrace the whole ground now.

Pandit Thakur Das Bhargava: I do not want to take my stand in the way in which my hon. friend has done. As per the advice given by you, I did not want to traverse that ground, but now that the objection has come from the hon. Minister I take my stand on those points. It is entirely wrong for the hon. Minister to come and say, all these points have been urged already, and therefore they should not be urged now, and if they are urged, he refuses to consider them; it is absolutely wrong in principle to say so. What is the use of our being told at this time when the law is being changed, and it is being discussed, that these points were raised some time back? Has the House declared its opinion in respect of these matters? It has not, for no vote was

taken on the last occasion about these points. Further, the last word does not remain with the hon. Minister, but it rests with the House. So, I am perfectly entitled to urge every possible point which I urged before, and which I am urging now. But since you have advised me, I did not want to take up those points.

Mr. Deputy-Speaker: This is a case of a departure from the ordinary rule of presumption that everybody shall be presumed to be innocent until and unless the guilt is established. Normally, he need not even open his mouth. In a warrant case, he may sit *chup-chap* and throw the entire burden on the prosecution and tear the evidence of the witness to pieces. He may keep quiet in the first cross-examination, in the second cross-examination and so on—I think one of the cross-examinations has now been done away with recently; and he need not open his mouth at all. We have read several cases like this. For instance, there was a young fellow who stole a pig. He killed that pig, and had the meat or pork or whatever it is. Half of it he had under his arm-pit, but then he was caught red-handed. He engaged a lawyer, and had the case argued. Ultimately, he was acquitted. As soon as he was acquitted, he came out and asked the lawyer 'What shall I do with this meat?' The pork was there under his arm-pit, and yet nobody could catch hold of him. These are some of the instances.

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But all the same, with respect to every kind of property, they want to take precautions. In the case of the railways, the property is not confined within the four walls of a house; it is strewn all over the sub-continent. If in spite of want of care some children live for a hundred years, is it a ground for not taking care? Of course, an innocent man ought not to be punished. All reasonable precautions should be

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there. The hon. Minister and others who are in charge of law and other matters should not only protect those people who are innocent, but also take care that general demoralisation does not set in in the country by which every scoundrel escapes and there is no justice for any honest man who loses his property. The Government cannot adopt an attitude of 'Chhod dho' and say 'Let the fellow go away'; in that case, nobody will have confidence in the maintenance of law and order. We are here not in the course of dispensing justice but trying to make the law, and therefore, the law must be made as fool-proof as possible. God himself has not made this world fool-proof; there are a number of fools. We are trying to do the best in the circumstances. Both these points of view must be borne in mind. That is my view. Unfortunately, I have no right to talk; yet I am talking. I am trying under the rules to elucidate for the benefit of hon. Members here the position. Ultimately, before I put the motion to the vote of the House, I can say what I like. Under the modified rules, I am trying to interpret both sides of the case, and elucidate the position.

Pandit Thakur Das Bhargava: You are defending yourself without any accusation against yourself. I congratulate you on the manner in which you lead us.

Mr. Deputy-Speaker: I am finding an enormity of offences all over the country. This property seems to be no man's property. Whenever a property is nationalised, it is no man's property. Nobody ever takes care of it. The man who is in charge of the electric lights puts a bulb in the coach. The next day his younger brother steals it away, and then opens a shop close by. It is impossible to find out whether this bulb was of the railway or not. Once again it comes back into the railway; then again it goes away. God alone knows how these things change hands from time to time and God alone must come and

investigate these cases! Of course, the hon. Minister and other persons in charge of the Bill do not want to get hold of an innocent man. Of course, there is a danger also in enthusiasm. There may be some mistakes committed. It is the duty of this House to safeguard the innocent people and likewise also infuse a spirit of trust and confidence in the maintenance of law and order by the administration.

If people feel that every thief, by the assistance of a clever lawyer or by the weakness of the law, escapes, I am afraid this administration will go either to the eastern side of the Bay of Bengal or the western side of the Arabian Sea. Therefore, legislators may have both these viewpoints before them, and not merely an abstract principle of law enunciated by a foreign country not related to our present position and conditions in this society. The rule of law may be good. The law of the jungle is different from the highly civilised law of *Devaloka*. But in between, there are *Matsyas* also, good and bad fellows. I have spoken enough, as I would speak on the floor of the House.

Pandit Thakur Das Bhargava: I thank you for the exposition of law that you have been pleased to place before us. I am myself impressed with that. This is not the first time that I have heard you saying this. What you have been pleased to say has entered our soul and we all appreciate it. At the same time.....

Mr. Deputy-Speaker: We are gradually missing hold of the real thing. The man who is wronged goes and complains to the police inspector. An accusation is made. The police inspector does not care, the constable does not care. The distiller goes on with the best of intentions. The poor man is asked not to drink. But the rich man goes on and sends the poor man to jail. He behaves as an honest man and makes tons of money. He undertakes to pay for the maintenance of the poor man's wife for six months. He comes away. Any

man who is interested in the administration of law—particularly those concerned with the legislation—must be anxious to see as to how this kind of wretched mal-administration can be got rid of. Therefore, if there is erring on this side, sometimes an honest legislator may feel, what is the harm in laying down such a law.....

Shri Kamath: Socialistic pattern, Sir.

Mr. Deputy-Speaker: I am sorry I interrupted the hon. Member like this.

Pandit Thakur Das Bhargava: I was saying that whatever you have been pleased to say must appeal to every Member of this House. At the same time, it appeals to me much more, as I know how you feel in the matter. But in this matter, it is not my effort to make the laws stricter than it usually is so far as thefts are concerned. You have been pleased to refer to corrupt police officials etc. and the fact of innocent people being victimised. May I humbly point out to you that this Bill only sets back the clock of law in this way that the entire burden is changed. You have been pleased to refer to cross-examination—first time, second time and so on—warrant cases etc. But here the presumption of innocence is dislodged. What is this law? It is a travesty of law to cast the burden of proof on the accused. Here the duty is cast on the accused to prove his innocence. This is not an ordinary law. Even in ordinary laws, you will find that the burden of proof is cast on the accused only in certain ways. The possession must be recent. Here they want to say—possession at any time. Even if the grandfather got the property and the grandson is found in possession of it, he will be held liable. Is this not a travesty of law? What I am submitting is only that you should bring this law in line with the present law of the land.

If you do so, I do not know whether those effects will follow or not, but it will be clear that the honest man whom you are anxious to protect will not be put within the clutches of the law unneces-

sarily because the burden will be upon you to prove. This possession may be absolutely honest. The theft may not have taken place. Still he has to account for it. Have you heard a thing like that? Theft does not take place; even then the man is presumed to be guilty of being in possession of stolen goods. This is the law which we are countenancing. According to the previous law, it was for the court to find out whether it is proved that the thing which is the subject matter of the theft is reasonably suspected of being stolen. Here, theft may not have taken place, and yet the man may be convicted—I for one cannot possibly defend this law; I cannot be a party to this law.

Mr. Deputy-Speaker: As I understand it, there must be theft established. The thing may have been stolen by somebody else. But because this man is in possession, the presumption *prima facie* is that he is the thief. Even under section 114 of the Evidence Act, whoever is in possession of stolen property is presumed to be the thief, until he has shown to the contrary. They must establish the theft.

Pandit Thakur Das Bhargava: I am very glad that I have got your support for my point of view, that the theft must be established. I hope every Member in this House will agree with me that unless theft is established, the man cannot be proceeded against.

I only want to say one word more. You were pleased to refer to section 114 of the Evidence Act. I will read out the section, which will show what makes the difference.

Mr. Deputy-Speaker: Knowingly.

Pandit Thakur Das Bhargava: It says:

“The 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”.

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If you kindly enact this, I have got nothing to say; I will not repent for having wasted so much time of the House, if this is enacted. But they do nothing of the kind. Whatever has fallen from you, should have fallen from the hon. Minister.

Mr. Deputy-Speaker: He may wait and see what happens when we come to the amendments.

Pandit Thakur Das Bhargava: All right. But I would only beg of the Minister to kindly accept, if not my reasoning, at least the reasoning of a man whom we have exalted to the Chair.

Shri U. M. Trivedi: Very few of us have the legal acumen and knowledge of criminal law which Pandit Thakur Dasji possesses. But, unfortunately, it appears today that in his zeal to protect the law of the land, he has forgotten the evils that are in existence. Day after day, with all the watchfulness or the want of watchfulness, the carefulness or the carelessness of the railway authorities, thefts do take place. A brand new coach comes into the yard. Before it is even commissioned, before even it is put into use things are stolen, things which seem to us rather odd, which are useless for ordinary purposes and when no ordinary market prevails for those things.

I can give you an illustration, the theft of railway bulbs at Ratlam station. Ordinarily, if you place an order for bulbs of 12 watts, they are not available in the market unless you go to particular sea-port stations or unless they have been indented for by the railway. Ratlam is not a manufacturing station; it manufactures nothing.

Mr. Deputy-Speaker: Are there not marks, or names of the railways on these things?

Shri U. M. Trivedi: Sometimes there are and sometimes not; mostly not. You place an order today; even if

there are no goods today you will get them tomorrow morning. He will arrange to get them stolen from the railway yards and in any number; this is what is usually happening. I know of this place as I live nearby.

Mr. Deputy-Speaker: Railways are in our places also.

Shri U. M. Trivedi: Yes, Sir. So, this law is made for those people who are in the habit of stealing railway goods and as these things are not manufactured in that place or are not easily available in that place, the suspicion would be that these are stolen property. These persons are greater offenders than the silly, foolish man who steals one or two bulbs. These may be sentenced to 3 years' imprisonment—but these fence must get even more than 5 years, and if this Abolition of Whipping Act had not been passed I would say they should be whipped (*An hon. Member:* Publicly), yes, publicly, to bring home to them that they are not only causing loss to the nation but creating difficulties for us, for the passengers who want to travel.

Mr. Deputy-Speaker: They make children thieves and when the boys are caught hold of, they pay some money to the parents and after three months the boys come out and start thieving again.

Shri U. M. Trivedi: For that reason, the law ought to be more stringent. I am not yet fully satisfied that the stringency is fully established here. The law during the Defence of India Act period was that mere possession itself was an offence. Here you are becoming a little more liberal with thieves. We will have to establish that it is the property of the railway administration; we will have further to establish that it has been used or intended to be used in the construction or maintenance of a railway. Supposing there is a thing which was formerly made use of in the railways and which is now obsolete or out of use, even if it is stolen you will not be able to do anything under this law.

Mr. Deputy-Speaker: Not under the ordinary law.

Shri U. M. Trivedi: Under the ordinary law, the difficulties are very many and lawyers know that under the ordinary law you will not be able even to catch them. Even under this law, you will not be able to touch them. What happens is this. Every department of the railway—excuse me for saying this—is full of thieves. Whenever we were young we thought that only those persons who cannot get any job anywhere else, illiterate and uneducated persons got railway employment. But, today, graduates, University graduates are admitted to railway service and they happen to be greater rogues than those whom we used to recruit during the past.

Shri Kamath: Some of them.

Shri U. M. Trivedi: I do not say that every one of them is so. If that were so, the world will not move. There are always some honest and over-honest people. But, this is what happens and the whole reason behind this and the whole problem arises because we have somehow or other eschewed religious education from our curriculum. We say, no religion as we are secular. True, we are secular but here the child is not afraid of doing anything sinful. Teach him some religion, some fundamentals of religion, of any religion so that he may be able to realise that what he is doing is a sin and a wrong. Because he does not learn that he is not afraid of doing anything which is wrong and carries on with it. Therefore, it is most essential that such a stringent law should be passed.

I do not see the importance of the arguments of Pandit Thakur Dasji. It is quite true that section 110 of the Evidence Act lays down one presumption of law and, as has been rightly pointed out by you, Sir, that section 114 lays down another presumption of law. But, here there is no question of presumption. We are making a very positive law about it. We say in clause 3—

“If any person is found, or is proved to have been in possession of any article of railway stores reasonably suspected....”.

and ‘railway stores’ has been defined in clause 2,

“...of being stolen or unlawfully obtained....”.

Now, this ‘unlawfully obtained’ is a very wide expression, and I should say that it has been wisely used. What happens is this. It is not that railway servants are going to be caught for taking files home and writing notes and preparing things. This is not the thing for which the law is being made. The law is to be applied only for such railway property as is used for the construction, operation or maintenance of a railway. A paper file or a note is not meant for the maintenance, operation or construction of a railway. What is sought to be protected is this.

Say you want to build a house. You are a railway employee. You are a Permanent Way Inspector. You have got so many best of rails under the imprest stock already issued. You take away 2 rails and have them built in.

Shri T. B. Vittal Rao (Khammam): Cement.

Shri U. M. Trivedi: Cement, nobody can catch. But these are marked 50 lbs. B. B. & C. I. and so on. If you are caught, the immediate explanation is that there was an auction and even the bigger authorities who are hand in glove with those who build those houses say, an auction was held and they have got no record of what was sold in auction but, at one time, there was some auction of scrap and this might have been in that scrap and so on and so forth. Even though there is the mark and it is suspected to be stolen, no prosecution can take place and the prosecution fails. That is why it is necessary to say that he must satisfactorily account as to how he came by it. Such prosecutions have failed by hundreds.

