

Saturday, August 27, 1859

**LEGISLATIVE COUNCIL
OF
INDIA**

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P . L .

SIR BARNES PEACOCK moved the insertion of the words "or may allow the Government Pleader or other Officer appointed by the Government to conduct trials before the Court of Session to put" after the word "put" in the 6th line.

The Council divided—

Aye 1.
The Chairman.

Noes 6.
Mr. Sconce.
Sir Charles Jackson.
Mr. Forbes.
Mr. LeGeyt.
Mr. Harington.
Sir James Outram.

So the Motion was negatived.

MR. LEGEYT moved the addition of the following words :—

"But it shall be explained to the accused person that he is at liberty to decline to answer any question so put to him."

The Council divided—

Ayes 4.
Mr. Sconce.
Sir Charles Jackson.
Mr. LeGeyt.
Sir James Outram.

Noes 3.
Mr. Forbes.
Mr. Harington.
The Chairman.

So the Motion was carried, and the Section as amended then passed.

The further consideration of the Bill was postponed on the Motion of SIR JAMES OUTRAM.

STANDING ORDERS.

MR. HARINGTON said, he had proposed to move to-day the adoption of the Report of the Select Committee on the Message from the Governor-General in Council calling for a report on the practical working of the Standing Rules and Orders of the Legislative Council. But having reason to believe that the Report would give rise to some discussion, he proposed, with the permission of the Council, to withdraw the motion of which he had given notice, and to move on Saturday next that the Council resolve itself into a Committee upon the Report for the purpose of considering any amendments that might be proposed therein.

CUSTOMS DUTY (BOMBAY).

MR. LEGEYT moved that the two Bills "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)" be referred to a Select Committee, consisting of Mr. Sconce, Mr. Forbes, and the Mover.

Agreed to.

MR. LEGEYT then moved that the Select Committee be instructed to report previously to the publication of the Bills, whether it would not be advisable to consolidate them.

Agreed to.

WATER SUPPLY (KURRACHEE).

MR. LEGEYT moved that the Bill "to provide for better supplying with water the Town and Suburbs of Kurra-
chee" be referred to a Select Committee, consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

The Council adjourned.

Saturday, August 27, 1859.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*,
in the Chair.

Hon. Lieut.-Genl. Sir James Outram,	H. Forbes, Esq., Hon. Sir C. R. M. Jackson, and A. Sconce, Esq.
Hon. H. B. Harington, P. W. LeGeyt, Esq.,	

PORT-DUES (PEGU).

THE CLERK reported to the Council that he had received a communication from the Foreign Department regarding the levy of Port-dues in the Province of Pegu.

MR. HARINGTON moved that the above communication be printed.

Agreed to.

NABOB OF FURRUCKABAD.

THE CLERK also reported a communication from the Foreign Department, forwarding correspondence with the

Government of the North-Western Provinces, relative to the passing of an Act for rescinding Section VIII, Regulation II, 1803, and Act XII of 1836, concerning the Nabob of Furruckabad.

MR. HARRINGTON moved that the above communication be printed.

Agreed to.

CRIMINAL PROCEDURE.

MR. LEGEYT presented the Report of the Select Committee on Section 235 of the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" submitting proposed Jury Rules.

CUSTOMS DUTY (BOMBAY).

MR. LEGEYT also presented the Report of the Select Committee appointed to consolidate the Bills (Nos. 1 and 2) "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)."

JOINT STOCK BANKING COMPANIES LIMITED.

MR. SCONCE moved the first reading of a Bill "to enable Joint Stock Banking Companies to be formed on the principle of limited liability." He said that the progress of public opinion as to the advantages and security arising to the community from the establishment of Joint Stock Companies on the principle of limited liability might be considered a sufficient reason for his dispensing with any lengthy remarks in the introduction of the present Bill. The general purpose of the Bill was to give to Joint Stock Banking Companies the benefit given by the law passed in 1857 to Joint Stock Companies in general. On that occasion the Legislature, he apprehended, following the example set forth in England, thought it expedient to exclude Banking Companies from being formed with limited liability. But by a subsequent Act the power was extended to Banks in England, and on a similar principle it now seemed desirable to adopt the same law in this country. Perhaps in no country in the world, certainly in no country in which we are interested, was the establishment

