

21st January 1927

THE
LEGISLATIVE ASSEMBLY DEBATES
(Official Report)

Volume I

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OF THE
THIRD LEGISLATIVE ASSEMBLY, 1927



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LEGISLATIVE ASSEMBLY.

Friday, 21st January, 1927.

The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock. Mr. President (the Honourable Mr. Vithalbai Javerbhai Patel) was in the Chair.

MEMBERS SWORN :

- Lala Triloki Nath, M.L.A. (United Provinces: Landholders);
Mr. Madheo Srihari Aney, M.L.A. (Berar Representative);
Risaldar-Major and Honorary Captain Kabul Singh Bahadur, M.L.A.
(Punjab: Nominated Non-Official); and
Nawab Sir Sahibzada Abdul Qaiyum, K.C.I.E., M.L.A. (North-West
Frontier Province: Nominated Non-Official).

ASSENT OF THE GOVERNOR GENERAL TO BILLS.

Mr. President: I have to inform you that the following Bills which were passed by both Chambers of the Indian Legislature have been assented to by His Excellency the Governor General under the provisions of sub-section (1) of section 68 of the Government of India Act:

- The Usurious Loans (Amendment) Act, 1926.
The Workmen's Compensation (Amendment) Act, 1926.
The Negotiable Instruments (Interest) Act, 1926.
The Indian Evidence (Amendment) Act, 1926.
The Administrator General's (Amendment) Act, 1926.
The Indian Companies (Amendment) Act, 1926.
The Sind Courts (Supplementary) Act, 1926.
The Cantonments (Amendment) Act, 1926.
The Code of Criminal Procedure (Third Amendment) Act, 1926.
The Indian Succession (Amendment) Act, 1926.
The Indian Bar Councils Act, 1926.
The Provincial Insolvency (Amendment) Act, 1926.
The Indian Succession (Amendment) Act, 1926.

MOTION FOR ADJOURNMENT.

Mr. President: I have received the following notice of Motion for Adjournment from Pandit Motilal Nehru:

"I hereby give notice that I shall move the adjournment of the House on Friday, the 21st January, 1927, on a definite matter of urgent public importance, namely:

The conduct of the Government in preventing Mr. Satyendra Chandra Mitra, an elected Member of this Assembly, from attending to his duties as a Member of this House and thereby seriously infringing the privileges of this House and depriving the constituency which elected him of its right to be represented in this House."

The motion *prima facie* appears to me to be in order. I do not know if Government or any other Member have any objection to the admission of this motion.

(No objection was raised.)

I rule that the motion is in order. I ask if the Assembly gives leave to Pandit Motilal Nehru to move the motion.

(No Honourable Member objected.)

As no Honourable Member objects, I intimate that the leave is granted. The motion will now be taken up for discussion at

The Honourable Sir Alexander Muddiman (Home Member): With your permission, Sir, I should like to suggest that it will be convenient for me, and possibly for my Honourable friend, Pandit Motilal Nehru, if the motion is taken up immediately after the elections are over. We cannot fix the time, because we do not know when the elections will be over.

Pandit Motilal Nehru (Cities of the United Provinces: Non-Muhammadan Urban): I quite agree with the suggestion made by the Honourable the Home Member.

Mr. President: It means that if the motion is taken up immediately after the completion of the business, say after fifteen or twenty minutes, the discussion can go on under the rules till 6 o'clock. Ordinarily, motions for adjournment are discussed for two hours from 4 to 6, but, as the Honourable the Home Member agrees to take the matter up immediately after the completion of the business, say at about half-past eleven, there is nothing in the rules which will prevent the House from discussing the motion till 6 o'clock. But I would ask Honourable Members to be considerate and not allow the discussion to go on for more than two hours. The Chair would accept a motion for closure at the end of two hours, if any Honourable Member chooses to make one. The motion will be taken up immediately after the completion of the business.

ELECTION OF THE STANDING FINANCE COMMITTEE.

Mr. President: I have to inform the Assembly that the number of candidates nominated for election to the Standing Finance Committee is equal to the number required and therefore I announce that the following Members are declared to be duly elected:

Haji Chaudhury Mohammad Ismail Khan,
Raja Ghazanfar Ali Khan,
Pandit Nilakantha Das;

Mr. Anwar Nath Dutt,
 Mr. Gaya Prasad Singh,
 Mr. Ram Narayan Singh,
 Mr. M. S. Sesha Ayyangar,
 Mr. Vidya Sagar Pandya,
 Mr. Ghanshyam Das Birla,
 Mr. N. C. Kelkar,
 Sir Purshotamdas Thakurdas,
 Mr. Sarabhai Nemchand Haji,
 Sir Darcy Lindsay, and
 Mr. A Moore.

ELECTION OF THE STANDING FINANCE COMMITTEE FOR RAILWAYS.

Mr. President: The Assembly will now proceed to elect 11 Members to serve on the Standing Finance Committee for Railways. There are 19 candidates whose names are printed on the ballot papers which will be supplied to Honourable Members in the order in which I call them.

(The balloting then took place.)

(As the Members were taking the ballot papers and recording their votes)

Mr. President: Honourable Members who have not taken their oath are not entitled to take part in this election. If they have by any chance voted, their votes would be regarded as invalid. The Chair would like to know whether there are any Honourable Members who have not taken their oath and yet have taken part in this election.

(The names of Dr. Moonje and Mr. Yusuf Imam were mentioned to the Chair.)

The Secretary will not take their voting papers.

Dr. B. S. Moonje (Nagpur Division: Non-Muhammadan): I was here, Sir.

Mr. President: The Honourable Member has not taken his oath.

Dr. B. S. Moonje: I was present here. I did not hear my name called.

Pandit Motilal Nehru (Cities of the United Provinces: Non-Muhammadan Urban): He may be permitted to take his oath now. There is nothing in the law against it.

Mr. President: Dr. Moonje's name was called, but probably he did not hear.

Mr. A. Rangaswami Iyengar (Tanjore cum Trichinopoly: Non-Muhammadan Rural): May I know, Sir, if they can take their oath now?

Mr. Abdul Haya (East Punjab: Muhammadan): On a point of order, Sir. You have ruled that those Honourable Members who have not yet taken their oath of allegiance are not entitled to take part in this election. You have said that you will ignore their votes. But how are you going to find out in whose favour they have voted and which are their voting papers?

Mr. President: The Honourable Member is quite right in raising the point. The Secretary has been asked to make certain inquiry and the Chair will soon deal with the matter.

Mian Mohammad Shah Nawaz (West Central Punjab: Muhammadan): May I point out, Sir, that the voting paper is still with Dr. Moonje?

Mr. President: It appears that Dr. Moonje's voting paper has not yet been put into the box but Mr. Yusuf Imam's paper has already been so put. If Mr. Yusuf Imam will kindly tell the Chair confidentially for whom he has voted, then that vote will be eliminated. Has Mr. Yusuf Imam any objection to tell the Chair in confidence for whom he has voted?

(Mr. Yusuf Imam signified his assent to this.)

Mr. President: That is all right. That settles the matter.

Mr. A. Rangaswami Iyengar: May I again inquire, Sir, if Mr. Yusuf Imam can now be permitted to take the oath and take part in the further proceedings?

Mr. President: There is no objection to Dr. Moonje and Mr. Yusuf Imam taking the oath now.

MEMBERS SWORN.

Dr. B. S. Moonje, M.L.A. (Nagpur Division: Non-Muhammadan), and
Mr. Yusuf Imam, M.L.A. (United Provinces, Southern Divisions:
Muhammadan Rural).

Dr. B. S. Moonje: Am I entitled to vote now, Sir?

Mr. President: No. The Honourable Member is not entitled to vote.

MOTION FOR ADJOURNMENT.

ATTENDANCE OF MR. SATYENDRA CHANDRA MITRA AT MEETINGS OF THE LEGISLATIVE ASSEMBLY.

Mr. President: Pandit Motilal Nehru. I desire to make it clear from the outset that I will not allow one minute more than the time allotted to each Member.

Pandit Motilal Nehru (Cities of the United Provinces: Non-Muhammadan Urban): Sir, I beg to move the adjournment of the House on a definite matter of urgent public importance. You have already read the motion. It concerns one Mr. Satyendra Chandra Mitra, an elected Member of this House, who was elected unopposed and who is now under detention under the Bengal Criminal Law Amendment Act. The motion calls attention to the conduct of the Government in preventing Mr. Satyendra Chandra Mitra from attending to his duties as a Member of this House and thereby seriously infringing the privileges of this House and depriving the constituency which elected him of its right to be represented in this House. The larger question of the release of this prisoner or others of the same class is not before the House nor is there any question of the repeal or amendment of the law, the so-called law under which they are detained, before this House. The gravity of the situation to which the motion calls attention arises from the fact that the detention of

this gentleman constitutes a very serious encroachment on the privileges of this House and on the right not only of the Member himself but of the constituency which has unanimously elected him.