[Shri U. M. Trivedi]

Fortunately, probably, with all his vast experience, Pandit Thakur Dasji has not come across such cases. We had got these prosecutions in Ajmer and Indore. It was difficult to prove that this accused had not come by it honestly. He will keep quiet as you have pointed out. Our law does not require that he should be cross-examined; it does not require that he should make a statement. He can keep mum and let evidence go in, and escape. It is for this reason that the law has been brought in this form that he must account satisfactorily about how he came by that. I have seen houses built up with railway material, railway cement—stolen from the railway—railway steel and even nails from the railway, wood from the railway and even the labourers from the railway. The house is built and when the time comes for such persons to be caught the house is sold and the money goes into the pocket. It is very difficult to trace it. Therefore, this law is absolutely necessary. Just as in the case of purchase of evacuee property,—anybody going to purchase the property of an intending evacuee would do so at his peril,—here also anybody who is found in possession of any article of railway stores suspected of being stolen or unlawfully obtained will do at his peril. That is why absolute liability has been created under this law. These are difficult times in which we are living and unless and until good persons come forward to serve our country with honest motives and raise the standard of the level of the morals, it is essential for us to have such laws as this put on the statute. I do not like it personally; I hate it; it is a castigation on the national character, but we have to take stock of the situation as it exists today. Taking stock of the situation as it exists today, I think that the law that is proposed to be enacted is a useful piece of legislation, and although it does not go to the same length as we had expected, I wish it a speedy passage.

Sardar Hukam Singh: I was also a Member of the Select Committee

and there we discussed all these things. There is no doubt that this is an extraordinary law. It is conceded that the burden of proof is being changed, but this is the purpose of the Bill. We have found and realised that the evil is so rampant that some drastic remedy is necessary. With that basic conception, the Bill was brought forward, and admitting it to be so, it was referred to the Select Committee. Of course, the definition in the first instance was wide. The Select Committee considered that there were dangers—maybe even now to some extent—that even innocent persons might be roped in. On the one hand there is the danger that innocent persons might be roped in and we have to avoid it by taking precautions. On the other hand, there are also some measures, as suggested by my hon. friend just now, which ought to be adopted so that this national waste which is occurring so widely may be stopped. Therefore, some means are to be resorted to, some safer course is to be adopted, some safeguards are to be provided so that innocent persons, as far as possible, may not suffer while our law might be able to extend its hands to catch hold of those persons who usually resort to such devices and cause loss to such a wide extent. The Select Committee considered this question dispassionately, and after mature discussion, the Committee came to the conclusion that the definition that is now put in the Bill would certainly provide enough safeguards.

Pandit Thakur Das Bhargava is of the opinion that the definition under the common law should be adopted here as well. But in my humble opinion, the very object of the Bill would be frustrated if we are to adopt the same old definition as we have in our common law under the Indian Penal Code. What is the use of bringing forward this Bill then? It may be thrown out. There is no use of enacting a special law at this moment if the same procedure is to be under-

gone and the same scope is to be left to the offender. In my opinion, the safeguards that have been provided and the changes that have been introduced are sufficient to cover a number of cases. When it has been put on the Railways first to prove, under the definition, that it is Railway property, it is not enough if (a) is proved; the Railways shall have further to prove under (b) that the property is used or intended to be used in the construction, operation or maintenance of a railway. Two things are required to be proved by the Railways. And that would not suffice. Even then, the Magistrate has to find out and come to the conclusion that the person is found or is proved to have been in possession of railway stores reasonably suspected of being stolen or unlawfully obtained. When we take the entire background and the evils that are rampant and when we think that some special remedy is necessary, then I do not consider that anything less would be sufficient to bring about the results that we desire. In my humble opinion, the precautions that have been taken are necessary and they would be sufficient. They would certainly have a check on the persons that usually resort to this evil. If this definition is widened, then the very object of the Bill would be frustrated and there will be no use in enacting the Bill. I, therefore, support the measure, and I think that the precautions taken and safeguards provided are quite adequate for our purpose. I hope that the measure will be passed as it is.

Mr. Deputy-Speaker: Under the definition of "railway stores" as amended now, on the date on which the case is launched, it is the duty of the administration to prove that the property still continues to be the property of the Railway Administration, that it had not been sold. I am only trying to examine the objection that any persons who is in possession of property, which was sold away long ago, can be accused of this offence. Under this amended definition, it is necessary before a case is launched, for the administration to

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prove that the article is the property of the Railway Administration. By theft, a title deed is not transferred. But if it has been sold away, it will not be the property on the date of the launching of the case, and therefore we have to exhaust all that. Therefore, this amendment seems to meet the situation and it is not as if any property sold away even fifty or sixty years ago will still be treated as railway property or stolen property. It has to be the property of the Railway Administration on the date on which the case is launched and after that the other man has to explain satisfactorily how he happened to come by it.

Shri U. M. Trivedi: It would not be easy to prove the date of the theft. How can you prove that the property belonging to such and such party on such and such a date was stolen?

Mr. Deputy-Speaker: No servant of the Railway is entitled to sell the property without any specific authority. If I put my bicycle in the possession of somebody, he has custody of the property and not possession. And, whoever takes possession from him becomes the thief himself and this man becomes an abeter. Therefore, it is not necessary for him to prove when this theft took place; it is enough to say that in the usual course the title has not passed from the railway.

Sardar Hukam Singh: Would it not be covered by sub-clause (a) here?

Mr. Deputy-Speaker: That is what I think. Sub-clause (a) of clause (2) covers this. Therefore, all the objections seem to have been answered.

Shri Raghavachari (Penakonda): I was also a Member of the Select Committee. If you will compare the original definition of the term "railway stores" with the present definition here, you will see that the whole thing has been altered. As my friend Sardar Hukam Singh was just submitting, one of the purposes or the very introduction of this Bill was

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to deter thieves by enhanced punishment and also to shift the burden of proof; otherwise, as the Minister in charge of the Bill submitted at the beginning, the ordinary law was there and there was no need for a special law. Enhancement of punishment might have been achieved by amending the Indian Penal Code itself but there was also the idea of shifting the burden of proof.

You know, people who are intimately connected with criminal law have always apprehensions that when any loophole is available innocent people also may suffer. Our attitude should always be to see that ten guilty fellows escape rather than one innocent fellow suffer. We usually see from that angle. Shri U. M. Trivedi has just pointed out that he has seen a number of thefts of railway stores and that he is prepared to pass any stringent law. Even if death sentence was imposed I dare say Shri Trivedi would have said: "Let us hang him." He has got some kind of prejudice against the thieves of railway stores.

Strictly speaking we have to see what are the risks that are involved in a prosecution under this Act and how an innocent man could expect to escape and not get caught. That is the test by which we should go.

Shri Dhulekar (Jhansi Distt.—South): May I draw the attention of my learned friend to the fact that during these 4 or 5 years there have been disposals of railway property. Public auctions have taken place of hundreds and thousands of girders and other railway materials. Now, you are making this law. So, I want to know where does the demarcation lie?

Shri Baghavachari: I will submit now. In this connection we have to carefully see what the present definition contemplates. As you rightly pointed out, now everything is not "railway stores". "Railway stores" is that which continues to be the property of the railway administration

on the date of the offence. That is, the date of the theft may not be known, the date of possession may be known, but on the date of the offence it must be the property of the railway administration.

Mr. Deputy-Speaker: I would even go further and say that the date of offence is not known and therefore on the date the prosecution is launched it must be the property of the railway administration.

Pandit Thakur Das Bhargava: What is the date of offence, may I know?

Mr. Deputy-Speaker: Nobody knows. It is not necessary. It places the burden on the prosecution to prove that on the date the case is launched it is the property of the railway administration. If the article in question has not been sold, even if it was stolen 100 years ago it continues to be the property of the railway administration.

Pandit Thakur Das Bhargava: There is no presumption in law that if a property was mine 20 years ago it continues to be my property.

Sardar Hukam Singh: The position may be that there may be one-tenth of a chance, but if the real owner comes in that one-tenth also goes away.

Mr. Deputy-Speaker: Pandit Thakur Das Bhargava and other hon. Members who are lawyers know that different periods of limitation are given for different items of property. If a man wants to acquire possession by title of a Government property the period required is 60 years—it is not 10 or 12 years. Therefore, there is no harm.

Pandit Thakur Das Bhargava: 60 years is for immovable property.

Mr. Deputy-Speaker: I am only citing an analogy. There is a difference between a man who has the property for 12 years and another person who has it for 60 years. So long as a per-

son continues to be a minor we will treat him a minor. We will treat the railway perpetually to be a minor. If it is nobody's property then somebody has to take charge. That is one argument. I am not in favour of the one or the other.

Shri Raghavachari: The next thing is, the definition says: "and which is used or intended to be used." "Intended to be used" is rather a phrase which is capable of some trouble. The first part says: "which is used". Therefore, if something which was used has been thrown out and put somewhere in the scrap stores that is not included here. I for one think that this definition does not make thefts from the stores of property thrown out as unserviceable an offence.

Mr. Deputy-Speaker: Under this Bill.

Shri Raghavachari: I meant under this law; they come, certainly the Penal Code. That is another matter. The trouble is only with regard to the term "intended to be used". I should think that "is need" and the later "intended to be used" in the context must only mean a new thing which was intended to be used rather than an old thing or something which once was used and was thrown away. That cannot be said to be "intended to be used".

Pandit Thakur Das Bhargava: An old thing can be re-used.

Shri Raghavachari: I can understand that. So the burden of proving that such a thing was intended to be used becomes more difficult.

Mr. Deputy-Speaker: I think the hon. Members in the Select Committee have carefully chosen the words. They have not said: "a thing which can be used", they have said: "intended to be used". It is all right to put a thing in the stores and say that it is no longer intended to be used.

Shri Raghavachari: Then also, when any person is found or is pro-

ved to have been in possession of an article; the difficulty is about the presumption that arises by mere possession. Certainly under the Evidence Act and the laws of jurisprudence re making presumptions they make a difference between 'recent possession' and 'mere possession'. Even in the Indian Penal Code sections the word 'recent' is not there. It is only in the Evidence Act that there is the term "recent possession" under section 114.

Pandit Thakur Das Bhargava: Is mere "possession" an offence under the Indian Penal Code?

Shri Raghavachari: No; it is only in respect of stolen property.

Mr. Deputy-Speaker: Does not section 411 say that the theft must have occurred within a period. Even though the theft might have occurred 100 years ago there is nothing under the law preventing a complaint being launched. But, the court will duly take that into consideration even if 4 days have expired, just as in the case of adjourned motions we ask why it was not brought in time and throw a motion out. So, this is more in practice and it need not be regulated.

Shri Raghavachari: So, my submission is that with regard to clause 3 also the general principles of jurisprudence are applicable to this Act and therefore we need not be really very nervous that the word 'recent' is not there for no hazardous presumption can arise if we take the definition as it is. It also says: "which is the property of the railway administration"; more than that it is said: "reasonable suspected of being stolen or unlawfully obtained". These are, thus additional safeguards.

Over and above all these things, the clause says: "and cannot account satisfactorily how he came by the same". This wording has been obviously put in, not because that the person must prove his ownership or anything like that but that he must

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give a reasonable account as to how he came by that property. The language is capable of protecting innocent people; one difficulty is still there. I agree with Pandit Thakur Das Bhargava that "or intended to be used" is ordinarily a very comprehensive thing; it is a very expansive word; many of our properties or articles which are used in the railway administration never bear a distinct mark. Many articles are manufactured for use in the railways and they may be intended to be used and the railway stores department may reject them; they are all things that are "intended to be used". So, the Committee has put in the words "which is the property of any railway administration" also.

Mr. Deputy-Speaker: The definition consists of two parts: the two parts are not in the alternative but they are cumulative. It must be shown that an ordinary article which is not available for any house-owner or any person who constructs a house in the public market is a railway property or not. If the person knows that it is railway property he should throw it out. But there is no identification mark exclusively showing that it is railway property.

Shri Raghavachari: There are some safeguards which reasonably protect an honest man.

Mr. Deputy-Speaker: I think the hon. Members in the Select Committee tried to make it fool-proof.

Shri Raghavachari: Not fool-proof. With the co-operation of the Government in that matter, the whole thing was so drafted. The language in the Bill as it was originally introduced was hopeless. Now, it has made a real improvement in the interests of the innocent man.

I have one difficulty there. That is with regard to the words "stolen or unlawfully obtained". There is a possibility of the argument that those words and phrases are used in the sense they connote in the

Indian Penal Code. I shall move my amendments when we come to the clause-by-clause consideration of the Bill, and I shall not say anything more about it for the present. On the whole, the Bill is certainly an improvement and there are ample safeguards; we need not be very much afraid that many innocent men will go to jail.

Shri V. P. Nayar (Chirayinki): The word "stolen" has not been defined.

Shri Raghavachari: No.

Shri Bansilal (Jaipur): May I ask for a clarification? So far as the punishment is concerned, the Bill says: "shall be punishable with imprisonment for a term which may extend to five years or with fine or with both." I suppose it is imprisonment of either description.

Mr. Deputy-Speaker: It is so.

Shri Bansilal: It ought to have been mentioned. When it is not so mentioned, then, it is not an imprisonment of either description. There is also another point. Fine has been mentioned. To what extent is that fine to be imposed? I want a clarification on this point also.

Mr. Deputy-Speaker: Order, order. May I suggest one thing to the hon. Members? Why not we proceed to the amendments now? There is very little time. We will proceed to the amendments and I shall allow Members who have not participated so far to speak on the amendments.

Shri Kasliwal (Kota-Jhalawar): Four hours have been allotted.

Mr. Deputy-Speaker: True, but nearly two hours are over. I shall reserve one hour for the amendments and one more hour for general discussion. The points, whatever they be, need not be repeated. I shall allow ten minutes for each Member hereafter.

Shri Bansilal: Most of the Members who have spoken were on the Select Committee.

Shri Kasliwal: I would not take more than ten minutes.

Mr. Deputy-Speaker: Was Shri Kasliwal a Member of the Select Committee?

Shri Kasliwal: Yes.

Mr. Deputy-Speaker: Then, Shri Kasliwal will resume his seat.

Shri Kasliwal: Only five minutes.

Mr. Deputy-Speaker: All right; I shall not call any more Member who has been on the Select Committee.

Pandit K. C. Sharma (Meerut Distt.-South): I was not a Member of the Select Committee.

Mr. Deputy-Speaker: I shall call him next.

