

THE

22nd January 1935

LEGISLATIVE ASSEMBLY DEBATES

Report)

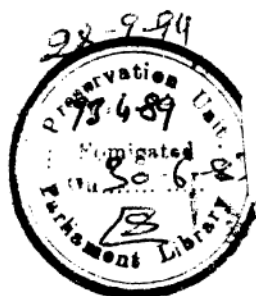
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(21st January to 18th February, 1935)

FIRST SESSION

OF THE

FIFTH LEGISLATIVE ASSEMBLY,
1935



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1935

Legislative Assembly.

President :

THE HONOURABLE SIR ABDUR RAHIM, K.C.S.I., KT.

Deputy President :

MR. AKHIL CHANDRA DATTA, M.L.A.

Panel of Chairmen :

SIR MUHAMMAD YAKUB, KT., M.L.A.

MR. S. SATYAMURTI, M.L.A.

LIEUT.-COLONEL SIR HENRY GIDNEY, KT., M.L.A.

SARDAR SANT SINGH, M.L.A.

Secretary :

MIAN MUHAMMAD RAFI, BAR.-AT-LAW.

Assistant of the Secretary :

RAI BAHADUR D. DUTT.

Marshal :

CAPTAIN HAJI SARDAR NUR AHMAD KHAN, M.C., I.O.M., I.A.

Committee on Petitions.

MR. AKHIL CHANDRA DATTA, M.L.A., *Chairman.*

MR. S. SATYAMURTI, M.L.A.

DR. ZIAUDDIN AHMAD, C.I.E., M.L.A.

RAJA SIR VASUDEVA RAJAH, KT., C.I.E., M.L.A.

MR. N. M. JOSHI, M.L.A.

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LEGISLATIVE ASSEMBLY.

Tuesday, 22nd January, 1935.

The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. Chairman (Lieut.-Colonel Sir Henry Gidney) in the Chair.

MEMBER SWORN.

Mr. Hormusji Peroshaw Mody, M.L.A. (Bombay Millowners' Association: Indian Commerce).

MOTION FOR ADJOURNMENT.

PREVENTION OF MR. SARAT CHANDRA BOSE FROM ATTENDING TO HIS DUTIES AS A MEMBER OF THE LEGISLATIVE ASSEMBLY.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): I have received notice of a motion from the Honourable Member Mr. N. C. Bardaloi that he proposes to ask for leave to make a motion for adjournment of the business of the House today for the purpose of discussing a definite matter of urgent public importance as follows:

"The conduct of the Government in preventing Mr. Sarat Chandra Bose, 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."

I should like to hear from the Honourable Member his reasons for considering this matter to be definite and of urgent public importance.

Srijut N. C. Bardaloi (Assam Valley: Non-Muhammadan): It is a matter of public importance in so far as a Member of this Assembly has been detained and he has not been allowed to come and attend the Session of this Assembly and thereby his services have been denied to the Assembly and his constituency also has been deprived of his services. So that is a matter which concerns the constituency from which he comes. The matter is, therefore, definite and it is one of urgent public importance, and I have brought the motion as early as possible.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): After having heard what the Honourable Member has said, I consider this motion for adjournment to be definite and one of urgent public importance, and, I therefore, rule that the motion is in order. I would now ask if any Honourable Member has any objection to the motion being taken up.

The Honourable Sir Henry Craik (Home Member): I have no objection.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): Will the Honourable Member indicate to the Chair what time would be convenient to him for this motion to be taken up for discussion?

The Honourable Sir Henry Craik: Four o'clock this afternoon.

Mr. Lalchand Navalrai (Sind: Non-Muhammadian Rural): May I request that the motion might be taken up after lunch at about half-past two? My request may be considered.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): I am glad to have the Honourable Member's opinion, but I am afraid the Chair *must* decide so as to suit the convenience of the Honourable Member in charge of the Department concerned. As no objection has been taken to the motion, I declare that leave is granted and that the motion will be taken up for discussion at four o'clock this afternoon.

The Honourable Sir Henry Craik: May I ask if the discussion will be confined entirely to the question of the privilege or whether other aspects of the matter will also be allowed to be taken up for discussion?

Mr. Akhil Chandra Datta (Chittagong and Rajshahi Divisions: Non-Muhammadian Rural): I had given notice of an adjournment motion on the self same subject.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): I have seen the motion of the Honourable Member. It will come up for consideration at a later date, unless, in the meanwhile, the Honourable Member withdraws it. The similarity of the Honourable Member's motion to the one proposed for discussion this afternoon is so close that I suggest it would be better for the Honourable Member to consider its withdrawal.

In reply to the Honourable the Home Member's request, I must inform the House that when this motion is discussed today, I shall certainly see that the remarks and criticisms made by Honourable Members are confined to the privileges of this House as are adumbrated in the motion for adjournment and which are called into question.

THE INDIAN MINES (AMENDMENT) BILL.

The Honourable Sir Frank Noyce (Member for Industries and Labour): Sir, I move for leave to introduce a Bill further to amend the Indian Mines Act, 1923, for certain purposes.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): The question is:

"That leave be granted to introduce a Bill further to amend the Indian Mines Act, 1923, for certain purposes."

The motion was adopted.

The Honourable Sir Frank Noyce: Sir, I introduce the Bill.

THE INDIAN NATURALIZATION (AMENDMENT) BILL.

The Honourable Sir Henry Craik (Home Member): Sir, I move for leave to introduce a Bill to amend the Indian Naturalization Act, 1926, for certain purposes.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): The question is:

"That leave be granted to introduce a Bill to amend the Indian Naturalization Act, 1926, for certain purposes."

The motion was adopted.

The Honourable Sir Henry Gidney: Sir, I introduce the Bill.

The Assembly then adjourned till Four of the Clock.

The Assembly re-assembled at Four of the Clock, **Mr. Chairman** (Lieut.-Colonel Sir Henry Gidney) in the Chair.

MOTION FOR ADJOURNMENT.

PREVENTION OF **Mr. SARAT CHANDRA BOSE** FROM ATTENDING TO HIS DUTIES AS A MEMBER OF THE LEGISLATIVE ASSEMBLY.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): Before I call upon the Honourable the Mover of the adjournment motion to move his motion, I should like to state that it would be to the advantage of all concerned as also in the interests of the economy of time if each Party that desires to present its case would respectively confine their speeches to just a few speakers and so within the two hours time at our disposal afford the Chair an opportunity of deciding as to whether a closure should or should not be put. It is obviously impossible for the Chair to come to an equitable decision when so many Members of the House desire to speak and when, in the opinion of the Chair, it appears that the matter has not been sufficiently discussed. The Chair desires to place before the House its views and wishes on this motion for adjournment to repeat its intention that it will try its utmost,—and the Chair hopes Members of the House will help it,—to confine all speeches made on this important matter which is pregnant with controversy, entirely to that aspect of the question which governs and concerns the privileges associated with it and not with anything else as regards the law or its operation that led to the incarceration of the gentleman in question.

Mr. M. A. Jinnah (Bombay City: Muhammadan Urban): Sir, may I know what you really intend by saying that the discussion should be confined to the "privileges"? It is a very undefined term.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): The Honourable Member has asked a question to which the Chair is very pleased to reply. The motion for adjournment before the House is indeed a very specific one. It calls into question, by means of adjourning the business of this House, the conduct of Government, a conduct which, it is alleged, has seriously infringed the privileges of this House and one of its Members and has deprived the constituency which elected this gentleman of his right to be present in this House. The privilege that is being questioned, as I interpret it, and its relevancy to the conduct of Government has to

[Mr. Chairman.]

my mind one and only one interpretation, that is the enforced absence from this House of one of its Members and a denial to him of enjoying his privileges as a Member. As to the *raison d'être* of that absence I refer to the legal aspect of the question. This is not at all included in this motion for adjournment. The motion merely calls into question the Government's conduct in preventing him, a duly elected Member, from enjoying the privileges of this House and nothing else and all speeches must be rigidly confined to this aspect of the motion.