The facts are very simple and I should like to state them briefly for the information of the House. Mr. Satyendra Chandra Mitra was an elected Member of the Bengal Legislative Council when he was arrested under the Bengal Ordinance No. I of 1925 and Regulation III of 1818. Thereafter the Bengal Criminal Law Amendment Act was passed and he was detained under that Act. Now it will be observed that in arresting and detaining Mr. Satyendra Chandra Mitra the Executive were guilty of a double wrong—a wrong to the Member by infringement of his rights, and a wrong to the constituency which elected him. The latter wrong, I mean the one against the constituency, was attempted by His Excellency the Governor of Bengal to be redressed in a particular way. The method which was determined upon by His Excellency the Governor shows an ingenuity and originality which beats the record of the bureaucracy for their special genius for suppression and oppression. His Excellency acting under the rule which gives him power to direct that a seat has become vacant for the reason that a Member has not been able to attend to his duties for two consecutive months issued a notification that the seat of Mr. Satyendra Chandra Mitra had become vacant. Now, Sir, what is the simple meaning of it? Here is a man duly elected by his constituency, who was actually representing the constituency in the House. He was deliberately disabled by executive order from attending. Not that he is unable to attend for personal reasons, but was disabled by force from attending to his duties and the consequences of the inability thus brought about were visited upon him by the notification that his seat was vacated. You tie down a man hand and foot and then beat him for not being able to move; that is what it comes to, and that is what really happened. Thereafter this particular constituency went unrepresented in the Bengal Council for the rest of the life of that Council. The experiment had failed but was not repeated of trying another election. In course of time the general elections came round and Mr. Satyendra Chandra Mitra offered himself as a candidate for election to the Assembly. He was again returned unanimously, i.e., unopposed to the Assembly. He was gazetted as a duly and properly elected Member of the Assembly. He received a summons of His Excellency the Governor General to attend the Assembly. He received another summons of His Excellency the Governor General to attend and hear his inaugural address on the 24th instant, which is to come. Thereupon he applied to his custodians to give him an opportunity to accept the very generous invitation which was extended to him but was refused permission.

Now, Sir, we are meeting here to-day without this gentleman for no fault of his and for no fault of the Governor General either. His Excellency has duly invited him but there are others who prevent him from coming out. Upon those facts what is the position? It is quite clear to me but my Honourable friend the Home Member does not look upon it in such a simple way as I do and I can anticipate his presently rising in his seat and shaking his fist at me and telling me "How dare I say that this man, a dangerous anarchist, should be admitted into the honourable company of this House. He has been dealt with under the law of the land". This particular law is known more as a lawless law than anything else. But he will reply upon it and say that it is none the less the law of the land.

[Pandit Motilal Nehru.]

He will say "When a man has been dealt with under the law and detained by competent authority, what right has any one to interfere with it". Now, Sir, my answer to that is a very simple one. I say that this man has not been tried. He has not been convicted. He has not been sentenced by any court and therefore he has every right to attend to his duties, by answering the summons he has received, unless my friend the Honourable the Home Member is able to point out to me any authority, which I challenge him to do if he can, precluding him from attending to his duties. Sir, this is really imposing a disqualification upon a duly elected Member which does not exist under the law. Of course it was open to the powers that be to make it a disqualification for seeking election, but luckily up to this moment, it has not occurred to them to do so.

An Honourable Member: You remind them.

Pandit Motilal Nehru: Now, the Government have not had the courage to put this man on his trial. They have not taken upon themselves to make it a disqualification. The man is kept in custody no doubt, but is there anything in any law in the world that the mere fact of a man being forcibly detained in custody not by an order of the court, nor after a conviction, disentitles him from performing the duties of his office? Imagine for a moment such a case arising in England. What would have happened? I will read the law as crystallised in Halsbury's Laws of England, Volume 21, Article 1468:

"Whilst Parliament is sitting, and during the time within which the privilege of Parliament extends no peer or member of the House of Commons may be imprisoned or restrained without the order or sentence of the House of Lords or the Commons as the case may be, unless it be for treason or felony, or for refusing to give security for the peace."

Now, that may comprehensively be described by saying unless he is convicted of a criminal offence. I will make it as general as that. Now in the case of the House of Commons, it has been held that a member cannot be arrested for a period of 40 days before and after the meeting of Parliament. It has always been held that a member is immune from arrest for a period of 40 days even after the dissolution of Parliament of which he is a member. A member who is in custody at the time of his election to Parliament—that is the case in point—is liberated upon his election in virtue of his privilege unless he is undergoing a term of imprisonment, for an indictable offence or for a criminal contempt of court. That is the common law of England. And what is the procedure prescribed if a man so detained is not liberated after his election? That you will find in the same book in Article 1469. The procedure with which the two Houses enforce the due observance of their privileges and punish any breach of them is practically the same. When any alleged breach of privilege is reported to either House, it is the practice of the House whose privileges had been attacked to send for the offender to answer the charge of contempt. Now, Sir, if this case had happened in England, His Excellency the Governor of Bengal and all others who are concerned in detaining this man would to-day have found themselves in a very uncomfortable position at the bar of the House of Commons. But it may be said that India is not England and that this Assembly is not Parliament. We may for our own purposes choose to dignify it into a Parliament on certain occasions

but it really is nothing of the kind and therefore there is no comparison. I quite agree. I do believe and I am perfectly certain that there is no analogy between the House of Commons and this House but so long as it is allowed to retain the merest pretence of what it is alleged to be I maintain that it is the inherent right of every member of a representative institution to be present at its meetings to represent his constituents. That right is, I submit, inseparable from the very nature of the institution. It has nothing to do either with any particular House or the privileges of that particular House. True it is that the privileges of the House of Commons have been built up by long convention but, unless we make an early beginning, I do not think we will ever be able to build them up. There are only two things upon which the privileges of the House of Commons are based. There is the convention established by immemorial custom and certain privileges have been sanctioned by Statute. Nothing known as privileges of the House does exist in this country. It is up to us to lay the foundation of a convention to-day because it is the inherent right of every such institution as ours is to have its own conventions.

Mr. President: I do not wish to interrupt the Honourable Member, but I would remind him of the time limit.

Pandit Motilal Nehru: I hope I have two or three minutes more. As the time at my disposal is running out, I shall not labour this point but I will say that in this present instance the Government itself and His Excellency the Governor General have fully recognised the right. If they did not, why were this summons and invitation sent? I will again remind the House that there is no question on the motion relating to the legality or otherwise of the Ordinance or of the arrest or of the detention or of release for all purposes. The present motion only relates to the disability which has been imposed upon a Member from attending the meetings of this House. Now, section 11 of the Act under which he is under detention is important and I wish to point out that that section also treats the case as that of a suspect, not of a criminal, not of one who has been found guilty of any offence. That being so, I submit that it is not a case of a criminal character at all—much less a conviction under the criminal law—which alone is excepted under the practice in England. What after all will happen if Mr. Mitra is allowed to attend? I cannot conceive that the enormous resources of the British Empire will prove inadequate to secure peaceful residence for this man in Delhi and his peaceful attendance in this Chamber while we are in Session.

Before I resume my seat I should like to remind the House of what happened only the other day. His Excellency in opening these buildings, called the buildings of the Parliament of India, was pleased to read a gracious Message from the King Emperor, and the concluding part of that Message ran as follows:

"I earnestly pray that in the Council House now to be opened wisdom and justice may find their dwelling place and that God's blessing may rest on all those who may henceforth serve India within its walls."

I put it, Sir, to the Treasury Benches and to my European Colleagues in this House whether they will be helping to keep wisdom and justice in their dwelling place in this House if they vote down this motion and declare to the world their impotence to protect themselves and the honour

[Pandit Motilal Nehru.]

of this House when it is attacked in this way. I hope and trust, Sir, that we who are here to serve our constituents will not neglect our primary duty to them. The best judges and the only judges of their representatives are their electors. The electorate has given its verdict and I hope that this House will not trample under foot that verdict which is the very foundation of our own right to be here. With these words, Sir, I commend my motion to the House.

The Honourable Sir Alexander Muddiman (Home Member): Sir, it was with very great interest that I heard the speech of my Honourable friend and I must congratulate him on his limiting the motion in the manner he has done. It is far easier to discuss what I admit is a point of constitutional interest in the manner in which he has put it before the House. He recognizes, as I am sure all sensible people will recognize, that there will be ample opportunity—and indeed judging from the notice paper ample opportunity has already been taken—to secure a discussion of the more contentious question which might have been introduced here I think irrelevantly. I congratulate my Honourable friend on his not having introduced them now, and so far from shaking my fist in his face I shall meet him with the utmost mildness. I will endeavour to convince him because I know him to be eminently reasonable on a point of constitutional law, however difficult he may be on other matters. Well, Sir, my Honourable friend will pardon me if I read the motion again. I will omit the reflections on the conduct of Government and take them as read and I will deal with the operative part of the motion, which is:

"and thereby seriously infringing the privileges of this House and depriving the constituency which elected him of its right to be represented in this House."