Shri Kasliwal: Really, there is nothing left for me to speak, but Pandit Thakur Das Bhargava has made one point and Sardar Hukam Singh has also clearly stated that this is a special law. Shri Trivedi has gone exhaustively into the reasons why such a special law is necessary. As to how far the rights of the accused are affected is the only thing I want to refer to. If you will please compare clause 2 with the previous clause as so many other Members have said, sub-clause (a) has been added in clause 2 and it says:

“which is the property of any railway administration”.

In the original Bill, the Railway was not at all bound to prove such that such and such property was the property of the Railway. So, in order that the prosecution may be launched and a charge may be framed against the accused, this will be the one point which the railway will have to prove. But, to prove that it is the property of the railway, you could also say that it “continues to be the property of the railway”. That is one point on which prosecution will depend.

The second point that the prosecution will have to prove is that it “is used or intended to be used in the

construction, operation or maintenance of a railway”. My friend Shri Raghavachari has raised some doubts about these words: “or intended to be used”. I submit that the railway purchases large stores and they are kept as such and they are intended to be used. It does not merely mean that the stores have been auctioned or have been given away. If the stores have been auctioned and had been taken away by somebody, they are no longer the property of the railway. It is only that property which has been stored for purposes of being used for the railways, for the operation, construction or maintenance of the railway, that will go into the category of railway stores. So, if you take out these words, “intended to be used”, that will upset the definition. Every railway store is meant to be used and it is intended to be used for such purposes.

The third point which the railway will have to prove will be that the railway store is reasonably suspected of being stolen or unlawfully obtained. You will please see that these words were not put in clause 3 in the original Bill but have been added now. Before a charge is framed by the court, the railway will have to prove these things: that it is the property of the railway; that it is intended to be used for the purposes of the railway and that thirdly it is reasonably suspected of being stolen. It is only after the charge is framed that the burden will shift on to the accused and the accused will be called upon to say how he can account satisfactorily for having come by the possession of those stores. The words in the original Bill were: “unless he proves that the article came into his possession lawfully”. You will see that the new words which have been substituted go a great deal in favour of the accused. The accused has to say, as Shri Raghavachari said, or rather, he has to account satisfactorily how he came by the property. He need not prove but explain his lawful possession. With these improvements suggested by the Select Com-

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mittee, I submit that the Bill is all right. The Bill as considered by the Select Committee has been an improvement over the original one, and I support the Bill as proposed by the Select Committee.

Pandit K. C. Sharma: With all respect to the speeches that have been made, I fail to understand the meaning of the words "reasonably suspected of being stolen or unlawfully obtained". What would be the criterion to come to the conclusion that it is a property which is reasonably suspected of being stolen or unlawfully obtained? Practical difficulties will arise which will take you nowhere and it will be a piece of law which practically would be of no use at all. As Pandit Bhargava has said, under section 411, the possession of stolen property is an offence, if the man who is in possession of it knows it to be a stolen property or has reason to believe that it is stolen property. In the interests of society, a man should not lend himself to the commitment of any crime at all. A man who comes into possession of stolen property knowing that it is stolen property, although he pays for it, abets the commitment of that crime. Therefore, he commits an act which is against the interests of society and against the social well-being of the people; it is an offence. "Reasonably suspected of being stolen" cannot by any stretch of imagination be equated with "being stolen". If a man is a lawful owner of a property, under the law he has the right of possession thereof. So, unless there is a transfer of possession and that transfer is unlawful, under the principle of criminal jurisprudence, as we understand it, an offence is not committed. But I do not agree with Pandit Bhargava that the possession by itself would be a guarantee of the lawfulness thereof. Neither any case of nuisance nor any case of offence can be justified by the long duration of time, if the operation thereto has been declared an offence under any Act. If a man is committing nuisance, he cannot justify it by

saying, "I am committing nuisance for the last so many years." Similarly, if a man is in possession of stolen property, it is an offence under section 411 and if the man says "I am in possession of this property for the last five years", the duration of time will not legalise that offence. There is no such thing as legalising of an offence by duration of time. It is not a matter of civil right. So, duration of time is no defence either in the case of an offence or nuisance.

With these observations, I still emphasize that if the words would have been as they are in section 411, then the law would have been much better, and there would not have been much difference. I do not think the Railway Ministry will gain anything by keeping these words. I would make one other observation before I conclude. Because of your lack of supervision or administrative inefficiency, you take resort to a measure which is not justified by law. Why not have have stricter supervision over your stores? Why not ask your people to work properly and hard? Instead of proceeding in the right way, you take resort to a wrong measure of doubtful efficacy. With these words, I conclude my speech.

Shri T. B. Vittal Rao: I do not fully support this measure. As it has been said, it is an extraordinary piece of legislation and I am doubtful whether this Bill will serve the laudable objects for which it is intended. We all know that thefts of railway stores take place and there is loss. When one considers the quantity of the stores used by the railways in a year and compares it with the loss, one is doubtful whether it is of that magnitude to make the Railway Ministry come forward with this piece of legislation. It has been stated here that railways are national assets and everything should be treated as public property and so on and so forth. During a year the railways use stores worth Rs. 100 crores and the loss due to thefts etc., according to the estimate of the Railway Ministry comes to Rs. 15 or Rs. 20 lakhs. Generally,

some stores are such that if they are stolen they do not cause public annoyance. For instance, if a tin of varnish or a piece of leather is stolen from the workshop, it does not cause public annoyance. But if an electric bulb or some other fittings are stolen, it does cause some public annoyance. Sometimes loss of such material greatly endangers the lives of the travelling public. But do all these things justify an enactment of this kind? I am afraid the present legislation will only lead to a number of prosecutions; it is not going to reduce the thefts. I say that you must strike at the root of the evil. For instance, while we are making a legislation for the loss of only Rs. 20 lakhs worth of material, every year we are paying claims for the goods lost or damaged on our railways nearly Rs. 3 to Rs. 3½ crores by way of damage. Is it not a big thing? Is it not loss to the exchequer? Is it not the money of the tax-payer that we are losing? Therefore, methods should be devised to check effectively these thefts and prevent loss of stores. I have been a railway servant myself and I have seen all these things being done. In a railway workshop, almirahs are made for the officers. I do not mind almirahs being made, but they should be charged the cost price and also 12½ per cent. supervision charges. But an almirah worth about Rs. 100 is given for a nominal price of Rs. 15 or Rs. 20. There was a small workshop for the repair of motor cars in the Railways in Hyderabad. There, the cars of all the officers used to be repaired. Actually, the materials used in the repairs would be costing about Rs. 100 or Rs. 150. The voucher will be made out for Rs. 50. It is an open secret; many people know it. One effective way of checking these thefts or preventing of loss of railway stores is to take some drastic action against the officers who misuse their power or abuse their power. Only then can we stop that.

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Enough has been said about the mechanics of the law in this connection and the principles of criminal

jurisprudence. I shall not go into all that as a lay man. Today, the Railways are spending a huge amount of money on the maintenance of the security force. One of the reasons why such a force has been organised was this. There are 60,000 men in this force. They can effectively check this if they perform their duties for which they are appointed. Then, I do not think there will be any necessity for having this law. I am afraid this will only lead to the launching of more cases by which we will not only not prevent thefts or loss of material, but we will be spending more money for conducting these cases. These are the two grounds on which I oppose this Bill.

(SARDAR HUKAM SINGH *in the Chair*)

Another point is this. The Railways being model employers, they should not have any special privileges. I am asking the Government whether they are prepared to pass a similar legislation if the Ahmedabad Textile mill owners request the Government to pass such a legislation: "Textile stores Unlawful Possession Act." The Indian Mining Association or the Indian Mining Federation may come forward and ask for a similar legislation. Certainly not. In the collieries there are important stores which, if lost or stolen by anybody, would endanger the lives of hundreds of people. This will be a bad precedent. There are so many nationalised undertakings in the States today. Motor transport in the State of Hyderabad is fully nationalised. Taking this as a precedent, they may come forward and pass the Motor Transport Stores Unlawful Possession Act. This will be a bad precedent. I strongly oppose this Bill.

Shri Dhulekar: I have heard carefully the speech of Pandit Thakur Das Bhargava. But, I could not understand why he was very anxious about the burden of proof that would be placed on the accused. In this Bill, there seems to be nothing strange. Railway stores is defined as property which is property of the railway administration or which is

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used or intended to be used in the construction, operation or maintenance of a railway. Further, the prosecution has to prove that this article of railway stores has been reasonably suspected of being stolen or unlawfully obtained. These words, reasonably suspected of being stolen or unlawfully obtained, have a very wide meaning. When a prosecution is launched, it has to be proved first of all that the property was at a particular place, secondly, that the property was not transferred to any person in any lawful manner, thirdly, that that property was found somewhere else and that it has not also been accounted for in the railway department and that it was not made a gift of or transferred. So many things are to be proved. When the prosecution takes upon itself such a big burden of proof, first of proving that it is railway property, second, that it was in the possession of the railway, third, that it was not legally transferred to any other person and fourthly that it has been found in the possession of the accused, I think it is all right. It is stated that because the accused is in possession, he will be convicted. That is not so. The words here are, 'cannot account satisfactorily how he came by the same'. The word 'satisfactorily' is very important. If the word 'satisfactorily' was not there and if it were only, 'cannot account how he came by the same', the position would be different: 'Satisfactorily' means that he should prove that his possession is *bona fide* possession. He can show that he purchased these bulbs to which my hon. friend Pandit Thakur Das Bhargava referred. Suppose he shows in his accounts that he is in the habit of purchasing things from a particular store and he has kept an account which shows that he has purchased the bulb for 6 annas or 8 annas which is the normal price in the market, he has certainly accounted for the matter satisfactorily. But, suppose he keeps an account, but does not show the price or shows that it was purchased for 2 annas, I would say that the intention is

clear. If a person says that he purchased property worth 12 annas for 2 annas in the open market, that is, in the chor bazaar, his intention is very clear. Why did he purchase a bulb which is normally sold for 12 annas for 2 annas. Therefore, I do not believe that these words 'cannot satisfactorily account how he came by the same' is such an injustice, to a person who tries to prove that he is very honest, but still has purchased property worth Rs. 10 in the open market for Rs. 2.

Further, I would say that the property of the railway is quite different from those sold in the open market. Their pumps, gaddies, and other things are quite different. Even an ordinary man knows that this is not property sold in open market. I have not seen the fans used in the railways anywhere else. They are not available in the open market. Even their nails are quite different. Now, people build their houses with old rails. Have they not got eyes to see that these are old rails belonging to the railway? Big contractors have some contract with the railway officials. They purchase them. The Watch and Ward people steal them. They sell in the market to some merchants, and then the merchants openly sell these things to the ordinary people. I say that although we may say that 99 criminals may escape punishment still one innocent person may not be punished, with regard to the Railway department the time has certainly come when 99 innocent persons may be punished rather than one criminal allowed to escape.

I am at Jhansi. In the Railway workshops there every day people take parts of iron, parts of copper or brass, just bind them in their legs, wear pyjamas and walk away. Every day these things are seen. Good timber which is worth Rs. 12 per foot is sold there at Rs. 3 or Rs. 4 per maund and these things are burnt in the houses of these railway employees. This is going on every day. Motor cars are being repaired there. Parts are made and they are put in the

officers' motor cars. All the clerks and Babus are getting everything from the railway workshops.

My friends may say that this is peculiar law, but I say that my professor said that law is commonsense, and if law is against commonsense, I would say that it is no law at all.

Shri S. V. Ramaswamy: Codified commonsense.

Shri Dhulekar: It is commonsense that the railways should prove that it is their property, that the property has not been legally transferred by the administration, that they reasonably suspect that it is stolen and finally that the man was in possession of it. It is said that it is very difficult for an innocent person to prove it, but I say that the burden has been put upon the magistrate to decide whether he reasonably suspects that the property has been stolen. The Railway Prosecutor cannot simply come to the court and say that he reasonably suspects. That is not it. The words here "of any article of railway stores reasonably suspected of being stolen or unlawfully obtained" mean that there has to be a decision by the magistrate or the presiding judge that he reasonably suspects that the property has been stolen or unlawfully obtained.

Pandit Thakur Das Bhargava: The accused need not suspect that it is stolen? He need merely possess.

Shri Dhulekar: It is not necessary.

My learned friend asks whether the accused should suspect or not. I have already submitted that the accused ordinarily knows, when he purchases an article, whether he has purchased it *bona fide* for the full price. Whenever such cases come, it will be certainly railway property. I do not think the railway will go into the bazaar, purchase an article and sell or transfer it and then come upon an innocent person saying he is the thief. That is not it. Railway stores will be railway stores. When they find that property has been lost and that man is found in possession of it, then they will prosecute him and it is for the magistrate

to decide whether he reasonably suspects or not. After that decision has been taken by the magistrate, the accused may produce a cash memo for his purchase and name the person from whom he has purchased. He cannot say that things have just come down from the heavens. If he reasonably proves that there is a person who has got a shop and that he is an honest dealer, certainly he has satisfactorily explained to the court that he is innocent.