Srijut N. C. Bardaloi (Assam Valley: Non-Muhammadan): Sir, I beg to move the adjournment of this House on a definite matter of urgent public importance. It relates to the detention of Mr. Sarat Chandra Bose, an elected Member of this House, under Regulation III of 1818, thereby preventing him from exercising his rights and performing his duties as a Member of this Assembly. He is prevented also from representing his constituency which has got a right to be represented here, after having elected him.

The facts of the case are well-known. This gentleman was detained under Regulation III of 1818 and he was under detention for some time when the elections for this Assembly began. At the time of his election, there was nothing in the Government of India Act which could prevent him from filing his nomination paper or offering himself as a candidate for election. As a matter of fact, he filed his nomination paper and the representative of Government accepted that nomination paper. He put in his security deposit and Government deposited that in the Treasury. And, then, afterwards, he was elected unanimously by his constituency and Government gazetted his election as a Member of this Assembly. Finally, he was summoned by His Excellency the Governor General to come and take part in the work of this Assembly as a Member. This is the state of things which occurred just before this Assembly began, and then what happened? When he was ordered to come and attend this Assembly he was detained and not allowed to come and perform his duties here, and why? Because he was detained under Regulation III of 1818. Why then was he allowed at all to file his nomination paper? As a matter of fact, the Government of India Act is an Act of Parliament and under that Government of India Act rules were made by the Governor General in Council with the sanction of the Secretary of State. In those rules the qualifications of Members and disqualifications also were prescribed and there is no disqualification assigned to a man who has been detained under Regulation III of 1818. But why do Government detain this man under Regulation III of 1818? They do it under suspicion, because no proof can be found against him. In this case this gentleman was detained under suspicion. But some time back he actually challenged Government to come out in the open with facts and figures and he, as a matter of fact, nominated three eminent jurists to form a Special Tribunal, if I remember aright, *viz.*, a High Court Judge, the Honourable the Law Member of the Government of India and the Honourable the Law Member of the Government of Bengal. He challenged Government to try him, and, if found guilty, to convict him. Instead of doing that, Government still kept him under that Regulation without giving him a chance to clear himself; and, on account of that suspicion, he is not allowed today to come and attend to his duties in this Assembly.

Now, the question arises. under what law is he detained and under what law was he called to attend this Assembly Session? So far as the Government of India Act is concerned, it is a Parliamentary Act and Regulation III is a law passed by the Governor General in Council a long time back. It is a law which cannot supersede the Parliamentary Act and under that Parliamentary Act certain rules were prescribed. It was under those rules that he was summoned to come here and attend this Assembly Session. How can he now be detained? Why should he not be allowed to come and join us here? If I understand aright, the summons of His Excellency the Viceroy was not obeyed as a matter of fact by the Government of Bengal. Can the Government of Bengal do that in the face of the summons of the Governor General of India?

As regards the privilege of this House, I beg to submit that this House has got this privilege that it has a right to the service of any Member who is elected to come and act here. That privilege has been infringed and infringed how? Under Regulation III of 1818. There are examples when a man, who is found to be under suspicion, is allowed to remain outside his province free and in this case Delhi is a far cry from Bengal. What would have happened to the Government if Mr. Bose had been allowed to come here and sit in this Assembly and serve this Assembly? By not allowing him to come here, the Government have infringed the privilege of this House and also infringed the privileges of the constituency which elected him. His own personal right has also been infringed by this action of the Government which cannot be justified. With these few words, I commend the motion to the acceptance of the House.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): Motion moved:

"That the House do now adjourn."

Mr. Akhil Chandra Datta (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Mr. Chairman, this motion raises a very important issue, that issue being the right of an elected Member of this House to attend the Sessions and to discharge his duties as an elected Member. I can show that more than half a dozen times the Government have declared in most unequivocal language that Mr. Bose is entitled, is qualified to stand as a candidate that he is qualified, that he is eligible, and not only that, but that he is entitled to come here and to perform his duties as a Member. To begin with, when his nomination paper was filed, there was that deposit of Rs. 500 which was accepted by the Government. That was done with the full knowledge that he was already under detention at that time under Regulation III of 1818. Then came the scrutiny. His nomination paper was examined and was accepted. It was accepted, because he was found to be qualified and eligible. It was not rejected, because he was not labouring under any disqualification. Internment under Regulation III of 1818 is not a disqualification under the rules enacted under the provisions of the Government of India Act. Now, what is the meaning and what is the significance of the acceptance of this nomination paper? I contend that this practically is tantamount to a declaration by the Government that Mr. Bose is entitled and is eligible to be a candidate and the Government invited the electors to vote for him. This acceptance of the nomination paper was, I say, a second declaration on the part of the Government. Then, there was the polling; and, as a result of the polling, the Government declared Mr. Bose as having been duly elected.

Mr. A. H. Ghuznavi: There was no polling. He came in uncontested.

Mr. Akhil Chandra Datta: Never mind. Polling or no polling, Government did declare him as having been duly elected. I do not like to be interrupted, because my time is short

Mr. A. H. Ghuznavi: I am only making certain corrections.

Mr. Akhil Chandra Datta: It does not deserve any reply

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): The Honourable Member will please continue.

Mr. Akhil Chandra Datta: Now, he was declared elected by the Government. I say this was another declaration by the Government that Mr. Bose was qualified and eligible to perform his duties as a Member. Then, there was that notification in the Gazette—still another solemn declaration by the Government. After that, when a Member has been elected and his election has been declared by the Government, is it election for the sake of election merely or because he should come and do his duties here in this Assembly? I need not, however, labour that point: as regards his right to come here and attend the Session, that right was recognised by His Excellency the Governor General in as much as a summons was issued asking Mr. Bose to come and attend the meeting on the 21st of January. That was another very solemn declaration. But there was still another. He was again asked to come here on the 24th of January on the occasion of the address by His Excellency the Viceroy. So that there were so many invitations and announcements made by the Government that he was entitled to discharge his duties as a Member . . .

An Honourable Member: His name was also called out by the Secretary to take the oath!

Mr. Akhil Chandra Datta: Thank you: his name was called out to come and take the oath of allegiance. That is so far as His Excellency the Governor General is concerned. But we are told that under a certain order communicated to Mr. Bose by the Government of Bengal under the order of the Government of India, he has been told that permission to attend has been refused. So, it is a case of His Excellency the Governor General *versus* I do not know what authority—whether it is the Government of India or the Bengal Government or the C. I. D. or anything of that sort. That is the position. These being the facts, I ask the Honourable Members of this House to frame a charge against the Government, that charge being one of breach of faith on the part of the Government so far as Mr. Bose is concerned and so far as Mr. Bose's constituents are concerned. Mr. Bose was asked to come in and contest. He was allowed to spend money, spend his energy and that of his supporters; and when he is elected he is told that he cannot come and do his duties here as a Member. I say, therefore, that it is a breach of faith so far as Mr. Bose is concerned. It is equally a breach of faith towards his constituency. That constituency is the Calcutta Non-Muhammadan Urban area. Calcutta. I need hardly say, is the most enlightened and most important constituency in the whole of India. It is the First City in India and the Second City in the British Empire. The result of this order of the Government refusing him leave to come here is that that constituency goes unrepresented.