Now I think my Honourable friend has done a great service in bringing forward this motion for the adjournment because these are matters which it is desirable should be discussed, so that the position of the House in regard to an important point of this kind may be made clear. But let me remind him in the first instance that he who pleads privilege must prove the privilege. I think that is probably a sound legal dogma. Well, Sir, this matter has not altogether been unexamined. Fortunately I am provided by the learning of others with a very concise account of the position of this House in regard to privileges. A very powerful sub-committee examined this matter. It consisted of two *ex-Law* Members of the Government of India, Sir Muhammad Shafi and Sir Tej Bahadur Sapru, gentlemen I think whose fame as lawyers is recognized throughout India, Sir Henry Moncrieff Smith, an officer of considerable legal experience who is now President of the Council of State and has great constitutional experience, and Mr. Jinnah, now in this House about whose merits I refrain from speaking. Well, Sir, these gentlemen carefully examined the question of the privileges of this House and this is what they said. I will read the whole paragraph:

"It has not been suggested to us from any source that the legislatures in India should be provided with a complete code of powers, privileges and immunities as is the case with most of the legislatures in other parts of the Empire. The matter has been generally dealt with by the enactment of a provision in their Acts of Constitution enabling the legislatures to define their own powers, privileges and immunities, with the restriction that they should not exceed those, for the time being enjoyed by the British House of Commons."

I pause there to comment because that is a very important restriction to which I shall refer later.

"Eventually no doubt similar provision will be made in the constitution of British India. But we are of opinion that at present such action would be premature."

At the same time they go on to say that they feel that sufficient protection has not been given to the Members and they make certain recommendations. In connection with those recommendations I may remind this House that last year this House and the other Chamber unanimously passed an Act to confer certain exemptions on Members of legislative bodies. That is, they did go some way towards conferring privileges and therefore they recognized that those privileges did not exist. My statement of the case would be inadequate if I did not point out that under the Government of India Act certain privileges do arise, but they do not arise in connection with the subject matter of this discussion. I have therefore shown, and indeed it was hardly necessary for me to have taken up so much of the time of the House because my Honourable friend hardly argued it, that there is no existing privilege.

Then I pass on to the question of how far this matter if it had happened in the House of Commons would have been a breach of privilege. It is perfectly true, and my Honourable friend readily admitted it, that there is no strict analogy between this House and the House of Commons in respect of privilege. (Laughter.) I am glad to see that my Honourable friends opposite accept some of my remarks. But let me point out to them that it is a pity to base an argument on what is not really sound. Had this case occurred in the House of Commons there would have been no breach of privilege. The privileges of the House of Commons have been fairly well defined in the many years in which that body has been developing them. It was suggested that this not being a case of criminal conviction privilege would arise. Now, Sir, that is not so. The House of Commons do not interfere by way of privilege in cases where a man is detained otherwise than on a criminal charge, in many cases and it will be in the recollection of many of the older Members of this House that during a period of some excitement, about 1861, numerous Members of the House of Commons were detained very much in the same way as the gentleman in connection with whom this constitutional debate has arisen. I refer of course to Messrs. Dillon, Parnell and the others. They were held under the Protection of Persons and Property Act, 1861, and it was never suggested that this was a breach of privilege of the House. What that Act did do was to require that a report should be sent to the House of Parliament concerned if a member were detained under its provisions. I will read you the section:

"If any member of either House of Parliament be arrested under this Act the fact shall be immediately communicated to the House of which he is a member, if Parliament be sitting at the time, or if Parliament be not sitting, then immediately after Parliament reassembles, in like manner as if he were arrested on a criminal charge."

Now if the House feels that they would like that provision to be in operation in regard to these particular arrests in this country, I am quite prepared to carry that out, and indeed I think it would be a reasonable and proper completion of our procedure. And I think if my Honourable friend's motion had no other result than that, he would have effected a valuable improvement.

[**Sr. Alexander Muddiman.**]

Now, Sir, a good deal has been said on the point of depriving the constituency of its Member. Now that point would have impressed me rather more forcibly if the gentleman in question had not been under detention at the time he was elected. Had he been arrested and confined after his election, then I think the constituency might have felt rather sad about it; and I should consider myself—though I have no reason for knowing it as a fact because I have not examined the point—that the action of the Government of Bengal in declaring—I think it was the action of the Government of Bengal—the seat vacant was probably to give the constituents an opportunity of filling that seat if they so desired.

Mr. A. Rangaswami Iyengar (Tanjore *cum* Trichinopoly: Non-Muhamadan Rural): They did not fill it.

The Honourable Sir Alexander Muddiman: They did not fill it. Then the constituency made that sacrifice in the interests of their political feelings, and my sympathies are not with them. In like manner, when this gentleman was elected to this House the constituency must have been aware of the fact that he was under detention.

Now, Sir, I have shown—at least I have tried to do so and I hope to carry the conviction of this House—(1) that there is no such privilege as is claimed existing in regard to this House, and (2) that if this House had the full privileges of the House of Commons, there would be no breach of privilege such as is suggested; and I ask the House to say that I have satisfactorily replied to the points raised by my Honourable friend.

Mr. Amar Nath Dutt (Burdwan Division: Non-Muhamadan Rural): Sir, coming from Bengal, as I do, I beg to associate myself with my leader in this motion for adjournment. I shall not trouble this House with the constitutional aspect of the question which has been raised and which has not been answered by the Honourable Sir Alexander Muddiman, and could not be answered. But I shall place before this House one fact which is for all Honourable Members to consider, that it is one of us, Pandit Motilal Nehru and myself as well as Sir Alexander Muddiman who is being kept away, by a barbarous law (I use the word deliberately) from this House from attending to his business; and I think whatever may be our political faith, and to whatever political party we may belong, it is the duty of every Member not only of the Opposition but also of the Members of the Treasury Benches to support this motion for adjournment because we have been deprived of half of Bengal being represented, for Mr. Satyendra Chandra Mitra represented two Divisions of Bengal; he was elected unopposed from two Divisions, namely, Rajshahi and Chittagong. The Chittagong Division happens to be the frontier of Bengal, the eastern frontier of Bengal as well as of India, and Rajshahi is hallowed with the sacred memories of great sons of Bengal as also great kings, last but not least of whom is Rani Bhobani, popularly known as Ardha Bangeswari, Queen of half of Bengal. Now, Sir, when you deprive these two constituencies of their representative to attend to his duties in the Central Legislature, we cannot allow that to go unprotested as Members of this House, whatever may be the value of our protests here. I appeal not only to my friends who belong to my party as also to the Independents but I also appeal to the Honourable Members occupying the front Benches to support this motion because it is an infringement of my right and your

right too. With these few words, Sir, I beg to associate myself with the motion for adjournment of this House moved by my leader.

Mr. S. Srinivasa Iyengar (Madras City: Non-Muhammadan Urban): Sir, as the motion has been confined to the constitutional aspect, I wish to confine my remarks also to that aspect. Every Member has a right of attendance, and it is his duty to attend. That is a right which is conferred by an Act of Parliament, and it is a duty which is imposed by an Act of Parliament. I do not think it is competent to the Bengal Legislative Council or to the Government of Bengal or to the Government of India to transgress an Act of Parliament. If there is a right in every Member of this Assembly to attend, and if there is a duty, that duty and that right could be interfered with only by an equivalent overriding Statute. There is no such overriding by the Legislature of Bengal. The local Legislature, the provincial Legislature, could not affect the Act of Parliament, the constitution Act, when it necessarily carries with it by implication a right to override any law which infringes the primary right which is given to every Member. Therefore, I do not consider that the Honourable the Home Member was relevant or sound in the remarks which he made, namely, that there is no question of privilege. It is higher than privilege, it is a statutory right which he has got. It is not necessary that it should be said in so many words, but when the Governor General has the right to summon him to attend this House, and when the right is conferred upon a member, that right can only be taken away by an Act of Parliament. As to whether there is a Statute, referred to by the Honourable the Home Member, which takes away that right, the only Act that is referred to is the recent Bengal Act. That cannot interfere with that right because it cannot override an Act of Parliament. The only other safeguard that is provided in favour of Government is in cases of offences and convictions for offences, but this is not that case. Therefore, it may be a lacuna, it may be a *casus omissus*, but there it is: so long as the Act of Parliament exists as it is, Government have no right whatever to prevent an Honourable Member of this House, unless they show that he has been detained in a manner which the Act of Parliament recognizes as depriving him of the right of attendance; I say they have no right whatever to prevent him from attending this House. I am not referring to the privileges of the House of Commons. It is hardly necessary, because I do not recognize that this is a House of Commons, but whether it is like the House of Commons or not, this technical or constitutional point is one which must be faced by the Honourable the Home Member; and I have not heard anything on that side on this aspect. Of course we all recognize also that when Parliament conferred upon certain constituencies the right of electing Members, the right was a real right, subject only to disqualifications which the Statute or rules made under the Statute impose upon those who are eligible for election. Now here there is absolutely no disqualification imposed upon him. On the other hand it was in the mind of Parliament to exclude certain classes of persons from being eligible for election,—such persons as were convicted of offences—but in this case there is no conviction and there is no offence. Therefore, you cannot say that this man is disqualified. There is not the slightest doubt, as Pandit Motilal Nehru has said, that this is really adding to the list of disqualifications, and I do not know whether it would not be technically a fraud upon the Act of Parliament to add to the table of disqualifications and make it impossible for a constituency to elect one who,