श्री बंसीलाल : मैं इस बिल का विरोध करने के लिए खड़ा हुआ हूँ। मैं इसका विरोध इस लिए नहीं करता कि रेलवे के सामान की चोरी नहीं होती बल्कि यह अपराध तो दिनों दिन बढ़ रहा है। वरन्तु मेरा विरोध इस बिल पर दो कारणों से है। पहली बात तो यह है कि इस बिल को पेश करते समय हमारे देश के जो और कानून हैं, पैनेल कोड (दण्ड संहिता) क्रिमिनल प्रोसीज्योर कोड (दंड प्रक्रिया संहिता) या एविडेंस ऐक्ट (साक्ष्य अधिनियम) और जो कौमन ला (सामान्य विधि) है, अपराध के सम्बन्ध में जो हमारा न्याय है और न्याय से सम्बन्धित जो कानून हैं, उनका ध्यान नहीं रक्खा गया है।

विरोध का दूसरा कारण मेरा यह भी है कि जिस मकसद के लिए यह बिल पेश किया गया है और जो कानून बनाया जा रहा है उससे उस अपराध की कोई रोक-थाम नहीं हो सकती। इन दोनों ही कारणों से मैं इस बिल का विरोध करता हूँ।

मेरे बयोवृद्ध मित्र पंडित टाकुर दास भागवत ने इसके विरोध में जो दलील पेश की है, मैं ऐसा महसूस करता हूँ कि उन बातों पर पूरा ध्यान नहीं दिया गया है। जब हम कोई कानून बनाते हैं तो यह हम को जरूर ध्यान रखाना पड़ेगा कि उस कानून के बन जाने के बाद भी उस अपराध में कोई रोक थाम होती है या नहीं। अगर अपराध में रोक थाम नहीं होती तो अपराधियों

[श्री बंसी लाल]

को ज्यादा प्रोत्साहन मिलता है। इस बिल में कुछ बातें ऐसी हैं कि जिस से कानून बन जाने पर अपराधियों को सजा मिलना मुश्किल है और कुछ शब्द ऐसे भी इस में आ गये हैं कि जो हमारी न्याय प्रणाली के बिल्कुल विपरीत होते हैं। खास तौर पर मैं ध्यान दिलाऊंगा "रीजनेबिली सस्पेंटेड" (उचित रूपेण संदेहजनक) की और अब तक हमारे यहां के फौजदारी मुकद्मात का जो आधार-भूत सिद्धान्त है वह यह है कि ससपिशन (संदेह) पर किसी भी अपराधी को सजा नहीं हो सकती। whether it is reasonable suspicion or otherwise (संदेह उचित है अथवा अन्यथा) इस प्रकार के शब्द कानून में रखना मैं समझता हूं कि जो लोग हमारे देश के कानून के पंडित हैं, वह इस प्रकार का कानून रक्खें और रीजनेबिल ससपिशन पर किसी को सजा हो सकती है तो मैं समझता हूं कि यह शब्द अनुचित है।

दूसरे शब्द इस में आये हैं "unlawfully obtained" (अवैधरूपेण प्राप्त)। कोई भी आदमी किसी कबाड़ी के यहां से चोर बाजार से कोई रेलवे का सामान खरीदता है और उस के बाद में जब उस से पूछा जाता है तो वह कहता है कि मैं ने तो यह सामान खरीदा है, तो मैं नहीं समझता कि उस में अवबाधुलनेस क्या आ गई।

Shri Dhulekar: It is not that it is in the chor-bazaar.

श्री बंसीलाल : अनलाफुल (अवैध) नहीं होगा, यह हो सकता है कि उस ने आधुली (वैध रूप से) खरीदा हो, इसलिये जो पहला अपराधी थीफ (चोर) है उसका तो इस में जिम्मा ही नहीं है क्योंकि सारे बिल की आधारभूत शिला पजेशन (अधिकार) है। अगर पजेशन थीफ के पास न हुआ और दूसरे के पास चला गया और फिर थर्ड इंड (तीसरे व्यक्ति) में चला जाता है तो थोड़ा अपराधी कैसे हो सकता है? रेलवे में

जो चोरी होती है उसमें चोर सामान को अपने पास नहीं रखता, वह बेचता है और कोई भी आदमी जिस के पास इस प्रकार का सामान मिलता है वह कहता है कि मैं ने तो चोर बाजार में खरीदा है। मैं नहीं समझता कि वह गिरफ्त में आ सकता है।

श्री सी० डी० पाण्डे (जिला नैनीताल व जिला अल्मोड़ा दक्षिण पश्चिम व जिला बरेली उत्तर):
आप चोर बाजार न कहिये, कबाड़ी कहिये।

श्री बंसीलाल : अब समझिये कि वह गिरफ्त में कैसे नहीं आता। उस के लिये तो यही है कि वह बतायेगा कि उस ने किस तरह से यह सामान खरीदा है, और ज्यों ही वह यह बता देता है कि उस ने इस प्रकार से सामान खरीदा है, उस की खरीदारी अनलाफुल नहीं रहती। आखिर, अगर आप यह समझते हैं कि यह भयंकर बीमारी रेलवे के सामान की चोरी हमारे देश में बहुत फैल गई है तो उस की रोक थाम होनी चाहिये। और अच्छा होता कि अगर सेलेक्ट कमेटी इस अपराध को रोकने के लिये कोई जोरदार बिल इस सदन में पेश करती।

Shri Dhulekar: Cannot account satisfactorily.

Mr. Chairman: Hon. Members who have had their chance already should remain content with their lot.

श्री बंसीलाल : "कैननाट एकाउन्ट सैंटिसफैक्टरिली" तो कुछ ऐसे शब्द हैं जिस के बारे में हमारे न्यायालयों के सामने बड़ी कठिनाई पैदा होगी। मैं एक ऐडवोकेट (अधिवक्ता) की हैसियत से यह बात कहता हूं कि अगर हम कोई भी कानून बनाते हैं तो वह कानून इस प्रकार का होना चाहिये कि उस का ऐडमिनिस्ट्रेशन (प्रशासन) हो सके। हम कानून बनाते हैं न्यायालयों में कानून जायेगा। उस के लिये कुछ पैमाना होगा, सैंटिसफैक्टरिली उस का एकाउन्ट होना चाहिये। "रीजनेबिल सस्पिशन" (उचित संदेह) कुछ इस प्रकार के शब्द हैं जिस से अपराधी भागाने से बच सकता है।

इस के अलावा अगर यही मंशा थी कि इस अपराध को रोका जाय तो आगे चल कर हम देखते हैं कि सेन्टेंस (दण्ड) के बारे में इस बिल में काफी लीनिएन्सी (रियायत) बरती गई है। अगर अपराध वास्तव में बहुत फौला हुआ है तो उस की रोकथाम के लिये "आर" (या) का शब्द नहीं इस्तेमाल करना चाहिये था। वार टाइम (युद्ध काल) में हम ने देखा कि बहुत से आर्डिनेन्सेज (अध्यादेश) ऐसे बने थे जिन में इम्प्रिजनमेंट (कारावास) लाजिमी था, खाली फाइन (अर्थ दण्ड) नहीं था। उन में यह था "विद इम्प्रिजनमेंट फार ए टर्म" (कुछ समय के कारावास सहित)। हमारे सम्माननीय मंत्री ने, जिन्होंने यह बिल पेश किया है, इस में कानून की दृष्टि से यह नहीं रक्खा है कि "इम्प्रिजनमेंट आफ आइदर डिस्क्रिप्शन" (किसी भी प्रकार का कारावास)।

The phrase 'imprisonment for a term which may extend to five years' or 'offence punishable with imprisonment of either description' ought to have been used here also.

इस के अलावा जहां "आर" (या) शब्द इस में रख दिये गये हैं वहां सजा लाजिमी होनी चाहिये थी। जब आप समझते हैं कि अपराध इस प्रकार फौला हुआ है तो उस में "आर" के बजाय "एंड" होना चाहिये था। अगर कोई अपराधी साबित हो जाता है जो उस के अन्दर दिया है कि : "extend to five years, and with fine or with both". आर (या) की वजह से मैजिस्ट्रेट (दण्डाधीश) के हाथों में शक्ति होती है कि अपराधी को सिर्फ जुर्माना कर के ही छोड़ दे। इसलिये अगर आप वास्तव में कानून को मजबूत बनाना चाहते हैं तो मैं समझता हूँ कि इस में "आर" (या) के बजाय "एंड" (और) शब्द होना चाहिये। ताकि इट मे हैव डेटरेन्ट एफेक्ट (इस का भयोत्पादक प्रभाव हो)

एक बात बर्डन आफ प्रफ (प्रमाण का उत्तरदायित्व) के बारे में कहूँ, उस के बाद

मैं खत्म कर दूंगा। अभी कई मित्रों ने कहा कि इस बिल में बर्डन आफ प्रफ किसी भी हालत में मुलजिम पर नहीं रक्खा जा सकता जब तक कि हम अपने न्याय का ढांचा ही न बदल दें। कल यह कानून बनता है, मान लीजिये कि किसी आदमी के पास कोई चोरी की वस्तु है। जैसा कि सब को मालूम है रेलवे के काफी डिस्पोजल्स (उत्सादन) होते हैं। कानून बनने से पांच, छः वर्ष पहले की कोई चीज किसी आदमी के पास पाई जाती है तो वह भी गिरफ्त में आ जाता है। नतीजा यह होगा कि जहां हम एक अपराध को रोकने के लिये कानून बनाते हैं वहां दूसरे लोगों पर भी जो कि इन्फोसिट (निरपराधी) हैं मुकदमें चल जायेंगे, उनको परेशानी होगी और हमारे देश के किसी भी नागरिक की इज्जत सुरक्षित नहीं रह सकेगी।

इस लिये मैं इस बिल का, जिस फार्म में कि वह इस सदन में हमारे सामने आया है, विरोध करता हूँ। जो बहुत से खयालात हमारे वयोवृद्ध मित्र भागव साहब ने रक्खे हैं, मैं आशा करता हूँ कि आप उस पर ध्यान देंगे। यह न हो कि हम अपने अपराध की रोक थाम करने के जोश में एक ऐसा कानून बना दें जो कि कानून जानने वालों की निगाहों में कमजोर साबित हों।

पंडित डी० एन० तिवारी (सारन दक्षिण) : मैं रेलवे के डिप्टी मिनिस्टर (उपमंत्री) साहब को मुबारकबाद देता हूँ कि उन्होंने इस बिल को यहां रक्खा है। मैं समझता हूँ कि इस से भी स्ट्रिंजेंट मेजर (सख्त विधान) आना चाहिये था। जैसी बीमारी होती है वैसी ही दवा दी जाती है। रेलवे में चोरियों की बीमारी इतनी भयानक रूप पकड़े हुये हैं कि जिस का वर्णन नहीं किया जा सकता और जिस का अन्धाज सब लोगों को नहीं है। अभी हमारे माननीय सदस्य श्री विट्ठल राव न कहा था कि हर साब

[पंडित डी० एन० तिवारी]

२५, ३० लाख रुपये की चोरियां होती हैं। मैं समझता हूँ कि अगर सब चोरियों के आंकड़े इकट्ठे किये जायें और उन की गणना की जाय तो साल में कम से कम २५, ३० करोड़ रुपये की चोरियां रेलवे में होती हैं जिन में सब किस्म की चोरियां शामिल हैं, टिकट की चोरी, माल की चोरी, व्यापारियों से मिल कर उन को भुआवजा दिलाने की चोरी.....

श्री बंसीलाल : ज्ञामान की भी चोरी होती है।

पंडित डी० एन० तिवारी : अगर सब को मिला कर देखा जाय तो २५, ३० करोड़ रुपये से कम की चोरी नहीं होती है। तीन चार दिन पहले एक प्रश्न का उत्तर देते हुये माननीय पार्लियामेंटरी सेक्रेटरी (संसदीय सचिव) साहब ने कहा था कि केवल कोयले की चोरी १२,००० टन प्रत्येक वर्ष हुआ करती है। मैं समझता हूँ कि उन्होंने कम आंकड़े दिये। कोयले की चोरी अधिक होती है। मैं तो देखता हूँ कि रेलवे इंजिनों में दो, चार आने पैसे दे कर लोग मन भर कोयला गिरवा लेते हैं, जलते हुये कोयले भी गिरवा लेते हैं जो कि पूरे जले हुये नहीं होते, जिस में उन को साफ्ट कोक मिल जाये और पैसे भी कम देने पड़ें। बाजार में सोफ्ट कोक २, २।। रुपये मन मिलता है और वह उन को चार आने में मिल जाता है। जंक्शन स्टेशनों पर जहाँ कोयले के डिपो (भण्डार) हैं या जिन स्टेशनों पर कोयला इंजिनों में लादा जाता है वहाँ के आस पास जा कर देखिये लोग इंजिनों के गिराये हुये कोयले से इंटें फूंकते हैं। मैं इस चोरी की शिकायत ले कर भेजता हूँ तो एन्वॉयरी (पूछताछ) में छः छः महीने नीत जाते हैं लेकिन जवाब नहीं मिलता। तो मैं कहता हूँ कि यह चोरी इतनी बढ़ गई है कि बिज का शायद आप को भ्रन्दावा

नहीं है। इसके लिये और भी सक्त कानून बनना चाहिये। मैं बड़े अदब के साथ कहना चाहता हूँ कि मैं ने एक घंटे तक पंडित ठाकुर दास भागव की स्पीच (वक्तूता) सुनी, लेकिन मैं समझा नहीं कि वह किस प्रकार इस बिल का विरोध कर रहे थे और क्यों कर रहे थे।

एक माननीय सदस्य : आप ले मेन (अनभिज्ञ) हैं।

पंडित डी० एन० तिवारी : हां, यह बात तो है, लेकिन कानून की तरफ ज्यादा न जा कर फैंक्ट्स (तथ्य) आप के सामने रख सकता हूँ और बता सकता हूँ कि इस कानून को कितनी दूर जाना चाहिये। अभी मेरे पहले जो मित्र बोल चुके हैं उन्होंने कहा कि यह बिल अपराध की रोक थाम के लिये है उस में पहले के मामले नहीं आने चाहिये। अगर इस कानून बनने के दो चार दिन पहले किसी ने चोरी की तो क्या उस को इस में न लाया जाये। कानून तो इस लिये है कि रेलवे में चोरी न हो। अगर किसी ने चोरी की है जिस के लिये दंड देना चाहिये तो क्या अगर पांच साल या सात वर्ष पहले किसी ने चोरी की हो तो उसे दंड दिया न जाये। आखिर वह छूटें क्यों ? तो मैं समझता हूँ कि यह कानून बहुत जरूरी था और देर करके आया है, पर दुरुस्त किया है।