There is still another wrong to another Party. He was returned on the ticket of a certain Party. He was not standing as an independent man on his own account. That Party had its own programme. He was asked by his constituents to come here and fight for that programme, and, I say, therefore, that it is a wrong done to that Party also.

Lastly, there is the privilege of the House. That is a constitutional question which I have not the time to argue now. There the matter rests. So I say that he has a right to attend this Assembly, but he has been deprived of that right. Mr. Bose is one of whom any Legislature in any country would be proud. It is a pity, Sir, that this House has been deprived of the services of a Member of that stamp, that he has been deprived of his statutory right, his inherent right as a Member to do his duty in this House. With these words, Sir, I say that the conduct of Government in this connection was simply not only illegal, but, to use a very moderate word, was not proper.

Mr. A. K. Fuzlul Huq (Bakarganj *cum* Faridpur: Muhammadan Rural): Sir, I move that the question be now put.

Mr. S. Satyamurti (Madras City: Non-Muhammadan Urban): There is no other speaker.

Mr. A. K. Fuzlul Huq: Sir, I move that the question be now put.

Mr. S. Satyamurti: There is no speaker, Sir.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): Order, order.

The Honourable Sir Nripendra Sircar (Law Member): Mr. President, I shall strictly abide by your ruling and confine myself only to the question of privilege with which we are concerned. I noticed that my friend, Mr. Akhil Chandra Datta, who has great experience as a lawyer, said various things on various topics, but when he came to the question of privilege, he said he had no time to argue it. It would have been more correct to say if he had said that it is a point which cannot be argued. He is silent on the only point at issue.

Sardar Sant Singh (West Punjab: Sikh): So far as that Member is concerned.

The Honourable Sir Nripendra Sircar: Sir, I shall place the matter as succinctly as I can in 15 minutes. This is a dry technical point which does not lend itself to either enthusiasm or to generation of heat. Before we discuss the question of privilege, it may be as well to inquire on what this privilege or privileges of the Houses of Parliament or of any other Legislative Assembly are based. What is their origin, what are their limitations and when can they be exercised. Now, Sir, I have no desire to take the House through a series of books, but I shall just give a few quotations from May, the standard book on Parliamentary Practice, at page 73:

"The law of Parliament is thus defined by two eminent authorities. 'As every court of justice hath laws and customs for its direction, some the civil and canon, some the common law, others their own peculiar laws and customs, so the High Court of Parliament hath also its own peculiar law, called the *lex et consuetudo Parliamenti*'. This law of Parliament is admitted to be part of the unwritten law of the land, and as such is only to be collected, according to the words of Sir Edward Coke, 'out of

[Sir Nripendra Sircar.]

the rolls of Parliament and other records, and by precedents and continued experience; to which it is added, that 'whatever matter arises concerning either house of Parliament, ought to be discussed and adjudged in that house to which it relates, and not elsewhere'. Hence it follows that whatever the Parliament has constantly declared to be a privilege, is the sole evidence of its being part of the ancient law of Parliament."

Now, Sir, I shall deal with the point. It has been laid down repeatedly by the House of Lords that no Parliament, outside the British Parliament, has any privileges independent of this Parliamentary Custom, and where a Legislative Assembly is created by an Imperial Statute, it has got to find its powers and privileges, if any, within the four corners of that Statute. That is such a well-established proposition that I shall detain the House with only two quotations and be done with that point altogether. This question has been raised over and over again by Parliaments in Australia, particularly in Tasmania and so on, and it has always been held that this question of privileges based on parliamentary custom has no application to any Assembly created by Imperial Statute. I shall give the House only one more reference now. I do not propose to read long judgments. I shall only read a few lines from Moore's Privy Council cases, Vol. IV.

"These powers certainly do not exist in corporate or other bodies, assembled, with authority, to make bye-laws for the government of particular trades; or united numbers of individuals....."

"It is said, however, that this power belongs to the House of Commons in England; and this, it is contended, affords an authority for holding that it belongs as a legal incident, by the Common Law, to an Assembly with analogous functions. But the reason why the House of Commons has this power, is not because it is a representative body with legislative functions, but by virtue of ancient usage and prescription; the *lex et consuetudo Parliamenti*, which forms a part of the Common Law of the land, and according to which the High Court of Parliament, before its division, and the Houses of Lords and Commons since, are invested with many peculiar privileges. . . . Their Lordships are of opinion that the principle of the Common Law, that things necessary, pass as incident, does not give the power contended for by the respondents as an incident to, and included in, the grant of a subordinate Legislature."

The question was again raised later on, and, I believe, the same conclusion was arrived at in 11, Moore's Privy Council Cases. I shall read three lines only.

"The principal point is",—*I am reading from page 745*,—"the principal point is, undoubtedly, of great importance, involving, as it does, the constitutional rights and authority of the Legislative Bodies in various parts of Her Majesty's Colonial Territories".

I may tell the House that this was a case where the Legislature had the power to make inquiries, and they ordered a witness to appear on its summons, and he refused to attend, and that is how the question arose. This question in substance came before its Committee on an appeal from Newfoundland. That is the case I have just read out to the House, and I read a few more lines:

"The second time before the Lord Chancellor, two noble members of the Committee who had formerly held the great seal, the three chiefs of the Common Law Courts in Westminster Hall, two out of the four members of the Court were present at the decision of the case. They have held that the power of the House of Commons in England was part of the *"Lex et consuetudo Parliamenti,"* and the existence of that power in the Commons of Great Britain did not warrant the ascribing it to every Supreme Legislative Council or Assembly in the Colonies."

Sir, you will find the cases all collected in May. I have no desire to read them, but I will only tell the House, especially to those Honourable Members who are not lawyers, that it is a settled proposition that this House which has been constituted by an Imperial Statute has no privileges of any kind whatsoever, but those which are to be found in the four corners

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): May I know from the Honourable Member whether the Government of India Act has taken away that right?

The Honourable Sir Nripendra Sircar: I am afraid my Honourable friend has not followed me. If he had done so, he would have understood that it is not a question of taking away any right or privilege, but it is a question of conferring, and if my friend will read that judgment, he will find that the point has been specifically dealt with there. On the other hand, the Court has doubted whether such a customary power can be conferred even by a Statute, but I won't be digressed into that, because I have got only 15 minutes more

Sir Cowasjee Jehangir (Bombay City: Non-Muhammadan Urban): Does the Honourable Member mean to say that the Members of this House have got no privileges over and above those of an ordinary citizen?

The Honourable Sir Nripendra Sircar: If the Honourable Member will bear with me, he will hear that under the powers that have been given by Statute, for instance, under section 87 (7) of the Government of India Act, freedom of speech has been given. If this Legislative Assembly enjoys the right of freedom of speech, it is not because of any customary right, but that is conferred by the Government of India Act. It is a Statutory right of the individual, not privilege of the House.

Mr. Lalchand Navalrai: Does that exhaust it?

The Honourable Sir Nripendra Sircar: That does not exhaust, but it exhausts the patience of Mr. Lalchand Navalrai. (Laughter.)

Mr. Akhil Chandra Datta: Nothing like inherent power?

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): Order, order.

The Honourable Sir Nripendra Sircar: I hope, Mr. Chairman, you will deduct these interruptions from my fifteen minutes. That does not exhaust, because, in the year of grace 1925, with the assistance of Mr. Lalchand Navalrai, I believe

Mr. Lalchand Navalrai: I was not here. I came here in 1926.