of Banks likely to be so beneficial to the community as in India. He took it to be the object of the establishment of a Bank to bring together capital ready for investment, with a view to its being distributed to those who needed it, and who were in a position to turn it to a better account, than if left in the hands of those to whom it belonged. The position of India with regard to capital was in many ways different from that of other countries. In India, as they all knew, money to a large extent was hoarded and lay idle. If, therefore, by the encouragement of Banking institutions, and more particularly by the adoption of the principle which this Bill proposed to establish, they should succeed in setting free that large capital which now lay buried under the floors of houses, undoubtedly many very material advantages might be expected to result, not only with a view of releasing capital to the profit of the capitalist, but also of employing it to the material relief of the community. It was notorious that the rate of interest exacted by capitalists in this country was, speaking as he might in a European sense, very exorbitant and much beyond the ordinary return sufficient to reimburse and remunerate the capitalist. In England and elsewhere the rate of interest was about 8, 10 or 12 per cent., but in this country parties borrowing money, whether for a longer or shorter period, had to pay 20, 30, and even as much as 40 per cent. Such appeared to him to be the general advantages derivable from the measure. The law of 1857 contained large and ample provisions to guide the management of Banks and to regulate the conduct of the Managers and secure the interests of Shareholders. With these remarks he begged to move the first reading of the Bill.

The Bill was read a first time.

TRADES AND PROFESSIONS.

MR. HARRINGTON said, he was desirous of prefacing his Motion for the second reading of this Bill with a few remarks. But, first, he must ask the Council to permit him to introduce at the commencement of Section 1, before the words "Regulation V, 1832," the following words, namely, "Regulation IV,

1818, of the Madras Code (prescribing rules for the assessment and collection of the Veesabuddy or Tax upon trade in the Provinces known by the appellation of the ceded districts in the zillahs of Bellary and Cuddapah"), to insert the word "also" between the figures "1832" and the word "of" in the first line of the Section, and to substitute the word "are" for the word "is" in the last line. Should this Bill become law, Regulation IV, 1818, equally with Regulation V, 1832, of the Madras Code, would require to be repealed, but in drawing up the Section the former Regulation had been inadvertently omitted.

He would also ask the Council to allow him to strike out the Schedule annexed to the Bill, as well as Section X, and to substitute the following classes for those mentioned in Section VIII, namely,

Under class	I	.....	5,000	Rs. yearly
"	"	II	.....	4,000
"	"	III	.....	3,000
"	"	IV	.....	2,000
"	"	V	.....	1,000
"	"	VI	.....	500
"	"	VII	.....	250
"	"	VIII	.....	100
"	"	IX	.....	50
"	"	X	.....	25
"	"	XI	.....	10
"	"	XII	.....	5
"	"	XIII	.....	2

His reason for wishing, at the present time, to introduce the three higher classes just mentioned into the Bill, was that it was generally considered that the rates at which it was proposed to assess them might fairly be paid by the larger Bankers and Traders without their being unduly taxed, or taxed out of proportion to the lower classes with reference to the extent of their trades or business; and if it was to be done at all, it was obviously better to raise the rates before the Bill was published for general information, than when it got into Committee. Hereafter, if the rates should be found too high, they could easily be modified.

Passing on to Section IX of the Bill, Mr. Harington observed that this Section prescribed that the Collector or other Officer authorized to grant licenses should determine under what class every person to whom a license was

granted should be assessed; the Section went on to enact that "such determination should be made with reference to, and after consideration of, the extent of the trade, business, or profession carried on by every such person." It might be objected to this provision that it was too vague and undefined in its character, and that, if large discretion were left to the taxing or licensing Officer, it would lead to considerable diversity of practice, and a greater degree of inequality, if not in the same District, still in different Districts, than had been contemplated by him in his opening speech. The objection had not escaped his observation in drawing up the Section. But he hoped that he had met it in some degree by the power given to the Governor-General of India in Council in Section XXVI, to make, from time to time, rules for the guidance of Officers in matters connected with the enforcement of the Act, provided that such rules were not inconsistent with any of the provisions contained in the Act. The amount of duty chargeable according to the class in which every person required to take out a license was placed, being absolutely fixed by law, he thought that, within the pecuniary limit so fixed, the powers thus proposed to be given to the Supreme Government might be legitimately and constitutionally exercised, and that the Supreme Government would be able to lay down such rules for the guidance of the Local Officers in fixing the amount of duty to be paid as would insure throughout the country a sufficient approach to uniformity of practice. But he might mention that a duty, approximating as nearly as possible, without any very strict investigation, to about 3 per cent. on the profits or emoluments of the party taking out the license, was what was contemplated by the Government, that being about the rate imposed in England under the Sections of the Act of Parliament which he had read at the time he moved the first reading of the Bill, though a maximum rate of 5,000 rupees was proposed, which would in no case be exceeded. He thought it right, however, at once to say, that if Honorable Members considered that whatever rule or rate of assessment was