साथ ही मैं एक बात रेलवे मंत्रालय के ध्यान में उन के घर के बारे में लाना चाहता हूँ। आप इस बात को समझ लीजिये कि रेलवे की तीन चौथाई चोरियां रेलवे वालों के मेल से होती हैं। जब तक रेलवे कर्मचारी और चोरी करने वाले मिलते नहीं हैं तब तक चोरी कभी नहीं होती। हां गाड़ी में जो चोरी होती है उसकी बात कुछ और है। रेलों में से कुछ गद्दे चुरा लेना या बल्ब निकाल लेना यह दूसरी बात है। लेकिन स्टार्क के चोरी तभी होती है जब कि

रेल का कोई मुलाजिम मिला होता है। कमी भी स्टॉक से कोयले की चोरी नहीं हो सकती जब तक कि कोई चौकीदार या क्लर्क या जो इंचार्ज है वह मिला हुआ न हो।

अभी हमारे एक भाई ने कहा कि अफसर लोग कुछ अल्मारियां बनवा लेते हैं या कुर्सियां बनवा लेते हैं। मैं समझता हूँ कि यह तो एक नगण्य सी चीज है। कुर्सी बनवा लेना या मोटर ठीक करवा लेना तो एक मामूली सी बात है। यह तो ज्यादा से ज्यादा एक लाख या पचास हजार की कुल चोरी बनती होगी लेकिन मैं तो उन चोरियों की बात कर रहा हूँ जो कि करोड़ों की चोरियों बन जाती हैं। मैं चाहता हूँ कि गवर्नमेंट अपने घर की तरफ भी ध्यान दे। इतने बड़े अस्त्रियार हम आप को सौंप रहे हैं और हो सकता है कि जो निर्दोष हैं उनको भी तंग किया जाये। मैं यह भी मानता हूँ कि कोई भी कानून फुलप्रूफ नहीं हो सकता जब तक कि उसको बरतने वाले आनेस्ट (ईमानदार) न हों। अगर वे चाहें तो बहुत धांधली मचा सकते हैं, बहुत से लोगों को दिक कर सकते हैं। मैं आपसे प्रार्थना करता हूँ कि आप यह देखें कि ऐसी बात न होने पावे कि इसका दुरुपयोग हो और उन रेल कर्मचारियों के खिलाफ इसे इस्तेमाल किया जाये जिनके साथ अफसरों का बैर हो। असल में जो डर पंडित ठाकुर दास भागव जी को है और जो मंशा उनका है वह यही है कि इसका गलत इस्तेमाल होगा और निरपराध लोगों को सताया जायगा। मैं समझता हूँ कि सताने वाले वही लोग होंगे जो या तो रेल कर्मचारी होंगे या जो मुकदमा चलाने वाले पुलिस कर्मचारी हैं वह होंगे। यही लोग हो सकते हैं और उनके अलावा और कोई नहीं हो सकता। इस लिये इस तरफ आपको अधिक ध्यान देना चाहिये और यह देखना चाहिये कि जो निर्दोष हैं वे न मारे जाय। साथ ही आपको यह भी

देखना है कि आप के जो चोरियां होती हैं उनको आप कैसे रोक सकते हैं। मैं समझता हूँ कि यह कानून तो दूसरों पर लागू होगा, रेल कर्मचारियों पर लागू नहीं होगा। हां, एबेटमेंट (दुस्ताहन) में शायद उन पर लागू हो सकता है लेकिन शायद इसमें एबेटमेंट के बारे में कोई धारा नहीं है। इससे तो यही होगा कि वह आदमी जो कुछ पैसा देकर चीज लाता है वह तो पकड़ा जायेगा लेकिन जो पैसा ले चुका होगा और जिस ने रेल का नमक खाकर नमक हराया है उसको कोई सजा नहीं होगी। उसको भी इस कानून में लाना बहुत जरूरी है।

मैं और अधिक इस विषय पर न बोलते हुये आप से इतनी ही प्रार्थना करना चाहता हूँ कि आप अपने घर को सम्हालें और उनकी तरफ भी नजर दौड़ाये और इस कानून का दुरुपयोग न हो, ऐसा उपाय करें। इसके बाद आप एक ऐसा भी कानून लायें जो इस से कड़ा हो और जिसमें एबेटमेंट भी आ जाये और जो दूसरी किस्म की चोरियां होती हैं उनका भी समावेश हो।

Mr. Chairman: Shri S. V. Ramaswamy. I would request the hon. Member to be brief. I propose to call the hon. Minister at 3-50 P.M. at the latest. There are one or two other Members also who want to speak.

Shri S. V. Ramaswamy: I will not take more than ten minutes.

Mr. Chairman: I expect him to take something less than that.

Shri S. V. Ramaswamy: There are two points of view with regard to this Bill. The first is the strictly legal point, and it has been very ably urged by my learned friend, Pandit Thakur Das Bhargava. He has been the champion of the legal cause and the arguments that he has been pleased to advance are somewhat irresistible, because clause 3, as it is worded, goes strictly against the existing law and the definitions

[Shri S. V. Ramaswamy]

contained in the Indian Penal Code and the Evidence Act. Section 411 of the IPC lays emphasis on 'knowledge' and 'reason to believe'. It reads thus:

"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".

These two aspects—knowing and having reason to believe—are totally absent from the clause as now proposed. This obviously creates a new type of offence. Knowledge is not necessary and reason to believe is also not necessary. Again, this clause conflicts with section 114 of the Evidence Act. That section deals with presumption and says:

"The 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".

The present clause differs in two respects from illustration (a) under section 114. The words 'account satisfactorily' are now put in here, though they are not to be found in illustration (a) of section 114. I find that section 114 deals with recent possession, about which nothing is mentioned in the Bill.

So in these two respects—in the matter of the definition in the Indian Penal Code and in the matter of the definition in the Evidence Act, clause 3 entirely differs and goes counter to the existing law. Strictly speaking, this will create anomalies and difficulties. If you subscribe to the existing law and if you want this law to be framed to be streamlined and put in accordance with the existing law, clause 3 goes counter to it and it is difficult to accept it.

The other difficulty is the practical difficulty. It no doubt creates a new burden of proof. It is not as if the burden of proof is not shifted in other cases also, e.g. in the Prohibition Act. We have shifted the burden of proof to the accused. That is a special case, and I believe the Government in bringing this forward have got special difficulties of proving theft of government property. That is why the clause has been framed in the manner it has been done.

Now, it is not as if it is an original clause—not that the Government could claim originality. This is just a copy; this has been taken bodily from the English Act. The language has been bodily taken from section 7 of the Public Stores Act of 1875 of U.K. Whether we should still stick to the language of 1875 in 1955, we do not know. But I submit that this language has stood the test of time, and even in a free country like England the language has been allowed to stay for the past 80 years. That, I submit, is a matter for consideration by this House. Section 7 of that Act says:

"If any person is brought before the court of summary jurisdiction"—

the law there is very stringent; it is a summary procedure that is adopted in such cases—

"Charged with conveying or with having in his possession or keeping any of Her Majesty's stores reasonably suspected of being stolen or unlawfully obtained..."

These are the very words that have been taken bodily from section 7 of the English Act and incorporated here. There is nothing new. I am submitting that the law in England is even more stringent. Section 10 defines what 'possession' is. It goes far beyond the explanation contained in the Penal Code or in any other Act we have. Take, for instance, section 27 of the Indian Penal Code.

It extends the meaning of 'possession' to include certain categories.

"When property is in the possession of a person's wife or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation. A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant, within the meaning of this Code".

You will see that section 10 of the English Act goes far beyond even the scope of section 26 of the Indian Penal Code. Section 10 of the English Act reads:

"For the purposes of this Act, stores shall be deemed to be in the possession or keeping of any person if he knowingly has them in the actual possession or keeping of any other person, or in any house, building, lodging, apartment, field, or place, open or enclosed, whether occupied by himself or not, and whether the same are so had for his own use or benefit or for the use or benefit of another."

The law, there is very stringent. The meaning is further explained in section 10. It is much more stringent than what is sought to be incorporated here. I am only surprised that the draftsman or the Government when they bodily incorporated section 7 of the English Act did not also have this section 10 in this Bill, so that they can achieve more fully the object they have in view, namely, to prevent, as far as possible, the theft of government property and, when there is a theft, to effectively catch at the thief, and see that government property is secure. I would gladly welcome this section 10 of the English Act also incorporated but as the Bill is limited in scope than the English Act. I commend that the House pass the Bill as brought before the House.

Mr. Chairman: Shri Mulchand Dube. I will request the hon. Member to take as little time as possible.

Shri Mulchand Dube (Farrukhabad Distt.-North): It was revealed when the Bill was under discussion in this House last time that railway stores of the value of about several lakhs were being stolen and lost to the railway every year, and that the ordinary law of the land could not reach the culprits. So, it became necessary to enact a law which, to a certain extent, departed from the ordinary law of the land.

I could not quite understand my hon. friend, Pandit Thakur Das Bhargava, when he argued the matter as if the general law of the land was quite sufficient. If the general law of the land had been sufficient, it would not have been necessary to enact this special law.

This law provides that railway stores if found in the possession of anybody must be proved to belong to the railway at the time so found and it also provides that if they are so found there must be a reasonable suspicion that they have been stolen or they have been unlawfully obtained. When these two things are also proved and the court is satisfied that these ingredients of the offence are made out, even then it is not sufficient for the conviction of the accused. The accused person is still called upon to explain as to how he came by those things and if he is able to satisfy that he came by them lawfully, he can be acquitted. Therefore, I do not think there is anything substantially wrong with this law even if, to a certain extent, it departs from the ordinary law of the land. As I said before, because it was not possible to reach the culprits even when large quantities of railway stores were being stolen and unlawfully taken away, it has become necessary and I think such a law is necessary in the public interest. I, therefore, fully support the Bill.

Mr. Chairman: Shri Sinhasan Singh; I am sure the hon. Member will finish his speech before 3:50.

Shri Sinhasan Singh (Gorakhpur Distt.-South): Sir, it requires no long arguments. At the initial stage, I supported the introduction of the Bill but I find from the Bill, as it has emerged from the Select Committee, that the very purpose for which the enactment is being sought is being defeated by the passing of this Bill.

I was not here when our learned friend Pandit Bhargava was arguing his case. Probably, the general law would have been much better than the present law which is being sought to be enacted. Under the general law, sections 410 and 411, the accused could probably have been arrested and punished more easily than under this enactment. By this enactment a lot of burden is thrown upon Government. Not only that it must be proved to be railway property but it must also be proved to be stolen or reasonably stolen...

Mr. Chairman: Not reasonably stolen but reasonably suspected to be stolen.

Shri Sinhasan Singh: ...reasonably suspected to be stolen or unlawfully obtained. Any learned advocate knows that anything can be proved. A certain person who is found in possession of stores can prove that he obtained it lawfully by paying money. There will be acquittals. This section 3, if enacted, will leave a great loophole for the accused persons to put forward evidence to show that they were in possession of property lawfully by purchase. They can file receipts. In section 411 cases, the accused always produce receipts written by somebody. They say, this was purchased for so much and here is the receipt. If this Bill is enacted, my submission is that instead of doing any good it will be worsening the whole affair.

The general law is there but naturally this law will be applied because when there is a special law and a general law, the special law will come into force and, if I may say so, this Railway Stores (Unlawful Posses-

sion) Bill after enactment will become Railway Stores (Lawful Possession) Act, and everybody will get out.

The Railway has got three kinds of police. Originally, there was the GRP; then in war time, and in 1947 there came the RPP—Railway Protection Police—and recently we have got the security police. These three forces are there guarding the same property and the thefts have increased. The other day the Parliamentary Secretary could not reply to a question which I put him as to the amount of claims that have been paid since the establishment of Security Police. I put a subsequent question as to what is the amount after the appointment of the Security Police but there was no reply. We know, everywhere in our country, when a man is appointed to some job, he looks for some income from outside, other than his regular pay. All these people, naturally, have some outside income than the regular pay. How do they get it? They get through the railway stores. Most of the railway employees make use of the railway stores freely. At Gorakhpur, the railway headquarters, big things are stolen. At one time they were taking articles in bags containing *burada* which were given to them for burning. As President of the Railway Union, a report was made to me and I went and saw big articles being put in those bags and taken away. Fortunately, the Security Police were there and they caught hold of the bags. Probably no action was taken later on. I do not know. Things of the railway have been removed and there have been regular shops for these. Whenever a person is caught by the police, the railwaymen who ought to have come and said, 'this is railway property' say that they do not recognise it. No case is made out. It is hardly possible for a Railway employee or officer to say that this property was railway property and was intended to be made use of by the Railways. Clause 2 itself very badly takes away all the fear and penalties

that one may apprehend from this clause.

I quite agree with the minute of dissent by Shri Mulchand Dube and also with Shri Raghavachari's minute of dissent. In the case of the Prevention of Corruption Bill by the addition of clause 6 we have taken away all the severity of the Bill, and similarly by the addition of clause 3, all hardship has been removed and there is absolutely no strictness. I can assure the hon. Deputy Minister and the Parliamentary Secretary that they will not succeed in getting any convictions even after passing this Bill.

Shri Bhagwat Jha Azad (Purnea cum Santal Parganas): He is wishing good luck to the offenders!

Shri Sinhasan Singh: Not I, but they.

Shri Alagesan: I am thankful to the House for the very overwhelming support it has accorded to the measure.

Pandit Thakur Das Bhargava has been pleading with me and wanting to convert me, but I hope after hearing the speeches delivered on the floor of the House he would have been already converted to supporting this measure.

Shri S. V. Ramaswamy: He is inconvertible.

Shri Alagesan: I have not lost hope. He raised the question whether any distinction at all should be made between private property and public property. On the previous occasion I dealt with this question and I ventured to put forward the view that public property, if any, should be considered even more sacred than private property. I said then that in view of the expanding public sector, we have to take a more serious view of this matter and, if necessary, even introduce changes in the basic common law of the land. He asked: how is theft of railway property different from theft of private property? That is very easily
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explained. As far as private property goes, every man sits and guards his property; but who is there to guard public property? Questions were raised whether this measure is a cover for the inefficiency of the Administration. The House knows that we have recently made the security force more effective . . .