The Honourable Sir Nripendra Sircar: I regret without the valuable assistance of Mr. Lalchand Navalrai (Laughter), a Statute was passed—Act XXVIII of 1925. Under that Statute, a man cannot be kept in custody in execution of a civil process if he happens to be a Member of this House. That Act became necessary, because this House had no privileges of any kind and it was conferred by that Statute. Therefore, that right

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Members have, and they can have the hospitality of His Majesty in any prison so long as this Assembly is sitting. I have said that my Honourable friend, Mr. Akhil Chandra Datta, has not indicated how this privilege is claimed, but I have shown that there is no kind of privilege, whatever, so far as this Assembly is concerned except what is to be found in the Government of India Act or other Acts. If we turn even to the privileges of the Houses of Parliament, there is the old rule that in cases of detention either under process in connection with criminal law, or even in cases where a man has been detained without any trial but legally detained under some Statute, there is no breach of privilege. I will remind this Honourable House that if they will turn to May, they will find there are four cases of members who had been detained under an Act called the Protection of Ireland Act. In 1920, an Irish M. P., Mr. Joseph Macride, was detained under that Statute, the language of section 14 (b) of which is:

"The Secretary of State may by order require such a person to be forthwith interned in such place as may be specified in the order."

So this gentleman and in three later cases three other men who were members of Parliament were detained, not after a trial in any court of justice—they were not found guilty of any criminal offence, but they were legally detained by the powers given under that Act, and the position of Mr. S. C. Bose is exactly the same here. He has not been found guilty of any criminal offence, nor am I suggesting that he is guilty of any criminal offence. He has been detained under Regulation III of 1918, the language of which is very similar to section 14 (b), and it was decided that there was no question of privilege there. I will remind Members of this House that it has also been clearly laid down that where a person has been detained before his election—and the case of Mr. S. C. Bose is a case of detention before election—there is no duty on the part of anybody, either the Government or the man in charge of the jail, to send any information to the House. This matter was debated at great length and it was ultimately decided in the Houses of Parliament that that was the correct position. I have not got the time to read all the relevant passages, but any Honourable Member who is interested in this question will find that in Volume 98 of Hansard at pages 1783 and 1968. Therefore, speaking generally, the position seems to be this. This House has no privileges beyond what is given by the Government of India Act, by the Legal Disabilities Removal Act of 1925 and there may be other Acts also,—I have not exhausted the list. But surely, the detention of Mr. S. C. Bose raises no question of privilege, and where a right of privilege is raised as given by a Statute, as has been pointed out by the authorities, including May's Parliamentary Practice. How can this House claim a privilege, for its breach it has no power to punish?

Mr. Basanta Kumar Das (Surma Valley *cum* Shillong: Non-Muhamadan): May I know if there is any analogous case in England where a man, while being detained, was allowed to be elected to the Houses of Parliament?

The Honourable Sir Nripendra Sircar: I have not been able to follow the Honourable Member. It is very difficult to hear him from this distance, and I cannot undertake to answer a question which I cannot hear. (Laughter.) A man undergoing six months imprisonment is not disqualified,

but is not entitled to release on election. Then, the point was raised by the Honourable the Mover of the difficult situation created. Here, said he, is a man detained under Regulation III of 1818; on the other hand, he has got a summons from the Governor General, or, at any rate, issued under the authority of the Governor General, to attend this House, and which prevails? That is exactly the point that I shall discuss. If Mr. Bose thinks, if he is so advised by his friends, and he himself is a lawyer, that the summons is an authority for him under which he is free to come out, then, if he is prevented, he has got the right to move the Courts. It is not a question of privilege of this House, it is a question of his personal right, just as in the case of the Legal Disabilities Removal Act if a man who ought not to have been arrested is in fact arrested, this House has no powers of any kind whatever to do anything to anybody who has arrested him, but the appropriate court has got to be moved for his release under the particular section of that Act. It is not a question of privilege of this House at all. I do not see any conflict at all. It is said that this is a summons from the Governor General. My Honourable friend, Mr. Akhil Chandra Datta, perhaps used more accurate language when he said this is one of the many invitations which Mr. S. C. Bose has received. Whether you call it summons, or whether you call it invitation, notification or declaration, it does not matter. But what is the legal force of this summons? Supposing Mr. Bose says: "I have not the slightest desire to attend the House", what consequences would have followed? What was the penalty in order to put it into force? Therefore, the language may be the language of summons, but we know it has no legal force to compel his attendance here.

Munshi Iswar Saran (Benares and Gorakhpur Divisions: Non-Muhammadan Rural): He would have been unseated.

The Honourable Sir Nripendra Sircar: I am not dealing with that question at all.

Some Honourable Members: Yes, you are.

The Honourable Sir Nripendra Sircar: I am dealing with the question of privilege. Unseating would have been the result of a Statute.

Munshi Iswar Saran: I am telling you the consequence that would have followed.

The Honourable Sir Nripendra Sircar: But there is no power on earth to compel him to attend the Assembly if he chooses not to do so. If I give you an extreme case, it is not for suggesting that Mr. Bose's case is anywhere near it, but for testing the validity of this argument, namely, that there has been a conflict between the summons issued under a Parliamentary Statute and detention under Regulation III of 1818, an Indian Statute. Let us take this extreme case. A Member who has started from Madras is on his way to attend this House after receiving the summons. He commits a murder in train. I hope he won't do it. I am mentioning Madras only by way of illustration. (*Some Honourable Members*: "Why not Bengal?") Let us say Bengal or preferably the province of Assam from which Mr. Bardaloi comes. He commits a murder in train. The warrant is issued.

Mr. S. Satyamurti: On a point of order, Mr. Chairman. The Honourable the Leader of the House has exceeded his time limit.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): Order, order. The Honourable Member's time is almost up.

The Honourable Sir Nripendra Sircar: I shall only take a minute or two, and "almost up" does not mean that it is up. When the officer comes to arrest him under the warrant, he says "My dear fellow, your warrant is under the Criminal Procedure Code which is an Indian Statute. Here I have received a summons from the Governor General under a Parliamentary Statute. Be off". That shows the utter absurdity of this argument that there has been a conflict. As my time is up, I have no desire to prolong my observations, and I was well aware that the time allowed is too short for dealing with the matter exhaustively.

Pandit Lakshmi Kanta Maitra: Do I understand the Honourable Member to say that Mr. Sarat Chandra Bose, a State Prisoner under Regulation III of 1818, will have to move a Court for his release?

Mr. B. J. Desai (Bombay Northern Division: Non-Muhammadan Rural): Mr. Chairman, I am glad of the assistance I have got of a well-known book which the Honourable the Leader of the House read out as regards the passages which deal with the growth of privileges. The questions which arise as regards this case are perfectly clear and are also capable, I respectfully submit to the House, of an equally clear solution. It is not as dry in the sense of impossibility of solution as the Honourable the Leader of the House would have it. He read to you, and I am glad he read to you, that privileges of the House can arise by what he called the Common Law, the custom of the House and precedent, and of all others I emphasize precedent more than any other. In the previous case of the Mr. S. C. Mirta though the Government of India failed to respond to the vote of this House, a precedent has fortunately already been created by this House,—in that, by its vote, it expressed that the Member who was then detained ought not to have been detained. That was the opinion of the majority of this House. The question is not whether this House has the privilege in another sense of the term. There are two senses in which the word privilege is used. One is the privilege of the House as a Supreme Court at the bar of which the offender who commits the breach can be called for explanation and it is a pity that it is that privilege which was made too much of without distinguishing between the privilege of the individual Member and the privilege of the House in arraigning before it the offender. I therefore ask the House to bear in mind two things which are implicit in this matter. The privilege of the House in so far as it arrogates to itself an authority to judge, an authority to enforce, as against an offender is one matter. The privilege of the House in so far as the individual has rights, which may or may not be respected by a Government of the type that we have in this country today, is another matter. I come therefore to the second privilege which is more important and which is the one in issue now, the privilege of the individual. The privilege of the individual arises by way of implicit privilege inherent in the very position to which he has been elected under an Act of Parliament and notwithstanding anything that the Honourable the Leader of the House may say about a person being arrested on a