[Mr. S. Srinivasa Iyengar.]

according to the Statute, is eligible to be elected but who is prevented from being either elected or reaping the fruits of a successful election. The constituency has a right to be represented in this House: what right have the Government of India or of Bengal, what right have they, to prevent that constituency from representation in this House? That is the point of view which I wish to place before the House. If this is to be regarded as a legal matter, as a technical matter, as a constitutional matter, by all means let us so regard it. But it is not a laughing matter, it is not a matter to be treated as a humorous episode. It is a very serious matter and it really affects the fundamental rights of Members of this House; and I should expect that a unanimous vote against the Government on this question is the only answer which a self-respecting House can give.

***Mr. M. A. Jinnah** (Bombay City: Muhammadan Urban): I listened to the speech of the Honourable the Home Member who is always very happy in his expressions and who always draws a very great deal of admiration for himself from me, although he refrained from saying anything about me. Sir, I agree with him that it is a question of great constitutional interest, but he argued in a particular circle which, if I may say so, is a vicious circle. He says under the present laws in this country and under the present Constitution under which this House is constituted, there is no privilege in existence. I think he is right. Except of course some rights, there is no privilege in the sense in which it is enjoyed by a member of the House of Commons. We have got certain rights under the Statute; and the position of the sub-committee, to which the Honourable the Home Member was good enough to refer—and I had the honour to serve on that sub-committee—when they examined that question, was this. The sub-committee, which examined this question, had to consider the question having regard to the terms of reference of the Muddiman Committee, and the terms of reference of the Muddiman Committee were that they could not possibly recommend any remedy or any proposals which went outside the scope of the policy and the structure of the Government of India Act of 1919. But I agree with the Honourable the Home Member that there is no analogy between this House, as it is constituted, and the House of Commons. Now, that being so, that there is no analogy between this House and the House of Commons, that privilege does not exist. The Bengal Criminal Law Amendment Act exists, and therefore this gentleman who has been elected to this House is properly detained and therefore the Honourable the Home Member says what can the Government of India do. Sir, if this House was the House of Commons, if this House was the Parliament of India, my Honourable friend would not be sitting there, nor would he have succeeded in passing that Bengal Criminal Law Amendment Act by certification as he did. It is a vicious circle. Of course it comes to this, that law does not give you privilege; we pass the laws, we enact Statutes in this country. Who? Our friends the bureaucrats who sit on the Treasury Benches. We have the power to enact any law we like. When we passed the Bengal Criminal Law Amendment Act or the Bengal Ordinance Act, we passed it; that is the law of the land. You have no privilege in this House at all and Mr. Satyendra Chandra Mitra is detained under the Bengal Ordinance Act. What can the Government do? Let us say this, Sir, let us not side-track the

*Speech not corrected by the Honourable Member.

issue. This is not at all—if I may say so with the utmost respect to the Honourable the Home Member—this is not at all a question of great constitutional interest in that sense. If this House was a Parliament, if this House either had, as you find in the Dominions, the privileges and the rights of members defined by regular Statutes, or if, as you find in the British Parliament, the rights and the privileges of the members of the House are a growth and a development of the common law of England, if that was the position here, then we would have been able to deal with this question in this House. But it is not so. Let us therefore get to the realities; let us get to the truth. What is truth? Here is a man who stands imprisoned for more than two years. Here is a man who was arrested under a most obnoxious law which gives the Executive absolute power to imprison a man on suspicion without trial. The question really to my mind, if I may say so quite frankly in this House, is this: How long are you going to keep this law? How long are you going to prevent him from what he is entitled to do?

The Honourable Sir Alexander Muddiman: On a point of order, Sir, I understood that the question was excluded on the ground of anticipation.

Mr. M. A. Jinnah: I want to impress on this House not to be led away by mere argument of the Honourable the Home Member that the privilege does not exist, that the law does exist, that the man is in prison and that therefore nothing can be done. You can do it under your system of Government which gives you the absolute autocratic powers which you possess and which you have taken in the name of Legislature. You can do it and I say do it, and if you do not do it, I shall support and vote for my friend Pandit Motilal Nehru.

Lala Lajpat Rai (Jullundur Division: Non-Muhammadan): Sir, I rise to fully associate myself with the motion and the reasons given by the Honourable Pandit Motilal Nehru and my friend Mr. Srinivasa Iyengar. I do not agree with both sides of the House as to the arguments *re* the privileges of the House. It is said that this House has got no privilege except those that have been granted to it by Statute. I put the case just the other way. I think this House has all the privileges of the House of Commons except those that have been denied to it under the Statute. I would ask Government to consider the fact that there is a wide complaint, a well-justified complaint that this House is practically impotent for all purposes affecting the administration of the country. If this verdict goes down as a correct interpretation of the law that this House has no privileges except those that have been granted to it by the Statute or that may be granted by the Statute hereafter, its impotency will become still clearer and will remove the last hope that the country may possess in the powers and the efficacy of this House.

Reference has been made by the Honourable the Home Member to a Committee on which some eminent Indian lawyers sat. One of them has just explained what the position was and I think his interpretation and explanation ought to be taken as final so far as he is concerned. I may say—and I am committing no breach of confidence—that another of those distinguished members who sat on that Committee exactly takes the same view which Mr. Jinnah has taken. It is this. The rights and privileges of this House can be created in three ways, either by Statute, or immemorial custom or by convention. We hear of convention so often and so much in the report of the Joint Select Committee and in discussions

[Lala Lajpat Rai.]

about the constitutional rights of this House or the Legislatures of India that it would be simply cruel, and I think unwarranted, to deprive this House of the right of establishing a convention. It is certainly one of the most important privileges and one of the most valued rights of the Members to attend the Sessions of this House without let or hindrance by any one; about which the present attempt is being made to establish a convention. The motion before you, Sir, is not an ordinary motion. The Honourable the Mover has made it very clear that he is not raising the general question of the legality of the law under which this gentleman is being detained or even the propriety of that law, but he has raised the very important issue of the general rights and privileges of the Members who have been elected to this House under due process of law. There is nothing in that process which vests the Executive with the power to take away the right of attendance, the right of attending the meetings of this House of the Legislature. Members who are detained in custody not after conviction by a court of law but by the sweet will of the Executive cannot be deprived of that legal right. As regards the argument that the Statute has not given this House any privilege specifically relating to this matter, I submit that is no argument at all and should not prevent this House from establishing the convention. It is one of those inherent rights for which no authority is required. It is for the other side to quote an authority to the contrary. Sir, all the precedents that can be quoted from books of English law or from other books are precedents which refer to convictions, convictions for treason or felony, but there is not a single case, as Pandit Motilal challenged the other side to prove, there is not a single case in which by mere executive act of the Executive Government a Member elected to the Legislature can be prevented from attending its meetings. That I submit is an encroachment not only on the liberty of the subject but also on the rights of the Members of the highest Legislative Chamber in the country, of the highest Legislature that exists. I submit the right way to look at the proposition is that the Members of this House and this House only have got all the privileges of the House of Commons, except those that are denied to them under Statute. I think that is the right view; and I ask Honourable Members to take note of the attempt that is being made by the Executive to deprive the Honourable Members of this House of the privileges which belong to members of legislatures all over the world. I hope that the motion will be accepted, and on behalf of myself and other members of my Party I associate myself fully with this motion and intend to vote for it.