Shri Sinhasan Singh: By the appointment of retired officers.

Shri Alagesan: I am glad to inform the House that it has already produced results, and the number of thefts is slowly coming down. I wish that the rate were faster, and with the effective functioning of this organisation, I hope we will be able to control, if not altogether eliminate, this evil. That is the difference between private property and public property.

I was amazed to hear my friend, Shri Vittal Rao, speaking on behalf of the textile mills. He asked whether such a law would be made if textile mill owners come forward and say that the same should be the case if their property is also stolen. I think the textile mills are much more secure and their property is much better secured, than railway property which is strewn all over the land. In fact, it was a very strange pleading and I was wondering as to what was happening to his thinking. Again he said that a time may come when the State Governments, who are fast nationalising road transport, may come forward with a similar measure. He also said that this measure will provide a bad precedent. I should be very glad if the State Governments would come forward with such a measure; in fact, from the British Act quotations were given and it was also pointed out that a particular expression here has been taken from that Act. Is it so. That Act applies to all public stores and a time will come when certainly we will have to give protection to all public stores and see that they are not tampered with. The hon. Member also questioned the magnitude of the evil. But

[Shri Alagesan]

as against one hon. Member questioning it, other hon. Members have eloquently put forward before the House the magnitude of this evil and now railway properties are being tampered with and stolen by numberless people. The hon. Member said he was a railway servant—I do not know whether he was an officer servant or a non-officer servant—and as such he should have known all these things better. I expected, therefore, some constructive suggestions from him. Instead, I should say I was disappointed at his speech.

Pandit Thakur Das Bhargava put forward the view and has also given an amendment to that effect, that railway servants should be awarded a higher punishment than others. I hope the courts will have the good sense to deal with that and if they find that a railway servant indulges in this evil, naturally they may take a more serious view and impose a higher or heavier punishment. It is not that the full five years imprisonment is going to be given in every case. The other day I pointed out how lenient the sentences have been in the cases that have so far been taken to the courts.

Some mention was made about railway property that was being auctioned. Generally, scrap that is not useful to the Railways is auctioned, but in such cases what is called a sale issue note, giving a description of the articles that are auctioned, is issued to the party and that should be sufficient proof for anybody to say that he came by the property very lawfully, by means of an auction. It should be very easy to prove that. There may be other articles which may go out of use or become obsolete because of the change in a certain design. After hearing some of the speeches made here I came to the conclusion that if such property is stolen, we may not be able to bring the offenders to book under this measure;

we may have to take recourse to the common law and not take action under this special law. As somebody pointed out, it cannot be proved that the property is intended to be used when it has become obsolete, although it was once used by the Railways. If it is not intended to be used by the Railways now, it may not be possible to bring such cases under the clutches of this law.

My friend, Pandit Thakur Das Bhargava, was pleading for the addition of the word "recent". I think he has been effectively answered by Shri Raghavachari. In fact, Shri Raghavachari stated that this measure does more than justice to the accused. Taking the special nature of the law, certainly it is nobody's intention that it should accord with the common law. Because there is a special situation to be met, we want this special law and this point has been explained by you, Sir, in very lucid terms; so I need not add anything to that.

4 P.M.

Then, Pandit Thakur Das Bhargava stated that he would give his full support if this applies to property which can be used only on the railways and which cannot be used by anybody else; that is, it should be peculiar to the railways. He said, if that is so, he would have no objection to this law. Now, I want to point out that it is because it is not possible to call anything peculiar to the railways that we have undertaken to prove that the particular article belongs to the railways. You will recall, Sir, that in the other measure that has been passed in respect of telegraph wires—the Telegraph Wires (Unlawful Possession) Act that was passed by this House—the proof does not rest with the prosecution. If it is proved that the wires are of a particular gauge then immediately the other man has to prove that he came by it lawfully. No proof rests with the prosecution. They are not to prove anything. No responsibility

for proof lies on the prosecution to show that the wires belong to the Post and Telegraphs Department. In our case because we cannot put any distinguishing marks on our articles and also because we cannot describe a property to be peculiar to the railways, we have taken on ourselves the burden of proof and that, I think, should satisfy the hon. Member.

Again, there was objection from him to the words "unlawfully obtained" and "suspected of being stolen". The House knows that these words have been taken from an Act which has been worked and on which the courts have interpreted. So, there should be no particular difficulty expected by the use of these words.

I should like to say that this is not a new thing that the House is called upon to do. It has already passed the Essential Commodities Bill this year and there, clause 14 reads thus:

"Where a person is prosecuted for contravening any order made under section 3 which prohibits him from doing any act or being in possession of a thing without lawful authority or without permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document shall be on him."

Clause 3 of this Bill is a little more lenient than the clause which I just now read out. I think I need not further pursue this matter.

I can quote figures of loss. I had quoted figures last time and I do not want to weary the House. They are not small. The losses are really very big and should be prevented.

I hope the House will agree to the consideration of this Bill.

Shri S. V. Ramaswamy: There are public stores not only in the railways and telegraphs departments but also in the river valley schemes, national highways and so on. Why do not the Government bring in a comprehensive measure on the lines of this Bill?

Mr. Chairman: That is a different thing altogether from the thing with which we are dealing now. It is for the Government to bring in such a Bill and if they bring one we will consider it. Now, I will put the motion to the vote of the House.

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, passed by Rajya Sabha and as reported by the Select Committee, be taken into consideration."

The motion was adopted.

Clause 2 — (Definition)

Mr. Chairman: The House will now take up clause by clause consideration of the Bill. There is one amendment received from Shri Sinhasan Singh which has been received very late and therefore that cannot be taken into consideration unless the Minister is prepared to accept it.

The Minister of Defence Organisation (Shri Tyagi): He has missed the train.

Shri Sinhasan Singh: I would request the Minister to accept my amendment. What I want to move is.....

Mr. Chairman: Whatever the contents of the motion may be it cannot be considered unless the Minister agrees to accept it.

Shri Sinhasan Singh: Can I persuade the hon. Minister to accept it?

Mr. Chairman: I agree. You may persuade him to accept it.

Shri Sinhasan Singh: Unless you allow me to explain.....

Mr. Chairman: The time is restricted and we have to proceed with our programme. So, let us take up clause 2 for consideration.

[Mr. Chairman]

Before that, may I know the sense of the House whether it would require any part of the time at our disposal for third reading? As it is, we disperse at 5-5 P.M. by which time we have to finish with this Bill as the 4 hours' time allotted for this Bill will be over. So, may I know whether the House requires some time for third reading, or whether we should take the whole time for the clause by clause consideration and no time is necessary in the end?

Pandit Thakur Das Bhargava: It is very difficult to state beforehand what time would be required for disposing of the amendments. We can consider it at the end.

Mr. Chairman: I leave it to the House. Normally we do decide beforehand whether we should have some time for third reading at all. If the House so desires I have no objection. Then we should try to finish the consideration by a quarter to five o'clock. Now, let me know who are all moving their amendments to clause 2.

Pandit Thakur Das Bhargava: I beg to move:

Page 1—

(1) for clause 2 substitute:

"2. In this Act, 'railway stores' means any article which is the property of any railway administration and is possessed by it."

(2) Page 1, line 11—

omit "or intended to be used"

(3) Page 1—

after line 12 add:

"(c) which is exclusively manufactured by or for the railway with a special mark and is not sold, auctioned or otherwise transferred by the railway or the manufacturer."

Mr. Chairman: I am sure the hon. Member has made his case exhaustively and he will now be as brief as he possibly can be.

Pandit Thakur Das Bhargava: At the time of the discussion on the motion for consideration I was told that whatever I had to say I can say when my amendments come up. Now, when I come to my amendments it is said that I have already dealt with the case exhaustively.

Mr. Chairman: I have not debarred him from dealing with his points.

Pandit Thakur Das Bhargava: At the same time I will keep in mind your advice and try to be as brief as I can.

Mr. Chairman: Before he proceeds, would it not be better if I ask other hon. Members if they have also some amendments to this clause which they would like to move? If they would now tell me whether they intend moving any of their amendments we might know what motions are there before us and then we can discuss all of them together.

It seems nobody is desirous of moving his amendment. So, the hon. Member can proceed with his speech.

Pandit Thakur Das Bhargava: In regard to these amendments, I maintain—as a matter of fact you were pleased to say that, other Members were pleased to say that as well as the hon. Minister—that there is no doubt that the amendment accepted by the Select Committee has narrowed down the scope of the Bill so far as the definition of 'railway stores' is concerned, and to that extent from the point of view of the accused as a matter of fact this has been changed a great deal; but at the same time I believe, though we have changed the definition of the Bill and have agreed that the railway administration shall prove that such property as the subject matter of the Bill is the property of the railway administration—as I submitted before—this is a burden too heavy for the railway administration to bear. Though I will congratulate in advance the hon. Deputy Minister for having secured the passage of the Bill so easily I must tell him in all regret

that, as a matter of fact, the thing that he is getting is a mere toy. It will not work. There will be no convictions. You have the Bill, but you have killed the spirit of the Bill already. My humble submission is: how will the railway administration prove that the property is the property of the railways? He has taken the burden upon him to prove that the stolen property is the railway property. But, at what time? Is it at the time when it is found or is it at the time when possession was transferred 20 years ago? What is the particular moment of time when it shall be proved that it is the property of the railway? How will he prove it? This is not all. The second thing is much more difficult. The railway materials are used for the boulders, girders, and other things in the case of a bridge and they are not likely to be stolen because of the size or anything else. But if the other things are there, the prosecution shall have to prove that they are "intended to be used". How is the intention to be proved? Whose intention is to be proved? And what is the time of such an intention? The Minister himself was pleased to say that the things will become obsolete and obsolete things will not come in, though I do not agree, because obsolete things today may be regarded as of great use tomorrow. So, it is impossible to say that they have become obsolete and will not be used. Even used things can be reused. The question is of intention, but whose intention is it? How is that intention to be proved?

Thirdly, what is most difficult is this. I was under the impression that we are not making a law in which the accused's *mens rea* need not be proved. But, as a matter of fact, what is required in courts is that the prosecution shall prove, the railway shall have to prove, that the thing is reasonably suspected of having been stolen. This is the position. Previously, I thought that it is just possible that the hon. Minister might say that this "reasonably suspected" has to be proved to inhere in the

mind of the accused as in the comparative law that we have got. Even now, it could be argued that this "reasonably suspected" is to be proved in respect of the mind of the accused. Now, I find that this is a technical, mechanical law. If the possession is there, nothing need be proved so far as the accused is concerned. He may be perfectly innocent so far as *mens rea* is concerned. According to my friend, this has to be proved in the court, namely, that the article is suspected to have been stolen. May I ask him, how he will prove it? If ten or twenty years ago, the article had been stolen, how do they know it was stolen or that it was unlawfully obtained? So, when all these three things are taken together, it appears to my mind that the burden is so large on the railway administration that they may bid good-bye to all the convictions. So far as this aspect is concerned, as I submitted, I wanted to make the law easier and capable of being used.

My friend has referred to the law in Great Britain and rightly so, because this Bill in Great Britain applies to all kinds of stores, and I agree with him. There is no reason why that we should confine this law only to the railway stores. I submitted earlier that all government property is to be protected. If the railway stores are sacred to him, all other stores are also sacred to me. Therefore, I would have liked it if he had agreed to bring in a general Bill to cover all the materials. You have heard the story कनूबा हुआ क्यों? That kind of averages I do not like. If this Bill is good, I stand by it and you can stand by it. In the course of the general discussion I submitted an argument that if it was a thing manufactured for the railway and by the railway, there would be no other use for it in this country, especially if it had a particular mark on it. Then my objection to the Bill would not be so great. But the difficulty now is that innocent people who have got other similar property not stolen will also be harassed though they may

[Pandit Thakur Das Bhargava]

be acquitted. I know there will be no conviction in these cases though under the ordinary law there will be conviction, but still the people would be harassed. What is this law as made in Great Britain?

Section 4 of the British Act runs thus:

"Marks described in the First Schedule to this Act may be applied in or on stores therein described in order to denote Her Majesty's property in stores so marked; and it shall be lawful for any public department and the contractors, officers and workmen of such department to apply these marks, or any of them, in or on any such stores; and if any person without lawful authority (proof of which authority shall lie on the party accused) applies any of those marks in or on any such stores he shall be guilty of a misdemeanour and shall on conviction thereon be liable to be imprisoned for any term not exceeding two years...." etc.

What is the last clause?

"This Act shall apply only to stores bearing any such mark or part of the mark as in this Act mentioned, whether it applies before or after the passing of this Act".

So, let the Government make any such thing so far as the railways are concerned. I would readily agree to such marks to those railway stores as we readily agreed in the case of the Posts and Telegraphs Department. I stand by them. If there are properties of the railway on which this mark is given, and are not manufactured for any other purpose, and are not sold by the Government in public auction, etc., then there is a good case for presumption. I do not want that every person who commits a theft should go scot-free. Nobody wants it in this House. My friend said that I would have been converted

in this matter by the argument of an hon. Member who participated in the debate and who referred to certain thefts which took place in Ratlam. I have not heard of such thefts anywhere else though I have heard of thefts generally in many other cities. Even if such thefts are there, have you not made the presumption much stronger than before? What is the presumption? You know very well that under section 114(1), the court is not bound to make a presumption. What have you done? We have taken the powers of the court. The court is now bound to make presumption, and so, is this not a sufficient change that you have effected? Have you not enhanced the punishment? At the same time, have you not made a change in the presumption also? The words are: "and cannot account satisfactorily". We have used the word "satisfactorily" and put more burden on the accused decidedly. I am only at one with you and I want to say that thefts should not take place, but do not go out of the way and make such changes as will enmesh and are likely to enmesh innocent persons. I do not object that the law may be tightened, but it should not be tightened to the extent that absolutely innocent persons may be enmeshed without any reason or rhyme. As I submitted earlier, the amendments are not likely to be accepted and when I am speaking on these amendments just moved, I am really speaking on some other allied matters also and on such allied amendments I shall not speak later. Now, you will realise, as I had submitted, that in the present case, the accused may be hanged without a murder being committed. It is the effect of this law. Though no theft has taken place of any stores, the court may come to the conclusion that a thing has been reasonably suspected to have been stolen. Now, you must know the story:

घर से आया है मोतबर नाई

A man came to a gentleman and said "Your wife has become a

widow." That gentleman said, "No, no." But his friends came and asked him, "You are living, but your wife has become a widow."