charge of murder, let us only confine ourselves to the question on the facts of the present case. The fact remains that it was competent to the framers of the Act of Parliament and the rules which have been made under it, with the sanction, I presume, of the Secretary of State to add another disqualification to those which are now prescribed, for indeed it was not unknown at the time of making of the rules that there are many Acts in this country which have been described, to use a hackneyed phrase, as the most atrocious of the lawless laws that exist; the preamble of the Regulation III of 1818 says "it may occasionally be necessary to place under personal restraint individuals against whom there may not be sufficient ground to institute any judicial proceeding". So that it was well-known to the framers of that Parliamentary Act that there were Statutes of this character in India and the best way for them, therefore, was to raise a disqualification, that any person interned under such an Act should also be disqualified, so that the constituency, the electors who wish to exercise their privilege to return him to the House in order that he may do his duty, may well know that he is a disqualified person. I say that this was omitted not merely as a matter of inadvertence, but supposing it was, how does the law stand? As the law stands, the Act of Parliament has led the country to believe, and, therefore, every constituency to believe, that any person under detention is not a disqualified person and indeed it would be a travesty to say that if he is not disqualified to stand and if properly elected there is still some other reason why he may not be allowed to exercise the privilege of serving in the House. I ask every section of the House, notwithstanding the legal subtlety, the narrow dry question, as my friend put it, not to surrender their inherent right as Members of this House. For the Act of Parliament does not purport to say and does not dare say that a person so detained is a disqualified person and may not be elected to this high office. That is how, I say that in the Government of India Act itself the privilege is implicit, but the matter does not rest there at all. I think the question was rightly put by some Honourable Members to the Leader of the House—if he means to say that the only way in which any privilege can ever arise is by its being put into Statute. It is not a question of borrowing the privileges of the House of Commons for the Members of a body like this. I have often been told in legal history, that rights arise at Common Law. Let us in this House start the commencement of that great Common Law of this land by creating the privileges of this House (Applause) and by following the precedent which has already been created by this House. I know very well that that particular claim of privilege, that particular demand, is met with a defiance by powers which undoubtedly are exercised by the Executive in this country, for we cannot forget and we must not forget that it seems to be (and it is a very unfortunate state of mind in those who govern this country at present), a sort of continuous hostility between the Government on the one hand and the rights and privileges of the people on the other. Such difficulties do not and cannot arise in any other country. (Applause.) The fact remains, however, that such a call would never have been met in any other country with defiance: and, Sir, I appeal to you that such a defiance is not a sign of courage, it is a sign of growing diffidence not to allow persons otherwise properly qualified and properly elected and otherwise capable, to come and give the assistance to the House which they are entitled to give and which they are capable of giving. (Applause.) And may I point out to the Honourable the Leader of the House that even where a man is convicted of an offence

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if a summons is sent from a Court of justice, he is brought (undoubtedly under guard) and in aid of justice even the prison-door is open and he is brought to the bar of the Court in order that he may assist in the administration of justice. (Applause.) And am I to be told, and is this House to be told that a person who is not convicted of any offence but is merely detained by an executive order has a lesser privilege to come and assist in as great if not a greater purpose than that of assisting in a Court? (Applause.) And I ask this House to say that Mr. S. C. Bose has a privilege higher, greater, more sacred and more useful to be protected. (Applause.) With these words, I support this motion. (Loud and Prolonged Cheers.)

Mr. M. A. Jinnah (Bombay City: Muhammadan Urban): Sir, I listened to the speech of the Honourable the Leader of the House carefully, after you gave your directions (*Some Honourable Members*: "Louder, please") as to what the meaning of the word "privilege" was in response to my request for making it more clear than it had appeared to me before that. Now, Sir, the word "privilege" is not defined so far as this House is concerned. When you say "the privilege of the House", I do not think it is being defined in any way and, further, there is no Statute that has defined the word "privilege". The Honourable the Leader of the House very rightly said—I do not think I would dispute the proposition—that there are certain privileges which are in fact specifically conferred upon the Members of this House by certain Statutes. Granted, correct. Then he says that this is not a privilege which comes within any one of those Statutes, but if it does, go to a Court of law and have your right decided. For example, when I am on my way to attend my duties in this Assembly, if I am arrested on a civil warrant and I am taken to the Court, I would then assert my rights before the Court that I am illegally arrested, because I was privileged and I was on my way to attend my duties in the Legislative Assembly. Granted. That is certainly a matter which can only be decided by a Court, because this is a question of interpreting and construing a Statute and deciding accordingly. But that is not the privilege we are talking of. The issue before the House is this. A Member of this House, Sarat Chandra Bose, was arrested in January, 1932. The Honourable Member will correct me if I am wrong, because that is my information on the subject.

The Honourable Sir Nripendra Sircar: That is almost right—it was in February, 1932.

Mr. M. A. Jinnah: That was in February, 1932, and we are now in January, 1935. He was arrested under what? Under a Regulation. I think I am justified in saying that he has challenged the Government to put him on his trial. The Government have refused it. (*Cries of "Shame", "Shame"*). Very well. His constituency, duly formed under a Statute, have elected him. He is a fully qualified Member of this House and entitled to come here and exercise his rights as a Member of this House. But I am not going to argue for a single moment that, because he has received a summons from His Excellency the Governor General, therefore, there being two contradictory orders—one order signed by His Excellency the Governor General in Council detaining him in prison, and another order summoning him to come here—I am not going to argue that, therefore

any Court of law would be justified in deciding that the previous order was cancelled, and, therefore, this is beside the point. That is not the point. The point I submit before the House is this. Are the Government justified in detaining this man from February, 1927, up to the present moment, and, particularly, in preventing him from performing his duties as a Member of this House without putting him on his trial? What is the justification? What is the explanation? And that was precisely the question that was raised in 1927 with regard to one of the Honourable Members who was detained under similar circumstances. The question was fully debated. It has had nothing to do with the privileges of a Parliament. This House is not a Parliament. It is absurd to refer me to the Parliamentary practice and read to me those great authorities; I have read them; they are, however, totally inapplicable to this House. Is this House a Parliamentary Legislature? If that was so, Sir, that is to say, if it was a sovereign Legislature, and if the Government were to thwart the will of the Members of this House, why, Government would not remain in office there for twenty-four hours! (Applause.) You would not be sitting there. What is the good of reciting to me those things and comparing chalk with cheese. Therefore, let us come to the real thing. The real thing is this. I want the Government to tell me how do they justify the detention of this Member for one single day more, and are they prepared to put him upon his trial. We, Sir, discussed this very question in 1927. The Honourable the Home Member, Sir Alexander Muddiman, took up a somewhat similar attitude as the Leader of the House has taken today. He tried in a very dexterous manner to make out that the privilege does not exist. I assume for a moment that the privilege does not exist. Have we not got the right to examine the conduct of this Government, and have we not got the right to say that "your conduct is such that we have no other option but to pass a vote of censure"? Either you explain to us and justify why you are doing this, or else we pass a vote of censure. Sir, this question of privilege was discussed and was made the subject of a very careful and long inquiry by the Muddiman Committee. If you read the Report of the Muddiman Committee, you will find they have laid down that in no event the privileges of the House or the privileges of the Members of the House should be more than those of the House of Commons. But that recommendation remains only in the Muddiman Report. The Honourable the Home Member speaking in the debate said this after he had quoted the recommendation of the Muddiman Committee:

"I pause there to comment, because that is a very important restriction to which 5 P.M. 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 recognised 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."