Mr. Harington

to be followed, it should be made to appear on the face of the Bill, instead of being left to be determined by instructions from Government, he should be quite willing, when the Bill was in Committee, either himself to propose a specific provision to that effect, or to adopt any suggestion that might be made, calculated, in the opinion of the Council, to meet the end in view. His great object in framing the present Bill was to make the mode of assessment of as little an inquisitorial, harassing, or oppressive character as was possible, consistently with a due regard to the purpose for which the Bill had been introduced. The amount of Duty proposed to be levied on licenses granted under the Bill being intended to be comparatively light, it was thought not unlikely that, in a great majority of cases, what might be termed self-classification might be allowed. This, however, could hardly be permitted in this country to any great extent were a general income tax to be imposed without subjecting the Government to great loss, and this was one of the reasons why it appeared to him that the scheme for improving the public Revenue proposed in the present Bill was preferable to an income tax, which, in order to accommodate the amount of the tax to every man's circumstances, and the frequent fluctuations therein, would necessitate a degree and mode of enquiry which he feared would render it a source of constant and endless vexation, annoyance, and disgust, and it might be something worse.

He observed, indeed, that it had been stated that the Duty which would be levied under the Bill would be, to all intents and purposes, an income tax, and he supposed that it was this impression which had given rise to the objection which had been taken to the Bill that it was a partial measure, inasmuch as it proposed, amongst others, to exclude from its operation all Government servants. But, however the Bill might operate, and whatever might be its effect, an income tax was not what was intended, and the inclusion therefore in the Bill of all public Officers with whose salaries the Government had full power to deal without recourse to the Legislature would, he thought,

have been improper, and, looking to what had just been said on the subject of official salaries, a work of supererogation. Had the Government, in introducing the present Bill, really intended to impose an income tax, it would of course have included all incomes or salaries from whatever source derived, unless protected by a law superior to any law that could be passed in this country, or unless expressly excepted. But he felt, he might safely say, that no such exception would have been permitted by the Government in favor of its own servants, nor was it the intention of the Government at the present time, in so far as it had the power to prevent it, that those servants should enjoy exemption while other classes were taxed. He believed he should take few, if any, by surprise by the announcement which he was now authorized to make that it had always been the intention of the Government, simultaneously with the passing of any Legislative measure of this nature, to cause a deduction to be made from all official salaries by a percentage. This would now be ordered, and would take effect from the date on which the present Bill received the assent of His Excellency the Governor-General. The rate of deduction proposed was 3 per cent., being, as already stated, the rate imposed in England. Salaries not exceeding 150 Rupees per mensem would be exempt, as also the pay and allowances of Regimental Officers and of Regimental Staff Officers, whether of Regular or Irregular Regiments, but not of Officers in Civil employ or on the General Staff. The deduction would also extend to the civil salaries which it had been proposed to the Home authorities to reduce, according to the reduced scale, equally with the rest. For some months past rumours had been afloat and had appeared in the public prints, which showed that what was now contemplated was no secret. How the information got abroad he did not know, nor did he care to enquire. But only the other day it was stated in a daily paper which had a very wide circulation that the clerks in one of the Public Offices were getting up a Memorial to the Government against the proposed deduction of 5 per cent. from their sala-

ries. He mentioned this to show that what was about to be done had been for some time under consideration, and had been delayed only until this Bill, or some measure of a similar nature, should become law. The cry of "wolf, wolf" had long been heard, and, as in the fable, he would shortly appear.