Shri Tyagi: The court cannot be guided by the *nais*.

Pandit Thakur Das Bhargava: The courts are not constituted of much better men than the hon. Minister. That is all that I can say. If the hon. Minister cannot be misguided or guided by any person, the court can be guided or misguided.

Mr. Chairman: The hon. Member shall continue to address the Chair.

Pandit Thakur Das Bhargava: The hon. Minister was not addressing the Chair. I think the rule is the same for the gander and the goose.

Mr. Chairman: That remark of mine applies equally to the hon. Minister.

Shri Tyagi: I am sorry.

Pandit Thakur Das Bhargava: I was submitting the very crux of law. Unless a theft is committed, you cannot hold that a property has been stolen. In this law, you need not prove that a theft has been committed, whereas in both sections—410 and 411 of the I.P.C., the rule is theft, extortion, robbery, dacoity, misappropriation and criminal breach of trust must all be proved before anything can be done. This is a very great flaw in this law and it can be very easily remedied also. As I submitted before, section 410 is our own law. Why should we fight shy of it? Why not make it so as to mean what the Indian Penal Code, in section 410, means? But my hon. friend will ask me, what is the difference between "unlawfully obtained" and "stolen" as defined in section 410. Well, the general law of the land is there and the general rule is, you must have stuck to those words and made the meaning clear. My submission is that if the hon. Minister is going to accept my amendment, it would be good. My amendment is:

"(c) which is exclusively manufactured by or for the railway with a special mark and is not sold, auctioned or otherwise transferred by the railway or the manufacturer,"

This is exactly, as a matter of fact, the full meaning of sections 418 of the Great Britain law which I have reproduced in my own words. You have taken one word from here and another word from there. I say that you must apply the whole of British law. You miss the soul of it and remain content with the skeleton. We are also anxious that the purpose of the Bill should be achieved, but I cannot be a party to the application of a principle half way. I would have requested my hon. friend Mr. Ramaswamy not to mislead the House in this way but he is not here now. He quotes one or two sections, but he does not read the very section which is the soul of the Act. It is not fair.

I will say one word more on my amendment No. 3. I have said that 'railway stores' means any article which is the property of any railway administration and is possessed by it. This, again, is the very soul of this section. As you know, stealing is an offence and under section 380, it applies to moveable property. My humble submission is that unless you put the words "possessed by it", it may refer to property transferred 20, 50 or even 100 years ago and that property may come within the purview of this Act. Therefore, when the Deputy-Speaker was telling us that there should be a limit, say, 5 or 6 years, he was perfectly right. In law, any person who is in possession of a property is the owner of that property until it is transferred. Therefore, the railways must prove that at the time when the offence was committed, the railways were in possession of it. Unless that is proved, there is no offence at all. The railways shall have to prove that it is not only their property, but they were in possession of it when the theft or transfer of possession took

[Pandit Thakur Das Bhargava]

place. I, therefore, submit that though the Bill may be passed, it will remain ineffective.

Mr. Chairman: Amendments moved:

(1) Page 1—

for clause substitute:

"2. In this Act, 'railway stores' means any article which is the property of any railway administration and is possessed by it."

(2) Page 1, line 11—

omit "or intended to be used"

(3) Page 1—

after line 12 add:

"(c) which is exclusively manufactured by or for the railway with a special mark and is not sold, auctioned or otherwise transferred by the railway or the manufacturer."

श्री सिंहासन सिंह : मैं माननीय ठाकुर दास जी के संशोधन का समर्थन करता हूँ।

एक माननीय सदस्य: अंग्रेजी में बोलिये।

श्री अलगोशान : किसी भाषा में बोलिये।

श्री सिंहासन सिंह : मंत्री महोदय कहते हैं कि किसी भाषा में बोलिये।

जिन जोरदार शब्दों में भार्गव जी ने अपना संशोधन रखा है मैं उस का अनुमोदन करता हूँ। इस विधेयक में जो रेलवे स्टोर्स (रेलवे भंडार) की परिभाषा रखी गई है उस के रखते हुए सरकार के रास्ते में बहुत दिक्कतें आवेंगी और इस बिल का जो मंशा है वह सफलीभूत होने के बजाय असफल हो जायेगा। जब सदन इस बात के लिये तैयार है कि सरकार को अधिक से अधिक अधिकार दे ताकि वह सरकारी चीजों को चोरी से बचा सके, तो सरकार इस मामले में क्यों मुरब्बत करती है। मेरी समझ में नहीं आता कि सरकार अपने को क्यों कमजोर रखना चाहती है। अगर इस संशोधन को जान लिया जाये तो उस परिभाषा का रु

बदल जाता है। उस से सरकार पर साबित करने की जिम्मेदारी कम हो जाती है। उसे मान लेना चाहिये।

अभी यहां अंग्रेजी कानून का हवाला दिया गया। हम को और आप को यह मालूम है, और दुःख के साथ मालूम है, कि जो हमारा आचार का स्तर है वह अंग्रेजों से कुछ नीचा है। गुनामी के कारण हम बहुत नीचे गिर चुके हैं और हम को ऊंचा उठने में बहुत देरी है। उन्होंने अपने यहां लिखा है कि जो प्रापर्टी एक्ज्यूज्ड के पास रहेगी

"The proof of which shall lie on the party accused....."

अर्थात् जो एक्ज्यूज्ड आदमी है उस पर यह साबित करने की जिम्मेदारी होगी कि उस चीज पर उस का अधिकार लाफुल है। लेकिन आप सारी जिम्मेदारी अपने ऊपर ले रहे हैं और इस रूप में ले रहे हैं कि आप साबित न कर पायेंगे। आप ने कहा है कि "intended to be used"। अब कुछ ऐसी चीजें हैं जिन को बेकार समझ कर फेंका हुआ है पर जिन को रेलवे गला कर काम में ला सकती है। लेकिन वे बाजार में बिकती हैं। वे चीजें इस में नहीं आती और उन के पजेशन (अधिकार) के लिये किसी को सजा नहीं हो सकती।

इन शब्दों के साथ मैं यह अनुरोध करता हूँ कि मंत्री महोदय कभी कभी सदन के सदस्यों के सुझाव भी मान लिया करें। हम तो सरकार के हाथ मजबूत करना चाहते हैं, उन को कमजोर नहीं करना चाहते। जब भवन सरकार के हाथों को मजबूत करने के लिये तैयार है तो मेरी समझ में नहीं आता कि सरकार क्यों अपने हाथों को कमजोर रखना चाहती है। आप किसी आदमी को लेजा कर अदालत में खड़ा करेंगे, लेकिन जब साबित करने का वक्त आवेगा आप के हाथ कमजोर पड़ेंगे। सरकार ऐसी सूरत को क्यों कबल

करना चाहती है। सदन का इतना समय लेने के बाद भी परिणाम कुछ भी नहीं होगा। इस से अशुद्धा तो यह होता कि हम विधेयक को पास न करके पीनल कोड (दंड संहिता) का ही आधार लेते। उस से ज्यादा काम हो सकता है। उस में जो स्टोलिन प्रापर्टी (चोरी का माल) की परिभाषा दी गई है वह इतनी बसीह (विस्तृत) है कि उसके अन्दर सब चीजें आ सकती हैं। और मुलजिम को दफा ४११ के मातहत सजा करायी जा सकती है। हम अनुरोध करते हैं कि अगर आप चाहते हैं कि इन चीजों की चोरी न हो तो इस संशोधन को मान लीजिये।

मंत्री जी ने कहा कि जो सीक्योरिटी मेजर्स लिये गये हैं उन से चोरी कम हो गयी है। लेकिन मैं आप से कह देना चाहता हूँ कि जब तक आप रिटायर्ड (सेवा निवृत्त) आदमियों को सरविस में रखते तब तक ये चोरियां नहीं रुक सकतीं। एक रिटायर्ड (सेवा निवृत्त) आदमी जोर से, व्यापक रूप से काम नहीं कर सकता। अगर किसी आदमी को तरक्की होने की आशा होती है तो वह शासन को उच्च स्तर पर लाने के लिये लगन के साथ काम करता है। अगर रिटायर्ड आदमी के काम में ढिलाई होगी तो आप उसे हटा सकते हैं, लेकिन वह तो पहिले से ही हटा हुआ है। इसलिये उस को रखने में उस का तो मतलब सिद्ध होता है पर आप का मतलब सिद्ध नहीं होगा। अगर आप रिटायर्ड आदमियों को रखते तो इस बुराई को दूर नहीं कर सकेंगे। इसलिये मैं फिर अनुरोध करूंगा कि कभी कभी तो आप इस सदन की राय मान लिया करें। यह विधेयक आप जिस रूप में चाहेंगे पास हो जायेगा। लेकिन अगर वह ढीले रूप में पास हुआ तो उस से काम नहीं चलेगा। इसलिये मैं अनुरोध करता हूँ कि आप इस संशोधन को स्वीकार कर लें।

Shri Alagesan: I do not want to say much, but frankly speaking I could not understand what Panditji

said. On the one hand he says that I have taken more burden than is necessary and on the other hand, he also says that more burden has been cast upon the accused.

Shri Sinhasan Singh: I was saying that the burden has been put on the accused to prove the lawful possession of the property.

Mr. Chairman: He is referring to Pandit Thakur Das Bhargava.

Shri Alagesan: He quoted the British Act and said that what is found there is in accordance with what he has moved here as an amendment, namely, some special mark should be put on the railway stores. If that is there, he has no objection. In fact, my failure to put any special mark on the railway stores is qualified by the definition clause. Because I am not able to put any special mark, I take the burden of proof. Though it may be an article of common use like a bulb, supposing the letters E.R.—Eastern Railway—are there, that will be itself sufficient proof that it belongs to the railways. No further proof may be needed. If such a mark is not there, then I will have to have further proof to establish that it belongs to me. There is no merit in accepting this amendment. In fact, he accused Shri S. V. Ramaswamy of misleading the House. I am afraid, the boot is on the other leg. In the British Act, there is no burden of proof cast on the prosecution that they should prove ownership of the property. Once a particular mark is found, it is for the other man to prove that he came by it lawfully. It is he who has left that out and tried to—I will not use the word mislead—present it wrongly; perhaps he himself did not fully go through it. I would only say that I am not able to agree to the amendments of Pandit Thakur Das Bhargava.

Mr. Chairman: The question is:

Page 1—

for clause 2 substitute:

"2. In this Act, 'railway stores' means any article which is the

[Mr. Chairman]

property of any railway administration and is possessed by it."

The motion was negatived.

Mr. Chairman: The question is:

Page 1, line 11—

omit "or intended to be used"

The motion was adopted.

Mr. Chairman: The question is:

Page 1—

after line 12 add:

"(c) which is exclusively manufactured by or for the railway with a special mark and is not sold, auctioned or otherwise transferred by the railway or the manufacturer."

The motion was negatived.

Mr. Chairman: The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3—(*Unlawful possession of railway stores*) *

Pandit Thakur Das Bhargava: I beg to move: /

(1) Page 1, line 13—

after "if any person" insert "commits theft or"

(2) Page 1, line 13—

before "possession" insert "recent".

(3) Page 1 lines 14 and 15—

for "reasonably suspected of being stolen or unlawfully obtained" substitute:

"which, within the meaning of section 410 of the Indian Penal Code (Act XLV of 1860) can be designated as stolen."

(4) Page 1, lines 14 and 15—

for "reasonably suspected of being stolen or unlawfully obtained" substitute:

"knowing or having reason to believe the same to be stolen with-

in the meaning of section 410 of the Indian Penal Code (Act XLV of 1860)."

(5) Page 1, line 15—

after "obtained" insert "by him"

(6) Page 2, line 2—

for "five years" substitute "four years".

(7) Page 2, line 2—

add at the end:

"and if such person is a railway servant, he shall be punishable with imprisonment for a term which may extend to five years or with fine or with both."

Enough has already been said and I do not want to say anything more now. I would however wish to make a few observations about two or three of these amendments. In the first instance, as regards amendment No. 7, my submission is, if the hon. Minister had included theft also, he would have done very well. Perhaps, theft is not less injurious or prejudicial to the interests of the railways than possession of stolen property. After all, it is only after theft that the second kind of offence can be said to arise. Today, if a person commits theft of railways property, he is only liable to imprisonment for three years whereas, under this Bill, we are making possession punishable with imprisonment for 5 years. If these words were added, the position would have been clear. I suppose he does not want to discriminate between the thief and the possessor of stolen property. I do not know why he does not like it. There is a phrase:

दाड़ी से मूछ बढ़ी । A man, who is really so bad as to commit theft should not have been left out of account. Under the general law, theft can be punished with 3 years. That is true. But, it is not the maximum punishment that is given in all cases. The maximum punishment is kept there only for the purpose of instilling fear into the minds of the people. Therefore, if you make the offence punishable with 5 years,

it is not 5 years always. It may be 3 years. I have not seen any case in which the maximum punishment is given. If an offence is made punishable with a larger amount of punishment, public opinion is moulded in such a way that it regards that offence as one of a more heinous character. This is my first amendment. I do not know if it will be accepted. If it is accepted, it will be all right.