Then, he said that no privilege exists. Therefore, we enter a vicious circle. The privilege does not exist. The Government have got

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power under the Regulation to detain any man by executive order indefinitely and without a trial, and, therefore, he cannot attend to his duties—private, public or the duties of this House. Therefore, this House has got no voice and the individual in question no remedy and everything is out of order and the Government can do what they please and it is all perfectly right. Sir, it is an impossible position. I say, therefore, that we have a right to censure the Government for their conduct; we feel that their conduct deserves our disapprobation and I appeal to every Member of this House to pass this motion without hesitation, because, speaking for myself, personally, I cannot subscribe to any law which takes away the life or the liberty of any citizen without trial, more especially which takes away the liberty of a Member of this House. It was said that the law exists; that Regulation of 1818 exists. Did the Parliament of India pass that Regulation? Had the Regulation of 1818 the sanction of this House or any other Legislature behind it? Sir, I do ask the Government not to go round and round in this vicious circle and draw a sort of a red herring across the path of this House. You should meet us fairly and squarely and we will appreciate it and understand it. I appeal to the Government most earnestly that it is really a most untenable position that you should detain a man—I am not saying that he is innocent or he is guilty—and arrest him not as a matter of emergency, but continue to detain him for nearly over three years, and when we ask you—and, of course, Mr. Bose has also asked for this—to put him on trial, what is your answer? If you say no, then I am compelled to pass a vote of censure on you.

Several Honourable Members: I move that the question be now put.

Sir Cowasjee Jehangir (Bombay City: Non-Muhammadan Urban): Mr. Chairman, I must acknowledge that I was rather disappointed with the speeches of my Honourable friends from the Congress Party and at one time it did look as if this debate was going to meet with a very sudden end. Sir, I am quite prepared to admit—I think my Honourable friend, Mr. Jinnah, has admitted it—that there is no question of personal privileges. We know that and we admit that it is no use arguing that there is a case of personal privileges. There is none.

Mr. M. A. Jinnah: But the point is that it has never been defined.

Sir Cowasjee Jehangir: The Leader of the House has told us that there are privileges of more than one kind.

The Honourable Sir Henry Craik (Home Member): Not with reference to this motion, where the words used are "the privilege of this House".

Sir Cowasjee Jehangir: I admit that the motion is badly worded. But remember there was a debate of a similar character in this Honourable House when the Mover, the late Pandit Motilal Nehru, put the case very differently to the way it was put today and, if I may say so with great respect to my Honourable friend who moved it, in a very different manner. Now, Mr. Chairman, we cannot compare the privileges of a Member of the House of Commons with the privileges of a Member of this House. There are certain privileges which we have got. You will see what was recommended by the Muddiman Committee as to what

additional privileges the Members of this House should get. But I admit that even if the recommendations of that Committee had been carried out, this case would not have fallen within the four corners of the regulations that might have been framed. Sir, the whole point can be put in a nutshell. Here is a man who has been imprisoned under a Regulation which is dated 1818. (Interruption.) I have no desire to make the position worse than it is. You may say that he is 'detained' in great luxury if you so please; but, although he was detained under Regulation III of 1818, he was allowed to stand for election. If he had been convicted to a year's imprisonment, he would have been a free man today but might not have been allowed to stand for election under the present law. But he has been detained for nearly three years and still under your present law he is allowed to stand and he conforms to all your rules and regulations.

He gives his deposit of Rs. 500 which can only be returned to him when he takes the oath of allegiance which he was not allowed to do. Under these circumstances, this amount of Rs. 500 will never be returned to him. Sir, I am going to ask the Honourable the Home Member a simple question. Under your rules and regulations I will get back my Rs. 500 or I must have got it back already because I took the oath yesterday. But this unfortunate Mr. Bose has been prevented from taking his oath and the Home Member of the Government of Bengal or whoever it is, has got his Rs. 500. Are they going to pay interest on it? What are they going to do with that amount? Are there any regulations framed by the Home Member for that or is the Home Member going to divide the amount amongst ourselves? Here is an anomaly, here is a case that requires attention. Now, he was detained without trial. There may have been very good reasons for having detained him, and there may still be very good reasons for detaining him. I am not going to express any opinion one way or the other. But surely when he becomes a Member of this Honourable House we have a right to be satisfied that the reasons for his detention are of such a substantial character and that his detention shall continue. How is the Government going to satisfy us? Now, we are also a party to this detention (hear, hear). Before he was elected and before this Assembly met, it was Government alone. We now become a party to his detention, he being a Member of this House. If he has been allowed to stand and if he becomes a Member, then surely the Government must satisfy us and give us a satisfactory explanation that his detention is on reasonable grounds and that even there is a reasonable suspicion of his being a dangerous character. Not a single Member of Government has risen up to now to give that explanation. If Government would only convince me that Mr. Bose without a trial is still deserving of detention in the interests of this country, in the interests of law and order and what is still more, in the interests of the lives of the people of Bengal, I will be ready, so far as I am personally concerned, to allow Mr. Bose to continue under detention. But if the Government is not prepared to convince me and to bring before us facts and figures to show that their action is justifiable, then I shall demand his release or his trial. It is no use continuing to discuss this question of privilege. There is no such privilege. I ask from the Government an explanation for his detention, the reasons for his detention, or demand his release. Or, if I may, I will make another suggestion to Government. I understand that the papers in such cases are generally placed before two Judges before the detention of any man continues much longer. Will Government be

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prepared to take into their confidence two or three Honourable Members of this House? We have got amongst us very eminent lawyers, lawyers who could have been on the High Court Bench of any Province with credit to the High Court and honour to themselves. Will Government be prepared to take two or three Members of this Honourable House into their confidence and place before them all the papers relating to Mr. Bose and let them advise us as to whether this man, Mr. Bose, should continue to remain in detention.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): Order, order. I must draw the Honourable Member's attention to the remarks I made before this debate opened, that is, Honourable Members must confine their speeches to the specific question that is contained in this motion for adjournment, namely, the conduct of the Government as concerned with the privileges of this House and in particular one of its elected Members.

Sir Cowasjee Jehangir: I have already dealt with that point and I have already stated very clearly that this question of privilege does not arise. I know that, but still there is a much more important factor, one of much greater importance to this country and to the Government and to the interests of Government.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): I am sorry again to interrupt the Honourable Member. I must draw his attention to the fact that since he has dealt with the question of privilege and since he has frankly admitted that no such privilege exists, what is he now censuring the Government for?

Sir Cowasjee Jehangir: I will tell you why we should consider further the question of censuring the Government. It is for preventing an Honourable Member who has been elected from being present in this House and that issue is in order. It is through the action of the Government that this man is not able to come and take the oath. It is through the action of the Government that his Rs. 500 has not been returned. I want an explanation as to how long the Rs. 500 will be detained by Government when the deposits of all others have been returned. I want to know what the Government is going to do with this Rs. 500. I want to know when this man is going to be allowed to come to this House and take part in the business of this House. It will facilitate the matter if Government will undertake to take two or three Members of this House into their confidence and in that case perhaps my Honourable friends will reconsider the whole position.

Some Honourable Members: No, no.