Pandit Hriday Nath Kunru (Agra Division: Non-Muhammadan Rural): Sir, the Honourable the Home Member, in congratulating you on your re-election yesterday, expressed his pleasure that a British precedent had been followed, and gave expression to the desire on his part that we would in future follow to an increasing extent the precedents set by the Mothers of Parliaments. In view of this it seemed to me to be somewhat surprising that he should take a stand on his legal rights and say that he who pleads privilege must prove it. I should have thought that he would be the first to follow here voluntarily the precedent set by a country which is governed under a constitution responsive to the wishes of the people. It is true, Sir, that in this country we have no law governing the powers and privileges of the Legislative Assembly, but in

certain Imperial and international affairs the position of India has been recognised to be equal to that of other members of the Empire, even though she has not yet attained full self-government. This being the case, I submit that it would be both appropriate and graceful, if, in a domestic matter of this kind, the same precedent were followed and Government would, instead of taking a stand on their strict legal rights, interpret the spirit of the constitution and the practice that has been followed in certain important matters during the last few years.

I am no lawyer, Sir, but there is another point which troubles me as a layman. Mr. Mitra was not disqualified from being a candidate and it seems rather difficult to an ordinary man to understand why a man who can be adopted as a candidate for election, should be debarred from appearing in this Legislature when he has been elected to it. If a man is convicted under the ordinary law of the land and the sentence is of a particular duration, I understand that he cannot offer himself as a candidate at all. In that case no question of sitting as a member in any Legislature arises; but where he is at liberty to be a candidate, it does seem to me to be an injustice that, after his election, he should be prevented from discharging his duties.

I do not wish, Sir, to trench upon the ground that will be covered later in connection with another Resolution, but I cannot help pointing out that Mr. Mitra has been detained under an Act passed in virtue of the power of certification vested in the Governor, and that his incarceration is indefinite. If he were imprisoned for a definite term there would be some limit to the period of his disqualification, but as he is now detained practically at the pleasure of the Crown, he is possibly almost permanently debarred from acting as a Member of the Indian Legislature. In consideration of these matters, Sir, it seems to me to be a mere technicality to say that there is no law under which we can claim privilege for a man like Mr. Mitra. The matter raised by the Honourable Member, the mover of the adjournment, seems to me to deal with a fundamental issue, namely, the liberty of the subject, and I therefore give my warm support to his motion.

Mr. C. S. Ranga Iyer (Rohilkund and Kumaon Divisions: Non-Muhammadan Rural): Sir, the leader of my party described the injustice to an elected member of the Party as "a double wrong." Sir, it is certainly a double wrong: it is also I believe a triple wrong, a wrong to him, an elected Member, a wrong to the constituency which has the right to elect him, and a wrong to this Assembly in which he should have been represented. Sir, I was really delighted when the Honourable the Home Member denied the analogy of this House to the House of Commons.

The Honourable Sir Basil Blackett (Finance Member): In this respect.

Mr. C. S. Ranga Iyer: Sir, I believe he will make a point of instructing the Publicity Officer never more to produce that book known as "India's Parliament." They would be rather more honest if they named it "India's Mock Parliament." That mockery has been proclaimed to-day by the Honourable the Home Member. In the light of what we see to-day, yesterday he was only mocking the House when he said we must follow the House of Commons' precedents.

[Mr. C. S. Rānga Iyer.]

Sir, the Honourable the Home Member says it is "a constitutional debate." Where is the constitution and what is a constitution? A constitution is no constitution which has not behind it the sanction of the people. Here is a constitution which has been imposed on us against our wish; here is a constitution which is denied by us; and even under this constitution which you have imposed on us you deny us the privileges which the constitution is supposed to give, the privilege of being elected, the privilege of representation. There is no constitution in this country and even the mockery of a constitution is being mocked. Sir, it is not a constitutional debate, it is a debate which denies the constitution. And the Honourable Member says it is irrelevant, it is improper to go beyond the constitutional purview!

Sir, I think I have no necessity to answer the constitutional arguments raised by the Honourable the Home Member. It was only a magnificent attempt to mislead this House; it was a very clever attempt but there is no constitutional point involved here at all. The question is one of brute force. The same brute force which put Sriyut Satyendra Chandra Mitra in jail without trial is being displayed again. It is brute force pure and simple—lawless despotism, legalised autocracy. Sir, I think the Government which is responsible for this, I think the system which permits this, should be censured and proclaimed to the world as the biggest fraud known to history.

Mr. Anwar-ul-Azim (Chittagong Division: Muhammadan Rural): Sir, I am indeed grateful to you that at last I have drawn your attention. I am not a parliamentary debater or speaker of any kind, but being new to this Assembly and also knowing as I do a little of this subject with regard to the detention of Mr. Satyendra Chandra Mitra, a gentleman who comes from my constituency, I think I owe it to myself as well as to my constituency that I should say something on this subject.

Those of us, Sir, who come here from the Eastern provinces of India, and especially my friends from Bengal who are here to-day, will bear me out when I say that His Excellency Lord Lytton, Governor of Bengal, only last Saturday called a conference of the representatives of this Assembly and also of the Members of the Council of State in order to have a consultation with regard to this very vexed matter. In the course of the talk with Lord Lytton, though I am uncertain about the name, our friend Mr. Goswami asked the Governor with regard to this particular gentleman; and, Sir, Lord Lytton told him very frankly—I am certain I am not giving out any secrets—that Mr. Satyendra Chandra Mitra and for the matter of that anybody who has been detained under that special law can have their freedom in a couple of minutes or at once on condition that Mr. Satyendra Chandra Mitra and gentlemen of his kind will only come to Lord Lytton and tell him "I as an honourable gentleman pledge myself that I will have nothing whatsoever to do with the revolutionary movements and that I am giving an undertaking I shall not do anything which I am suspected of having done".

Now, Sir, I have a very great respect for Pandit Motilal Nehru, the leader of the Swarajists, as a gentleman. I do not know whether this is a political stunt introduced here to puzzle the Members of the Assembly at this very critical juncture of Indian history. Sir, Pandit Motilal Nehru

Sahib does not bring up any Bill or any amending measure to do away with these pieces of legislation which are called "barbarous", "lawless", and by such other terms. If the leader of the Swaraj Party was really anxious about the freedom of Mr. Satyendra Chandra Mitra, then, Sir, he should have devised, as a sound constitutional lawyer, some programme which might have helped in that way. Of course this being only a "feeler", I do not know what useful purpose will be served by having a threadbare discussion here in this Assembly at this time. Secondly, Sir, if, as my friends here admit and as they know, there is no statutory law which gives any privilege or freedom to a gentleman of Mr. Mitra's kind, my firm conviction is that this has been introduced here only for party reasons. On the other hand, might I not ask the leader of the Swaraj Party what harm there would be if Mr. Satyendra Chandra Mitra gave an undertaking, as an honourable gentleman? That would be sufficient to bring him here and there would be no further trouble.

Mr. A. Rangaswami Iyengar: Undertaking for what?

An Honourable Member: Has any charge been framed against him?

Mr. Anwar-ul-Aziz: Of course I do not hold any brief for the Honourable the Home Member. You find, Sir, that some of my friends here have claimed privileges like those enjoyed by a Member of the House of Commons. There are some who are in doubt with regard to whether Mr. Satyendra Chandra Mitra's case forms a proper parallel with that of Parnell and others. Even in that case I am certain that neither the constitution nor the law as it stands now can bring our friend here. With these few words I beg to oppose the adjournment.

Mr. T. C. Goswami (Calcutta Suburbs: Non-Muhammadan Urban): Mr. President, we have all read in our schoolbooks that silence is golden. Well, Sir, there are certain conventions precluding me from saying anything more in reference to the speech of the Honourable Member who has just sat down—I mean, the conventions regarding maiden speeches. But he at any rate broke what, without any disrespect, I was feeling was a conspiracy of silence on the other side of the House.

I do not wish, Sir, to claim the attention of the House for more than a few minutes, because to my mind the legal position is by no means as subtle as some great lawyers in this House have made it out to be. Either you recognise that there are inherent rights—fundamental inherent rights,—or you declare that the only sources of rights—that is to say, the only sources of law—are the bomb and the machine-gun. I am sorry to make an abrupt statement like that, but I hope in a House consisting of eminent jurists and others learned in philosophy, I need make no apology for that.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Dr. Gour has already left.

Mr. T. C. Goswami: For I feel I did not depart from familiar lines of thought in jurisprudence when I made that statement. The Honourable the Home Member referred to an Irish precedent. He might as well have referred to some Russian precedent drawn out of the shades of Czarist Russia. That would be as relevant to the subject we are discussing, namely, the inherent rights of this Assembly as a legislative body, as any analogy or precedent he could draw from the deplorable history of England's relations with Ireland. It is said that under the criminal law of the land—

[Mr. T. C. Goswami.]