As regards recent possession, I have had enough to say. I do not want to repeat all that. Shri Raghavachari—the hon. Member is not here now—stated that he is not in favour of keeping the word 'recent'. As the Deputy-Speaker pointed out, even a limit of 5 years is not there. If we do not put in any period, we do not know where we stand.... 'Recent' may mean in particular circumstances 2 or 3 years, or 2 months or 5 days. It all depends on the nature of the article stolen. If you do not put in the word 'recent' it means that you are thinking that section 114 of the Evidence Act which has been accepted as good as good law for the last 60 years, is no longer good law. It is not right to take away the word 'recent' which enlarges the scope of the Bill to such a degree that any person who did not care for the sufferings of the accused persons or whether it was discreet to bring a case of this nature, may bring a case against a person whose possession may have been that of his father or grandfather. So far as the law is concerned, there is nothing which militates against this. If the hon. Minister is pleased to see the commentary under illustration 1 of section 114 of the Evidence Act, he will be convinced that the word 'recent' must be there. Otherwise, it might mean havoc to the accused.

As regards 'suspected of being stolen', I do not want to say anything more than I have already stated. I would only request the hon. Minister to read section 410. Then, he will be satisfied that so far as is known to criminal law, this wording of section 410 is important. I have taken the wording of my amendment from

section 410. If he does not like to accept this, it is his own choice.

Further, I beg to submit that the words 'by him' may be added. This is most essential. Unless a person is mentally guilty, he is not guilty at all. I understand that under the original Bill and in the other Acts also, mere physical, mechanical possession has never been made an offence. Today, we are changing the whole face of the criminal law of this country. This is a fundamental departure from the principles of criminal jurisprudence to regard mere mechanical possession as an offence. I would have been happy if the wording of section 411 had been taken here. Even if a person had reason to believe that it is stolen property, he may be guilty. Even if these words are retained, it would mean that some kind of criminal mentality will have to be proved to exist in the mind of the accused. As a matter of fact, we know that in the British jurisprudence and Indian jurisprudence no offence is committed unless the person has got *mens rea*. Here is an offence without *mens rea*. The hon. Minister is a lawyer himself.

Shri Alagesan: I am not a lawyer.

Pandit Thakur Das Bhargava: I think the hon. Minister is pursuing this measure without *mens rea*. I would respectfully submit that, though not the words 'having reason to believe', even if minor words are retained, it will be useful and there will not be a departure from the general principles. If the words 'by him' are there, there is the court which will determine the question. It must be found that the possessor suspected the thing to be stolen when he took possession. An innocent purchaser will not come under the clutches of the law, unless he knows that the article, the possession of which has been transferred, has been the subject matter of theft or some other offence.

In respect of 4 years and 5 years, I have already submitted that if he accepts the change, it will be salutary. It is true that the courts have discretion to give whatever punishment they

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like. If a public servant commits a theft, it is regarded as more heinous because of his position of responsibility and confidence. Other persons are not in the same position. It is to meet this case that this amendment is suggested.

I commend these amendments to the hon. Minister.

Mr. Chairman: Amendment moved.

1) Page 1, line 13—

after "if any person" insert "commits theft or".

(2) Page 1, line 13—

before "possession" insert "recent".

(3) Page 1, lines 14 and 15—

for "reasonably suspected of being stolen or unlawfully obtained" substitute:

"which, within the meaning of Section 410 of the Indian Penal Code (Act XLV of 1860) can be designated as stolen."

(4) Page 1, lines 14 and 15—

for "reasonably suspected of being stolen or unlawfully obtained" substitute:

"knowing or having reason to believe the same to be stolen within the meaning of Section 410 of the Indian Penal Code (Act XLV of 1860)."

(5) Page 1, line 15—

after "obtained" insert "by him".

(6) Page 2, line 2—

for "five years" substitute "four years".

(7) Page 2, line 2—

add at the end:

"and if such person is a railway servant he shall be punishable with imprisonment for a term which may extend to five years or with fine or with both."

Shri Alagesan: If I accept the amendments of the Mover, then, I need not have recourse to this special

penal instrument at all. It can very well come under the common law. I do not know why I should take all the trouble of bringing forward this special legislation.

Shri V. P. Nayar: That is also what we do not know.

Shri Alagesan: I can assure my hon. friend that I have no partiality for thieves. He asked, why the people who commit theft should be left out. He wants to add the words "commits theft or". In that case, I will have to prove that it is theft. The person in possession may have been the thief. I need not prove that he stole it himself. It is enough for me to establish that he is reasonably suspected, that the property is reasonably suspected of having been stolen by him. He might himself be the thief. You will remember that in the original Bill as it was introduced and passed by the Rajya Sabha these words were there: "Whoever is found or is proved to have been in possession". Then, it would have included a whole chain of people who have operated. 'A' might have committed the theft of an article and passed it on to 'B' who might have passed it on to 'C'. If this can be proved, then all of them could have been brought under the clutches of the law. But as it is, I realise that unless the man who is in possession is himself the man who has committed the theft, it may be that the man who has actually committed the theft might be left out. We have to go only to the common law for that purpose. But then, I am not prepared to take the burden of proving the committal of the theft. That will be obligatory on me if I accept Pandit Thakur Das Bhargava's amendment No. 8 or No. 9. If I have the word "stolen" in the sense of section 410 I.P.C., I do not know why I should have this special legislation.

I think I have already disposed of the point about higher punishment for railway officers when I had occasion to reply previously.

I do not agree to the amendments.

Mr. Chairman: The question is:
Page 1, line 13—

after "if any person" insert "com-
mits theft or".

The motion was negatived.

Mr. Chairman: The question is:
Page 1, line 13—

before "possessions" insert—
"recent".

The motion was negatived.

Mr. Chairman: The question is:
Page 1, lines 14 and 15—

for "reasonably suspected of
being stolen or unlawfully obtained"
substitute:

"which, within the meaning of
Section 410 of the Indian Penal
Code (Act XLV of 1860) can be
designated as stolen."

The motion was negatived.

Mr. Chairman: The question is:
Page 1, lines 14 and 15—

for "reasonably suspected of
being stolen or unlawfully obtained"
substitute:

"knowing or having reason to
believe the same to be stolen with-
in the meaning of section 410 of
the Indian Penal Code (Act XLV
of 1860)."

The motion was negatived.

Mr. Chairman: The question is:
Page 1, line 15—

after "obtained" insert "by him".

The motion was negatived.

Mr. Chairman: The question is:
Page 2, line 2—

for "five years" substitute "four
years".

The motion was negatived.

Mr. Chairman: The question is:
Page 2, line 2—

add at the end:

"and if such person is a rail-
way servant he shall be punish-
able with imprisonment for a term

which may extend to five years
or with fine or with both."

The motion was negatived.

Mr. Chairman: The question is:

"That clause 3 stand part of the
Bill".

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4.— (Repeals and Savings)

Pandit Thakur Das Bhargava: I
wish to move amendment No. 15 or,
in the alternative, amendment No. 16.

I beg to move:

(i) Page 2—

for lines 9 to 13 substitute:

"(3) This Law shall only apply
to cases in which the possession
referred to in Section 3 of the
Act has been transferred after
the passing of this Act."

(2) Page 2—

for lines 9 to 13 substitute:

"(3) This Act shall not apply to
cases in which the possession re-
ferred to in Section 3 of the Act
has been transferred to the ac-
cused before the passing of this
Act."

When I spoke at the consideration
stage, I submitted for your considera-
tion that according to article 20 of the
Constitution, a person cannot be
punished for an offence which did
not exist at the time of the offence
was committed. The law in force at
the time when the offence was com-
mitted is the only law which can be
applicable to such a case, and simi-
larly, in regard to punishment, the
law is the same.

Article 20 of the Constitution runs
thus:

"No person shall be convicted
of any offence except for viola-
tion of a law in force at the time
of the commission of the act
charged as an offence, nor be sub-
jected to a penalty greater than
that which might have been in-
flicted under the law in force at

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the time of the commission of the offence."

In clause 3 of the Bill, the words are again very wide.

"If any person is found, or is proved to have been, in possession of any article of railway stores reasonably suspected of being stolen or unlawfully obtained, and cannot account satisfactorily....."

My humble submission is that if 'A' was in possession some, say, four years back of such property as described here, and then he transferred the possession to 'B', say three years before this.....

Mr. Chairman: Simply for the sake of information, could I know whether this point was also raised during the debates in the Select Committee?

Pandit Thakur Das Bhargava: I do not remember.

And similarly, supposing B who came into possession at the time when this law was not in force transferred it after this law came into force, may I enquire whether all the three will be guilty or not? Because, it is proved to have been in possession of certain persons many years before. And what will be the punishment given to them? Are they liable to be given five years? The man who is found recently after passing this Act may or may not be liable for five years because he proves it was transferred to him before this Act came into force. I am very doubtful if, as a matter of fact, this law can be applied to him, and the distinction will not be made by the courts. I am therefore anxious that this House should give direction to the courts that this will only apply to cases where offences have been committed after the passing of this Act.

My friend has been pleased to say that this may apply to the thief as against a person who is in possession

of the property. It is quite true. If the thief is also found to be in possession of the property, he may be proceeded against. But, at the same time, this is a law for possession. He will not be punished for theft. And I do not know why the hon. Minister has got a soft heart for the thief. While he wants to punish the man in possession for five years, he only punishes the thief for three years. He wants to be content with that. What is the position of the law with regard to the persons who have got possession of supposed stolen property? He has not fully realised the implication of what we are doing. In fact we have changed the law. I have not put in any amendments which have not made the law stricter against the accused. As a matter of fact, my hon. friend does not realise that now the courts have got no discretion whatsoever in the matter. They must make a presumption against the accused if it is found that he was in possession. Previously, under the Evidence Act, they had a discretion. Now, that discretion has been taken away. My hon. friend is not satisfied with it, it appears. So far as the accused is concerned, he says he does not understand how the law has been made tighter against him. The words are "cannot account satisfactorily". The word "satisfactorily" has got some meaning. If it has no meaning, why did you put it there? It means the burden is greater on the accused than before.

In all such cases, as you know, so far as the law is concerned, even when the burden is on the accused, the accused need not prove the fact that he alleges. He has only to raise an alternative theory. It may or may not be true. Yet, it must be a theory which may be acceptable to the court though it may not be true. This is the law. If you want an authority, I can off-hand quote one—56 Indian Cases 849. The burden is always on the prosecution. The accused has only to create a doubt. Therefore, by the

word "satisfactorily" being there, he must understand that the burden is much greater now on the accused than before. I would not have raised this point here because we do not want any person who has really committed a crime to escape scot-free. Therefore, I am submitting only that so far as the law is concerned, he should not think that even those persons who do not come within the scope of this law under article 20 can also be enmeshed.

I would therefore request him to accept the amendment.

Mr. Chairman: I would also request the hon. Minister just to tell us whether his attention has been drawn to this article 20. If the offence was committed at a time when the law was not in force, would the courts be able to try the offenders?

Shri Alagesan: The only answer I can give to that is that all law is subject to the Constitution. I do not think any law that this House passes can bypass the Constitution.

Mr. Chairman: That is correct. But here, there is article 20 which says:

"No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence....."

By this clause it is intended to punish those persons also who have already committed that offence before this law came into force. This was not in force when a particular offence was committed earlier. When you want to try that under this law, would it not be against the provisions of the Constitution?

Shri Barman: (North Bengal—Reserved—Sch. Castes): May I submit that so far as the offence of theft is concerned, that is not being superseded by this legislation, as regards railway property. So, if nobody has committed any theft so far as railway property is concerned, then the person concerned will be convicted under

the ordinary law. So far as this legislation is concerned, it will be an offence only from the date of passing of this Bill.

Pandit Thakur Das Bhargava: We are not concerned with theft at all.

Mr. Chairman: That is exactly what he wants.

Shri Barman: That need not be put in the statute-book.

Shri Rane (Bhusaval): This Bill cannot have any retrospective effect.

Pandit Thakur Das Bhargava: This is all that I want.

Dr. Krishnaswami (Kancheepuram): It looks as though it has.

Shri Mulchand Dube: The offence consists in the person being found in possession.

Mr. Chairman: Has the hon. Minister anything more to say?

Shri Alagesan: The court will interpret clause 3 in the light of article 20 of the Constitution.

Mr. Chairman: I shall now put amendments 15 and 16 to vote.

Pandit Thakur Das Bhargava: May I submit that amendment No. 16 is an alternative to amendment No. 15? If amendment No. 15 is not accepted, then amendment No. 16 is to be accepted.

Mr. Chairman: In that case, I shall put them separately.

The question is:

Page 2—

for lines 9 to 13 substitute:

"(3) This Law shall only apply to cases in which the possession referred to in Section 3 of the Act has been transferred after the passing of this Act."

The motion was negatived.

Mr. Chairman: The question is:
Page 2—

for lines 9 to 13 substitute:

“(3) This Act shall not apply to cases in which the possession referred to in Section 3 of the Act has been transferred to the accused before the passing of this Act.”

The motion was negatived.

Mr. Chairman: The question is:
“That clause 4 stand part of the Bill”.

The motion was adopted.

Clause 4 was added to the Bill.

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

Shri Alagesan: I beg to move:
“That the Bill be passed.”

Mr. Chairman: The question is:
“That the Bill be passed.”

The motion was adopted.

Mr. Chairman: We shall now take up the next item.

Dr. Krishnaswami: We shall take it up tomorrow.

Mr. Chairman: The hon. Minister is here, and there are still ten minutes left. So, I think we can proceed with the next item.

Shri N. R. Muniswamy (Wandiwash): If he starts his speech today, it will be left incomplete.

Dr. Krishnaswami: We can take it up tomorrow, when we are fresh.

Mr. Chairman: If this is the general opinion of the House, then I have no objection. The House stands adjourned till 11 A.M. tomorrow.

4-52 P.M.

The Lok Sabha then adjourned till Eleven of the Clock on Friday the 2nd December, 1955.