Sir Cowasjee Jehangir: I think it will be in the interests of Government to lay all their cards on the table and to be perfectly frank in this matter. I would remind the Government that in a very short time, at least in the Provinces, Honourable Members who sit on this side of the House may be Home Members and will deal with these and similar papers before they come to the Government of India. I submit, Mr. Chairman, that trust begets trust and if they will set the example of trust at least with some

of the Honourable Members on this side of the House, it will repay them a hundredfold more than merely giving explanations in a half-hearted manner which nobody can understand in this House and which sometimes are not meant to be understood. I would, therefore, make an earnest appeal in the very beginning of our work and labour in this Honourable House when we have the pleasure of having some of the strongest opponents of Government on these Benches to be as conciliatory as they possibly can, to meet us half way, if not the whole way. I feel confident that if Government will act in this spirit, our work will not only be successful, but will result in the greatest benefits to the country and to all of us. I have no desire to censure the Government. But I will censure them if necessary. I will have no hesitation in doing that. I would appeal to them that this is a good opportunity of holding out their right hand of friendship and to prove that after all the Government have as good a heart and as solid a heart as any man in India. (*An Honourable Member*: "They have none".) If they will only show us, if they will only prove to us that the detention of this man is necessary in the interests of India herself, I, for one, will be quite prepared to allow him to be still detained. Unless they prove that, as he happens to be a Member of this Assembly, I will be reluctantly compelled to walk into the lobby with my Honourable friends on this side. (Applause.)

The Honourable Sir Henry Craik (Home Member): Sir, while I am glad that this debate has for the most part, not altogether, but for the most part, remained on the higher level as directed in your ruling from the Chair, I cannot feel that I can conscientiously congratulate the Congress Party on its logic or on the way it has presented its case. The motion purports to adjourn the House, that is to censure the Government, on the ground that it has gravely infringed the privileges of this House. The first two speakers in spite of repeating each other's arguments entirely failed to show that there are any such privileges or that they have been infringed. My Honourable friend, the Leader of the House, seemed to me, though I am a layman and he is a lawyer, to have completely demolished the theory that there has ever been, in fact, any privilege and therefore that there could have been any breach of that privilege. Thereupon the Honourable the Leader of the Opposition, having been shown, I presume, to his own satisfaction, that there was no question of a privilege of this House which is the only thing referred to in the motion, fell back on a vague expression which,—I took down his words,—he called "an implicit privilege inherent in the position" to which the gentleman in question has been elected. That is a very vague term and I think the Honourable Member as a lawyer will agree with me that it does not connote any legal entity at all, and it is not certainly what is referred to in the motion before the House. The Congress speakers were, it seemed to me, floundering in a hopeless morass of illogicality, when who should come to their rescue? Who should be the fairy queen who comes and holds out the helping hand? My Honourable friend, the Member from Bombay. With one hand he pulls the Congress out of the bog, with the other he extracts from his pocket a magnificent specimen of the red herring which he draws across the trail and he attacks Government, not for doing anything that infringed the privileges of this House, which he admits do not exist, but for not repealing this obnoxious law, the Regulation of 1818.

Mr. M. A. Jinnah: That is not correct. I never suggested that this Act should be repealed. I said, the Act is there; you have used the Act, but you are using it in such a manner that I am entitled to pass a vote of censure on your conduct.

The Honourable Sir Henry Craik: I am sorry; the last thing I wanted was to misinterpret the Honourable Member and I will certainly accept his own words. His red herring was not the repeal of the Act but the way in which Government had used the Act. Well, Sir, on a suitable occasion, I am perfectly prepared to justify the use, the very sparing use, that Government have made of this Regulation. I should be guilty of anticipation if I did so now. We have on the notice paper motions for the repeal of this Regulation; we have in fact a Bill for the repeal of this Regulation itself on the notice paper, and so even if time permitted I should be guilty, as I said, of anticipation if I took that ground now. My Honourable friend was assisted by the Honourable Baronet from Bombay. He drew out of his pocket not another equally magnificent specimen of a red herring but what I may only describe as a somewhat small sardine. The five hundred rupees deposit about which he showed such anxiety and which he seems to think I have in my pocket. Now, Sir, he has misquoted the rule about the return of a Member's deposit. He says it can only be returned to him when he takes the oath. If he had read the rule, he would find that there are two sets of contingencies in which the five hundred rupees can be returned to the Member who has deposited it. The first is, after he has taken the oath or affirmation; the second is:

"In pursuance of a direction by the Governor General in Council for the return of the deposit despite the fact that the said oath or affirmation has not been taken."

Let me assure the Honourable Baronet that I will make it my business to advise the Governor General in Council to make an order for the return of that five hundred rupees. I hope my Honourable friend's anxieties on that account will now be assuaged.

Now, Sir, I have been asked to justify the action of Government in detaining Mr. Sarat Chandra Bose. At the proper time I am perfectly prepared to justify that up to the hilt. This, Sir, is not the proper time and under your ruling this debate is not to stray on to that ground. If it did, I for one would not regret it because I believe I can make out a perfectly good case. I have no doubt whatever that some time in the course of this Session an opportunity for debating the justification for his detention will arise and, as I say, at the proper time I shall be only too glad to meet that case and I shall be perfectly frank and lay the material before the House. But at present, Sir, as I am sure you will be the first to agree, I should be infringing your ruling if I took that line and I shall be throwing into the middle of this comparatively harmonious debate an apple of discord almost as large as my Honourable friend's red herring.

Sir Gowasjee Jehangir: That is a very easy way of getting out of it.

The Honourable Sir Henry Craik: If the Chair will allow me, I have got the material here and I will do it now. But I could not do it in 15 minutes.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): It is the Chair's order that no such extraneous matter should be discussed on this motion and the Honourable the Home Member is quite in order.

Mr. M. A. Jinnah: In that case the motion ought never to have been admitted.

Sir Cowasjee Jehangir: If there was no privilege why was it admitted?

Mr. M. A. Jinnah: Now it is sought to be made out that there is no question of privilege. And that is why I asked that question in the morning. If you had said to me that the word "privilege" is used in the technical sense according to the Parliamentary practice, I would have at once said that there is nothing to discuss.

Sir Cowasjee Jehangir: Let us discuss it.

The Honourable Sir Henry Craik: It is not a thing that can be discussed in the half hour that remains.

Mr. M. A. Jinnah: I can assure the Honourable the Home Member that unless he justifies the Government position I shall be bound to vote against him.

The Honourable Sir Henry Craik: Although the Honourable Member will vote against Government for having infringed the privileges of this House.

Mr. M. A. Jinnah: No.

The Honourable Sir Henry Craik: That is the motion before the House.

Mr. M. A. Jinnah: I do not agree; it is the conduct of Government.

The Honourable Sir Henry Craik: I am afraid that even at the risk of losing the Honourable Member's vote. . . .

Sir Cowasjee Jehangir: Is the Honourable Member ready just now to give the explanation?

The Honourable Sir Henry Craik: I am perfectly ready now if time permits, but I cannot do it in the five minutes that remain for me.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): Order, order. That would introduce a matter so controversial and so lengthy that it would occupy more time than we have left at our disposal that I cannot allow it. Moreover, it could be moved at a subsequent date by means of a Resolution. I, therefore, maintain that the Chair's order must be observed that all speeches be confined to the question of privileges.

The Honourable Sir Henry Craik: That has been your ruling, Sir, from the very beginning and I for one will obey it. I will give my vote on the merits of the motion before the House which, as I have said, is that the privileges of the House have been infringed. As I have been convinced that there are no privileges and there has been no infringement, I shall have to vote against this motion. My Honourable friends opposite will apparently vote against something which is not the motion before the House.

[Sir Henry Craik.]