I do not know whose law it is; it is not my law; it is not the law of the people, for the law of the people has been in abeyance in India for the last 150 years;—it is said that under the criminal law of the land Mr. Satyendra Chandra Mitra has been detained and that he cannot be brought here; but we have a further illumination on the subject from the Honourable Member who preceded me, namely, the fact that Lord Lytton is of opinion just now that if only Mr. Mitra, along with his other friends in jail, came up to him and told him that he was not going to indulge in violent crimes in future he is able to release him and others. The position is this,—that Mr. Mitra has not been convicted under any law, neither the law of the British Government or the law of the people. In the name of law and order, in defence of law and order, more than a hundred respected citizens of Bengal were taken away from their homes in 1924. Nemesis overtook this imprudent assertion of monopoly over law and order. Government had declared through their highest officials that they had always the power to preserve law and order. But what did we find in Calcutta last year? For several months—not days, but for months—the second city in the British Empire was given up to the hooligans, and there was no law and order; there was no security of life and property in Calcutta, the premier City of India.

Now, the position seems to have slightly changed. Lord Lytton is now prepared to release these people on an undertaking. When he told me this, I naturally retorted, "If you ask me now to give an undertaking that I shall not steal, am I going to give you that undertaking? But does it follow that if I refuse to give that undertaking, it is because I intend, when I leave your room, to carry away some of your things?" Why should they give an undertaking? They have not been convicted of any offence; no charge has been framed against them. So that if under the law of the land,—law for which we are not responsible,—it is a crime to be suspected of a crime,—for that is what the provisions of the Ordinance amount to,—these detenus may be criminals, but they are not convicted criminals. And then, I fail to see any reason from the point of view of law and order, for that is the only excuse for that law—why Mr. Mitra could not be produced here under police surveillance. If it is contended that his liberty is dangerous to the liberties of other people, he could have been brought here under a police escort.

Sir, as I have said before, I do not think the legal position is as complicated as some friends have sought to make it out to be. And, you, Sir, as our Speaker, have grave responsibilities in this matter. You are the guardian of the privileges of this House. Sir, privileges in no Parliament were entirely conferred by statute law. Privileges were first created by convention. That was so in the British House of Commons; that has been so in other places. You are the guardian of privileges which have to be created as well as of privileges which already exist under the law.

Mr. K. Ahmed: Inside the House only and not outside.

Mr. T. C. Goswami: And yesterday, as also on a previous occasion when you were elevated for the first time to the Presidential Chair, you were reminded of the great traditions of the House of Commons. There the privileges were not conferred on the House of Commons by Statute. The House of Commons began to assert its privilege whenever there was an

infringement of privilege,—whenever there was, in other words, an infringement of what the House regarded as its privileges. We have now a case in which we feel that the inherent rights of this Legislative Assembly have been violated, and it is our opportunity, as it is our duty, to, if necessary, create a privilege; and it is for you, Sir, to guard it. In the struggle of the House of Commons with the Crown in bygone days, when the Crown was the Executive in England, the Speaker did play a very significant part. The King, that is to say, the Executive, did not recognise the privileges of the House of Commons then, but they were asserted and they have since been maintained; and some of them have been incorporated in statute law. Even with regard to convicted criminals in England, a convicted criminal, if he is a Member of Parliament, has the right to go to Parliament and be heard by his fellow Members. I will remind you of a very recent case, that of Mr. Horatio Bottomley, who was convicted of a very serious offence and sentenced to imprisonment for, I believe, six years. In that case the House of Commons by a Resolution decreed that he could, if he chose to, come before the House of Commons. After all, if Government followed that analogy, you would have had Mr. Mitra here and you would have heard from his own mouth that no charge was even framed against him though he is detained indefinitely not, as Mr. Kunzru said, at the pleasure of the Crown, but at the pleasure of people whose *bona fides* in the matter we have serious reasons to doubt.

Sir, this is an occasion, I would submit to you, when you can convert this similitude of a Parliament into something like a real Parliament. If necessary, your active intervention in preserving what we claim to be our privilege may be required in the near future, and, if you succeed in asserting the privileges of this House, you, Sir, will be the architect of a freedom for which history will be grateful to you.

I say this again, in conclusion, that there is not the slightest excuse for preventing Mr. Satyendra Chandra Mitra from attending the deliberations of this Legislative Assembly. He is not an outlaw. The country claims his services. It was once said in 1924 that the people detained under that infamous Ordinance were outlaws. Sir, it is a fiendish thing to declare a man an outlaw before he has been tried and convicted, before his accusers are able to produce him before a competent court of law, before they are able even to question him on the charges brought against him.

Pandit Madan Mohan Malaviya (Allahabad and Jhansi Divisions: Non-Muhammadan Rural): Sir, there are two points involved in this motion for adjournment. One deals with the right of a Member who has been elected a Member of this Assembly to attend this Assembly and to exercise his right; the other is the question of the privileges of this House. I wish to address myself to the first point first. The Government of India Act provides by section 64 that:

“Subject to the provisions of this Act (namely, the Government of India Act), provision may be made by Rules under this Act as to—

(c) the qualification of electors;

(d) the qualifications for being or for being nominated or elected as Members of the Council of State or the Legislative Assembly.”

Under the provisions of this Act, rules have been made laying down the qualifications of Members to be elected and the general disqualifications for

[Pandit Madan Mohan Malaviya.]

such membership. These are to be found in Part II of the Electoral Rules published by the Government of India. Rule 5 states the general qualifications for being elected. It says that:

"A person shall not be eligible for election as a member of the Legislative Assembly if such person—

is not a British subject; or

is a female; or

is a member of the Legislative Assembly and has made the oath or affirmation as such member; or

having been a legal practitioner has been dismissed or is under suspension from practising as such by order of any competent court; or

has been adjudged by a competent court to be of unsound mind; or

is under 25 years of age; or

is an undischarged insolvent; or

being a discharged insolvent has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part."

I fail to read in these rules and these disqualifications the disqualification of having been interned under an Ordinance such as the one under which Mr. Satyendra Chandra Mitra has been prevented from taking his seat here.

The next point to which I invite attention is that section of the Government of India Act which lays down that where no special provision is made as to the authority by whom any rules are to be made, the rules are to be made by the Governor General in Council, and which also lays down that such rules shall not be affected by any legislation undertaken by any local Legislature. (*Mr. L. Graham*: "Section 129A.") Thank you. Section 129A says:

"Where any matter is required to be prescribed or regulated by rules under this Act, and no special provision is made as to the authority by whom the rules are to be made, the rules shall be made by the Governor General in Council with the sanction of the Secretary of State in Council and shall not be subject to repeal or alteration by the Indian Legislature or by any local Legislature."

Now, I submit that the matter is quite clear. The Governor General in Council, acting with the sanction of the Secretary of State, has laid down the disqualifications by reason of which a person who has been elected a Member of this Assembly shall not be entitled to sit here, and Parliament took care to say that these rules shall not be subject to repeal or alteration by the Indian Legislature or by any local Legislature. If, therefore, the Government of India thought when they passed the Ordinance by certification that a disqualification of having been interned under the Ordinance should be added to the disqualifications by reason of which a Member who has been elected cannot sit in this Assembly, they should have taken the trouble to get the rules amended formally and properly. They have not done that. Therefore, the position is that under the Statute Mr. Satyendra Chandra Mitra is entitled to be elected. He has been elected a Member of this Assembly. There is no disqualification laid down in the law by which the Government have the power to shut this man out, and the Government of India acted wisely and constitutionally when they advised His Excellency the Governor General to extend an invitation to Mr. Satyendra Chandra Mitra to attend as a

Member of this Assembly. The Government of India are unfortunately not well-advised in not accepting this motion to-day. They have lapsed from the position that they took up, but I think there is still time for the Honourable Member to reconsider this matter. I submit then that so far as the right of the Member in question is concerned there is no power on earth, except the English Parliament or the Government of India acting with the Secretary of State under the authority of that Parliament, which can shut out Mr. Mitra from attending as a Member of this Assembly and taking part in the debates here. So far, therefore, as the question of his right is concerned, I submit that it stands absolutely unassailable. Nothing that has been said here affects that question, nothing I submit that can be said here can affect that question.

I come now, to the question of the privileges of this House. It is hardly necessary for me to argue that point, in view of what I have already submitted to this House. But my Honourable friend, Pandit Motilal Nehru, thought it fit, and I think not unwisely, to include in his motion the second aspect of the case also for the consideration of this House, namely, that the Government of Bengal and, therefore, by implication the Government of India who are their masters, have prevented Mr. Mitra from attending to his duties as an elected Member of this House and have thereby seriously infringed the privileges of this House. My Honourable friend the Home Member said that there were no privileges of this House. He also pronounced the dictum that he who pleads privilege must prove it.

The Honourable Sir Alexander Muddiman: I did not say that there were no privileges. What I said was that there were certain privileges conferred either by the Government of India Act or a competent legislative authority in India.