There was one point taken by the Honourable Baronet from Bombay. He said that the rules made ineligible to stand as a candidate any man who has been convicted and sentenced to more than one year's imprisonment. But any other man has a right to stand as a candidate and his nomination papers having been accepted and he having been elected, Government are infringing his personal rights or his inherent rights or something like that, whatever they may be, in preventing him from attending the House. I understand that that was the Honourable Member's position. If that be so, I would ask him to consider the case of a man undergoing a sentence of less than one year—say ten months—is perfectly eligible to stand: his nomination paper may have been accepted: it could not be refused: would the Honourable Member claim that he must be released from jail in order to attend his parliamentary duties?

Sir Cowasjee Jehangir: Certainly not: that would not be the law: that would infringe your rules.

The Honourable Sir Henry Craik: Quite so: but then you claim because the man is imprisoned and because he is eligible that he must be let out.

Sir Muhammad Yakub: The Honourable Member should address the Chair.

Sir Cowasjee Jehangir: May I point out what I said? I said it is a question

Mr. S. Satyamurti: On a point of order: this is becoming a conversation between the Honourable the Home Member and the Honourable Member from Bombay: I respectfully submit that the Chair should be addressed.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): Order, order; will the Honourable Baronet from Bombay address the Chair?

Sir Cowasjee Jehangir: Yes: what I meant to say was that it is inconsistent to have a rule which debars a man who has been convicted for a year and has paid the penalty of the law from standing for this Assembly and to allow a man who has been detained for three years under a Regulation from standing. I say it is an inconsistency which Government ought to explain.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): Is this a speech or is it a question?

Sir Cowasjee Jehangir: I was explaining what I meant to the Honourable the Home Member.

The Honourable Sir Henry Craik: I quite admit that there is an anomaly in the rules, and if it offends my Honourable friend's sense of unity, I will see whether it is not possible to get the rule in that particular respect amended.

Sir, I really have nothing more to say. I have shown, I think conclusively, that this motion rests on a foundation of sand. It seeks to censure the Government for seriously infringing the privileges of this House, and it has been shown by the Honourable the Leader of the House that there is no such privilege: it was shown conclusively eight years ago by my predecessor that there was no such privilege and where there is no privilege there can be no infringement. I have no doubt that the Opposition will vote as one man in favour of this resolution and it is quite possible that they will be successful; but though the victory may be theirs in the division lobby, I think no impartial person who has listened to the debate can deny that the victory in the debate will unquestionably have been ours.

Mr. S. Satyamurti: Sir, I move that the question be now put.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): The question is that the question be now put.

The motion was adopted.

Mr. Chairman (Lieut.-Colonel Sir Henry Gidney): The question is:

"That the House do now adjourn."

The Assembly divided:

AYES—58.

Aaron, Mr. Samael.
Asaf Ali, Mr. M.
Ayyangar, Mr. M. Ananthasayanam.
Bajoria, Babu Baijnath.
Banerjee, Dr. P. N.
Bardaloi, Srijut N. C.
Bhagavan Das, Dr.
Chettiar, Mr. T. S. Avinashilingam.
Chetty, Mr. Sami Vencatachelam.
Das, Mr. B.
Das, Mr. Basanta Kumar.
Das, Pandit Nilakantha.
Datta, Mr. Akhil Chandra.
Desai, Mr. B. J.
Fakir Chand, Mr.
Fuzhul Huq, Mr. A. K.
Gadgil, Mr. N. V.
Gaubha, Mr. K. L.
Giri, Mr. V. V.
Govind Das, Seth.
Gupta, Mr. Ghansham Singh.
Hidayatallah, Sir Ghulam Hussain.
Hosmani, Mr. S. K.
Iswar Saran, Munshi.
Jedhe, Mr. K. M.
Jogendra Singh, Sardar.
Khan Sahib, Dr.
Lahiri Chaudhury, Mr. D. K.
Lalchand Navalrai, Mr.
Maitra, Pandit Lakshmi Kanta.

Mangal Singh, Sardar.
Mudaliar, Mr. C. N. Muthuranga.
Murtuza Sahib Bahadur, Maulvi Syed.
Nageswara Rao, Mr. K.
Paliwal, Pandit Sri Krishna Dutta.
Pant, Pandit Govind Ballabh.
Parma Nand, Bhai.
Raghubir Narayan Singh, Choudhri.
Rajan, Dr. T. B. S.
Raju, Mr. P. S. Kumaraswami.
Ranga, Prof. N. G.
Saksena, Mr. Mohan Lal.
Sant Singh, Sardar.
Satyamurti, Mr. S.
Sham Lal, Mr.
Shankat Ali, Maulana.
Sheodass Daga, Seth.
Sherwani, Mr. T. A. K.
Singh, Mr. Deep Narayan.
Singh, Mr. Ram Narayan.
Sinha, Mr. Anugrah Narayan.
Sinha, Mr. Satya Narayan.
Sinha, Mr. Shri Krishna.
Som, Mr. Suryya Kumar.
Sri Prakasa, Mr.
Thein Maung, Dr.
Varma, Mr. B. B.
Vissanji, Mr. Mathuradas.

NOES—54.

Abdullah, Mr. H. M.
 Ahmad Nawaz Khan, Major Nawab.
 Allah Bakhsh Khan Tiwana, Khan
 Bahadur Nawab Malik.
 Anwar-ul-Azim, Mr. Muhammad.
 Ayyar, Rao Bahadur A. A.
 Venkatarama.
 Bajpai, Mr. G. S.
 Bhagchand Soni, Rai Bahadur Seth.
 Bhoré, The Honourable Sir Joseph.
 Russ, Mr. L. C.
 Chatarji, Mr. J. M.
 Clow, Mr. A. G.
 Craik, The Honourable Sir Henry.
 Dalal, Dr. R. D.
 DeSouza, Dr. F. X.
 Dow, Mr. H.
 Drake, Mr. D. H. C.
 Fazi-i-Haq Piracha, Khan Sahib
 Shaikh.
 Gajapatiraj, Maharaj Kumar Vijaya
 Ananda.
 Ghiasuddin, Mr. M.
 Ghuznavi, Mr. A. H.
 Graham, Sir Lancelot.
 Grigg, The Honourable Sir James.
 Hockenhull, Mr. F. W.
 Hossack, Mr. W. B.
 Hudson, Sir Leslie.
 James, Mr. F. E.
 Jawahar Singh, Sardar Bahadur
 Sardar Sir.
 Kirpalani, Mr. Hiranand Khushiram.

Lal Chand, Captain Rao Bahadur
 Chaudhri.
 Mehr Shah, Nawab Sahibzada Sir
 Sayad Muhammad.
 Metcalfe, Mr. H. A. F.
 Milligan, Mr. J. A.
 Monteath, Mr. J.
 Morgan, Mr. G.
 Mukharji, Mr. N. R.
 Mukherjee, Rai Bahadur Sir Satya
 Charan.
 Muzaffar Khan, Khan Bahadur
 Nawab.
 Nayar, Mr. C. Govindan.
 Noyce, The Honourable Sir Frank.
 Owen, Mr. L.
 Raisman, Mr. A. J.
 Rajah, Raja Sir Vasudewa.
 Rajah, Rao Bahadur M. C.
 Rau, Mr. P. R.
 Sarma, Mr. R. S.
 Scott, Mr. J. Ramsay.
 Scott, Mr. W. L.
 Sher Muhammad Khan, Captain
 Sardar.
 Siddique Ali Khan, Khan Sahib
 Nawab.
 Singh, Mr. Pradyumna Prashad.
 Sircar, The Honourable Sir
 Nripendra.
 Sloan, Mr. T.
 Swithinbank, Mr. B. W.
 Tottenham, Mr. G. R. F.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 24th January, 1935.