Pandit Madan Mohan Malaviya: Thank you. The Honourable Member said, "You must prove a privilege if you plead it." I prove the privilege by showing that this Assembly has been constituted by the English Parliament. The English Parliament has laid down certain rules for the conduct of this Assembly. Under those rules we meet. Under those rules and by the very constitution of this Assembly there is one thing which is absolutely clear and undeniable, and that is that this Assembly is the supreme legislative assembly of this country, that it is this Assembly which enacts laws and that those laws are binding upon every servant of the Crown in India. I submit that the privilege which the Members of the House of Commons enjoy is based upon the identical consideration that Parliament being the supreme legislative assembly in the United Kingdom any laws made by it must be binding upon every servant of the Crown, and that any member who has the privilege of being a member of that assembly and thereby contributing his share to the making of laws must be assumed by virtue of that fact alone to be beyond the reach of any arrest 40 days before the meeting of the assembly, and while the assembly is sitting, and 40 days thereafter. I submit that that is one privilege which every Legislative Assembly in every civilized country must enjoy and I am certain that my Honourable friends who sit opposite me will agree that this constitution of a supreme Legislative Assembly, having been given to India, it is implied, undeniably implied, that the Members of this House shall be exempt from the fear of arrest or apprehension just as Members of the English Parliament are free from that apprehension. It is an elementary right of members of the supreme legislature of every country.

[Pandit Madan Mohan Malaviya.]

My Honourable friend the Home Member must show that by certain definite rules clearly expressed we have been deprived of this privilege. If he cannot show that, I think it would be only graceful and constitutionally the correct position for him to take up to admit that privilege, to uphold it and give the world an opportunity to think that, while we lack certain powers which Parliament possesses, Parliament by giving us the powers it has conferred upon us has certainly placed us in the position that so far as the membership of the Assembly is concerned, we shall be treated as gentlemen at least while this Assembly is sitting and enabled to attend it. It is surprising that having laid down the qualifications of a member for election, having allowed and helped that member to be elected, having gazetted his appointment, having issued an invitation to him to attend this Assembly, having asked him to be present here to hear the address of His Excellency the Viceroy, we find the Home Member getting up and saying practically, "true, we have done all that, but we have blundered". We say "having done all that you have done do not blunder now by shutting out this man from attending this House". It is unfortunate that the idea of enabling the gentleman concerned to attend this House did not occur earlier to the members of the Government. It is unfortunate that the mistake was not rectified earlier, and that it became necessary for my friend Pandit Motilal Nehru to bring a motion for adjournment of this kind. But the position is very simple. My friend the Honourable the Home Member says that we have to prove the privilege we plead. I submit I have shown that the privilege is implied in the fact of this Assembly being constituted as it is, and I would ask the Honourable the Home Member to consider the situation a little further. It has been pointed out that the member concerned is not undergoing a sentence, he has not been tried and convicted. We take our stand on this. If the gentleman were convicted and sentenced, the position would be different. The rules do not lay down such a disqualification, and by an Ordinance passed by certification you cannot deprive a man of the right which has been conferred upon him by Statute. Can there be any greater insult to this House than what is involved in the adoption of this policy? This House has not passed the law under which this gentleman has been interned, and the English Parliament has taken care to see that unless a man has been convicted, he shall not be shut out from taking part as a member of the Supreme Legislative Assembly of the country. My Honourable friend the Home Member referred to the case of Ireland, to those unfortunate days of 1881, when Ireland was seething with discontent and witnessed many unhappy events. Why cannot he cast his eyes forward to the Ireland of to-day? I am sure there is not an Englishman who would feel happy that in 1881, a measure like that to which the Home Member referred was adopted. You have again and again told us that we have entered upon a new era, that there should be an era of goodwill and co-operation between the non-officials and officials, between Europeans and Indians. Is it not your duty as well as ours that we should adopt a course of conduct which will commend itself to the judgment of all Indians as well as Europeans? I ask every Member of this House to say whether the course adopted by Government commends itself to him. I make no exception. I ask every Member of this House to say whether the man whose privileges we are discussing, who has not been tried, convicted and sentenced, should be shut out from taking part in the proceedings of this House merely because he has been detained

under an Ordinance. We have repeatedly asked the Government to put these detenus on trial. The Government have not accepted that fair challenge.

The Honourable Sir Alexander Muddiman: I did not understand that there was going to be an anticipation of debate on this question. I have made the only speech that it is possible for me to make and it is not fair to the Leader of the House that there should be this anticipation. I did not deal with any of these points.

Mr. President: The Honourable Pandit will have ample opportunity to discuss the general question later during this session, when the motions in that connection are reached.

Pandit Madan Mohan Malaviya: I am perfectly within my rights in basing my arguments upon the facts connected with the Ordinance and the detention of the gentleman to whom the motion relates. I am perfectly entitled to point out the circumstances under which Government have sought to frustrate the enjoyment of a right by a Member of this House who is detained under an Ordinance which has not been passed by this House. I will not dilate further on that point. I do not wish to take up the time of the House further. I submit that in the first place because it is the right of Mr. Satyendra Chandra Mitra to attend this House as a Member and to take part in its deliberations, he should be allowed to attend. The Bengal Government should receive an order from the Government of India to let this gentleman be set free so that he may attend meetings of this House. I have referred to the Ordinance. I wish the House to note the period of detention which the gentleman concerned has undergone, and to note further that if this gentleman had been convicted and sentenced, probably the sentence would have expired and he would have been in a different position to what he is in now. His internment under the Ordinance for an indefinite period is a very serious wrong to him, and no justification has been offered for it to this House. For these reasons, both on the ground of the right of Mr. Satyendra Chandra Mitra to attend as a Member of this House and because also such a privilege as is claimed should be established in this House by convention, I appeal to the Honourable the Home Member and the whole House to accept this motion. The privileges of the House of Commons have not been created by a constitutional act, either of the Parliament or of the King. Many of them have grown up, as many conventions have grown up; and I say let this be recognised as a privilege of this House that a man who has been elected a Member of this House shall not be prevented from taking part in the discussions of this House by any order or Ordinance passed by executive authority. I commend this motion most strongly to the Members of this House.

Mr. President: I do not know if at this stage we should adjourn. Several Mussalman Members wish to get away for their prayers and if we continue the discussion much longer, they will not be here to record their votes.

(Several Honourable Members moved that the question be put.)

Mr. President: The question is that the question be now put.

The motion was adopted.

Mr. President: Sir Alexander Muddiman.

The Honourable Sir Alexander Muddiman: Sir, I do not think I have any right of reply on this.

Pandit Motilal Nehru: Sir, I think my friend the Honourable the Home Member has been sufficiently answered by the speeches which followed his. I have only to point out one thing more. We have been reminded of the nature of these detentions and arrests. Now what is it? As I said in my opening remarks, you cannot put it any higher than this, that these good people are suspected by the bureaucracy of being very dangerous people. Well, what are you afraid of? They are suspected of being anarchists. Now I ask you and I ask the Honourable the Home Member to consider for a moment what is it that I am asking on behalf of Mr. Satyendra Chandra Mitra. What I am asking on his behalf is the opportunity for him to come here to take the oath of allegiance to His Majesty the King Emperor. That is what he is asking for and that is what permission is not given to him to do. The man who comes to this Assembly must perforce take the oath. Does that go for nothing, and are we to attach a larger meaning to a verbal assurance to Lord Lytton that the man will not engage in political crime? Sir, if I may say so, it means nothing but pure vanity. Because His Excellency Lord Lytton's vanity would not permit him to allow the man to come here and His Excellency would not rest content until he has come down on his knees before him he must not be allowed to take the oath of allegiance. This is an additional reason which I lay before the House, and I submit for its consideration that it is almost conclusive. But that again is going into the merits of the question. I say that apart from the merits, whatever the man may be, you may take such precautions, you may make such arrangements as you like, but surely he can be allowed to exercise his right under proper safeguards. Whatever you may think of the man—he may be a very dangerous man indeed—as I have said, surely the resources of the British Empire are not so inadequate as not to be sufficient to cope with any situation. What does it mean, what do I ask for him? Only liberty to come and reside in Delhi while the House is in Session to attend the meetings of this House to represent his constituents. Indeed I am fully entitled to ask that he be released for all purposes, but I have limited my motion and, as my Honourable friend Pandit Madan Mohan Malaviya has pointed out, it is confined to asking for the freedom of movement for a number of days—whether it is 40 or 30 days I cannot take it upon myself to fix—before the commencement of a Session and a similar number of days after the close of the Session in order to enable him fully to discharge his duties. With these few words, Sir, I commend my motion to the House, and I hope it will be unanimously adopted, at least by the non-official section of the House.

Mr. President: The Honourable the Home Member said that he had no right of reply. I find from the rules that he has the last word. Does he wish to speak?

The Honourable Sir Alexander Muddiman: Sir, I do not propose to take up the time of the House for more than a minute or two on this matter

Mr. T. Prakasam (East Godavari and West Godavari *cum* Kistna: Non-Muhammadan Rural): May I ask whether the Honourable the Home Member

(*Honourable Members:* "Order, order".)

Mr. President: Is it a point of order that you are raising, Mr. Prakasam?

Mr. T. Prakasam: No, Sir, it is not a point of order, but

Mr. President: Then you have no right unless the Honourable the Home Member gives way. Sir Alexander Muddiman.

The Honourable Sir Alexander Muddiman: Sir, I did not give way to the Honourable gentleman purposely because I do not think that it is reasonable when one is making a reply—especially as I told the House that I did not propose to detain the House for more than a minute or two—for him to interrupt me. I can assure him that in the course of an ordinary speech I should have had much pleasure in giving way, but on the occasion of the last reply I do not think that it is a reasonable thing to ask me to do that.

This case has been argued from almost every point of view possible. A case was sought to be made out first on the technical ground of privilege. Then a good deal was said on the merits. I said from the beginning that I proposed to deal with this point from the constitutional point of view, where it was very properly placed by the Honourable Mover, and I do not propose to depart from that one jot. I have not been shaken by one argument which has been put forward on the point of constitutional law. No one has suggested that there are any privileges which cover this case, and no one has repudiated my argument that had this case occurred in relation to the House of Commons, there would have been no breach of privilege whatever. It is in vain that it is sought to draw a red herring over the tail by saying, "Why cite Irish legislation?" I was not citing Irish legislation, I was citing the conduct of the House of Commons in England.

Mr. T. C. Goswami: I said Irish precedents.

The Honourable Sir Alexander Muddiman: It is not an Irish precedent, it is a precedent of the House of Commons—it arose in connection with an Irish matter. I hardly think that my friend himself would contend that it is an Irish precedent. That is the position I have endeavoured to put before you. I must thank the House generally for the way in which they have debated this question and for putting forward the right position. I do see that in the constitutional procedure there is a lacuna. I made an offer to the House that we should follow the House of Commons procedure and that we should see that the President gets a report of any Member who had been detained in this way.

Mr. A. Rangaswami Iyengar: Will he be given the opportunity to judge whether the detention was proper or not?

The Honourable Sir Alexander Muddiman: Certainly not. I propose to follow the English Parliamentary precedent.

Mr. A. Rangaswami Iyengar: There are also precedents of that kind, Sir.

The Honourable Sir Alexander Muddiman: My Honourable friend will pardon me. I am trying to make an offer; he is trying to make a rival offer. Therefore, Sir, I stand by what I said. It has not been argued for one thing that there is any such privilege attaching to Members of this House and further I have satisfactorily established—I hope to the satisfaction of the majority of this House—that there is no such privilege attaching in the House of Commons.

Mr. President: The question is:

"That this Assembly do now adjourn."

The Assembly divided:

AYES—64.

Abdoola Haroon, Haji.
 Abdul Haya, Mr.
 Abdul Latif Saheb Farookhi, Mr.
 Abdul Mastin Chaudhury, Maulvi.
 Abdullah Haji Kasim, Khan Bahadur
 Haji.
 Acharya, Mr. M. K.
 Aney, Mr. M. S.
 Ayyangar, Mr. K. V. Rangaswami.
 Ayyangar, Mr. M. S. Sessa.
 Badi-uz-Zaman, Maulvi.
 Belvi, Mr. D. V.
 Bhuto, Mr. W. W. Illahibakhsh.
 Birla, Mr. Ghanshyam Das.
 Chetty, Mr. R. K. Shanmukham.
 Chunder, Mr. Nirmal Chunder.
 Das, Mr. B.
 Das, Pandit Nilakantha.
 Dutt, Mr. Amar Nath.
 Dutta, Mr. Srish Chandra.
 Ghazanfar Ali Khan, Raja.
 Ghulam Kadir Khan Dakhan, Mr.
 W. M. P.
 Goswami, Mr. T. C.
 Gulab Singh, Sardar.
 Haji, Mr. Sarabhai Nemchand.
 Iyengar, Mr. A. Rangaswami.
 Iyengar, Mr. S. Srinivasa.
 Jannadas, Seth.
 Jayakar, Mr. M. R.
 Jinnah, Mr. M. A.
 Jogiah, Mr. Varahagiri Venkata.
 Kidwai, Mr. Rafi Ahmad.
 Kunzru, Pandit Hriday Nath.

Lahiri Chaudhury, Mr. Dhirendra
 Kanta.
 Lajpat Rai, Lala.
 Malaviya, Pandit Madan Mohan.
 Mehta, Mr. Jannadas M.
 Moonje, Dr. B. S.
 Mukhtar Singh, Mr.
 Murtuza Saheb Bahadur, Maulvi
 Sayyid.
 Nayudu, Mr. B. P.
 Nehru, Pandit Motilal.
 Neogy, Mr. K. C.
 Pandya, Mr. Vidya Sagar.
 Prakasam, Mr. T.
 Purshotamdas Thakurdas, Sir.
 Rahimtulla, Mr. Fazal Ibrahim.
 Rajan Baksh Shah, Khan Bahadur
 Makhдум Syed.
 Rananjaya Singh, Kumar.
 Rang Behari Lal, Lala.
 Ranga Iyer, Mr. C. S.
 Rao, Mr. G. Sarvotham.
 Roy, Mr. Bhabendra Chandra.
 Shaif Nawaz, Mian Mohammad.
 Shervani, Mr. T. A. K.
 Singh, Mr. Gaya Prasad.
 Singh, Mr. Narayan Prasad.
 Singh, Mr. Ram Narayan.
 Sinha, Kumar Ganganand.
 Sinha, Mr. Ambika Prasad.
 Sinha, Mr. Siddheswar.
 Suhrawardy, Dr. A.
 Thakar Das, Pandit.
 Tirlaki Nath, Lala.
 Yusuf Imam, Mr.

NOES—46.

Abdul Aziz, Khan Bahadur Mian.
 Abdul Qayum, Nawab Sir Sahibzada.
 Akram Hussain Bahadur, Prince
 A. M. M.
 Allison, Mr. F. W.
 Anwar-ul-Azim, Mr.
 Ashrafuddin Ahmad, Khan Bahadur
 Nawabzada Sayid.
 Ayyangar, Mr. V. K. A. Aravamudha.
 Bhero, The Honourable Mr. J. W.
 Blackett, The Honourable Sir Basil.
 Clow, Mr. A. G.
 Coatman, Mr. J.
 Crawford, Colonel J. D.
 Donovan, Mr. J. T.
 Dunnett, Mr. J. M.
 E'jaz Rasul Khan, Raja Muhammad.
 Evans, Mr. F. B.
 Gavin-Jones, Mr. T.
 Graham, Mr. L.
 Greenfield, Mr. H. C.
 Haigh, Mr. P. B.
 Hezlett, Mr. J.
 Howell, Mr. E. B.
 Innes, The Honourable Sir Charles.
 Jowahir Singh, Sardar Bahadur
 Sardar.

Kabul Singh Bahadur, Risaldar-Major
 and Honorary Captain.
 Keane, Mr. M.
 Lamb, Mr. W. S.
 Littlehales, Mr. R.
 Macphail, The Rev. Dr. E. M.
 Mitra, The Honourable Sir Bhabendra
 Nath.
 Mohammad Ismail Khan, Haji
 Chaudhury.
 Moore, Mr. W. A.
 Muddiman, The Honourable Sir
 Alexander.
 Nasir-ud-din Ahmad, Khan Bahadur.
 Natiq, Maulvi A. H.
 Parsons, Mr. A. A. L.
 Rajah, Rao Bahadur M. C.
 Roy, Mr. K. O.
 Roy, Sir Ganen.
 Ruthnaswamy, Mr. M.
 Sassoon, Sir Victor.
 Singh, Rai Bahadur S. N.
 Svkes, Mr. E. F.
 Tonkinson, Mr. H.
 Willson, Sir Walter.
 Young, Mr. G. M.

The motion was adopted.

SEATING ARRANGEMENTS FOR MEMBERS.

Mr. President: I have to remind Honourable Members that His Excellency the Viceroy is going to address this Assembly on the morning of the 24th instant at 11 o'clock. The House is aware that Members are to sit in such order as the President fixes. I have not yet fixed the order in which the Member should sit. So long as that order is not fixed, any Member is entitled to occupy any seat he chooses. I cannot, I am afraid, delay the fixing of that order any longer. I have delayed it for this short time owing to the representation made to me by certain Members. Now, it is not desirable that I should wait any longer, and if any Member wishes to make any representation on the subject, he should do so before 12 o'clock on Monday next. The seating arrangements which I propose to make will come into force from Tuesday, the 25th instant.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 25th January, 1927.