But though, as he had stated, the Government had full power to order such amount of deduction from the salaries of the greater portion of its servants as it might deem necessary and proper, without the sanction of the Legislature, there were some official salaries which, being fixed by Act of Parliament, could not be affected by any Act passed in this country. The Officers to whose salaries this remark applied were few in number, but, for the most part, the positions which they occupied were the highest, and the salaries which they drew were the largest in the country. Under this head were included the Governor-General of India, the Governors of Madras and Bombay, the Lieutenant-Governors of Bengal, of the North-Western Provinces and of the Punjab, the Commander-in-Chief in India and the Commanders-in-Chief at Madras and Bombay, the Judges of the Supreme Courts of Judicature, and he believed the Bishops of the three Presidencies, the Members of the Executive and Legislative Council, and there might be some others. It was not the intention of the Governor-General and of the other Members of the Supreme Government present with the Government that the measure, which now only awaited the order to issue, should pass by them, and their salaries would accordingly be subjected to the proposed reduction from the date which he had mentioned. But in their case, as well as in the cases of the other high Officers whom he had named, it would be necessary for the Home Government to apply to Parliament for an Act of the Imperial Legislature to give legal authority to the extension of the measure to them. Steps would immediately be taken for obtaining this authority.

The only other part of the Bill which he desired particularly to notice at this time was Section XXIII, which provided that nothing in the Act should be deemed to apply to any artificer or

workman for hire, or to any laborer, or to any cultivator of land in respect of the produce of such land. In commenting on this Section in the remarks with which he introduced the Bill, he (Mr. Harington) observed—

"It would be deserving of consideration hereafter, whether the Collector or other Officer authorized to grant licenses should not have power to except any person carrying on any petty trade, of whose inability to pay the small sum of two Rupees per annum without great difficulty he might be satisfied, or whether the exception contained in this Section might not properly be carried farther."

He did not anticipate that any great difficulty would be experienced in determining who should or who should not be exempted. Something analogous to this proposition was to be found in the pauper laws. The law said that a person having a good cause of action might be permitted to sue *in forma pauperis* if he could satisfy the Court, having jurisdiction of the claim, that he was not possessed of sufficient property to enable him to pay the Government Stamp Duty; but before he could enjoy the benefit of this law, it was not required that he should sell the clothes which he wore or the tools or instruments with which he carried on his trade. The same principle which governed the Civil Courts in the administration of the pauper law would, he presumed, govern the licensing or taxing Officer under this Bill in the event of any provision, such as he had suggested, being introduced into it. He now begged to move that the Bill be read a second time.

MR. SCONCE said, the Bill in the form in which it was now presented came in quite a different shape from that in which they had been considering it for the past week, and therefore it might form a ground for the consideration of the Council, whether under such circumstances they should proceed at once to discuss the merits of the Bill as it had now been advanced, or whether its further consideration should not be postponed to the next Meeting of the Council. Under any circumstances, he thought the subject-matter of the Bill was one of gravity and importance, whether looking to the large scale of assessment which the tax pro-

Mr. Harington

posed to raise, or to the state of financial difficulty in which the Government now lay. He was conscious, as a Member of that Council, that he was placed in a peculiar and somewhat undefined position. The Executive Government came to that Council to be furnished with the means for carrying on the Government, and so far it lay within the functions of the Council to consider the nature of the proposition, and the amount which it would be expedient to sanction. Therefore it seemed to him, besides the mere passing into law such Bills as were laid before them, they had also the responsibility of considering the necessity of the proposed measures. The amounts required might be more or less large, and the principle of assessment or taxation involved more or less substantial, but beyond and before this question he could not help thinking that it was necessary to see whether Government had made out a case to call for the assistance of the Council. In this matter they had to satisfy their own consciences, and they were trustees for the public; and though he admitted the indefinite character of the powers with which they were invested, he could not help considering the justification which the introduction of such a measure should involve. For another reason also it seemed to him that these considerations were of paramount importance. The Bill now before the Council, it was estimated, would yield from one to one and a half crores of Rupees. Now it was one thing to pass this Bill for a period of say one, two, or five years, and another to make it a permanent law of the land. On that ground it behoved them to act cautiously, and to look to Government for such information as would afford good grounds for the adoption of the Bill. He had listened with much interest to the explanations entered into by the Honorable Mover of the Bill, and it was certainly satisfactory to know that the deficit of last year had been considerably reduced. It was also satisfactory to know that Government had undertaken measures to consider the reduction of the different departments, both Military and Naval; but he should have been glad if his Honorable friend had carried the subject farther, and brought down his information to the present

day in extension of the information which His Excellency the Governor-General had submitted to the Council on the introduction of the Customs Bill in March last. There were one or two broad facts which required explanation. In the first place, it appeared that, in the year 1856-57, the deficiency between the income and expenditure was about 18 lakhs; in the following year ending 30th April 1858, there was a deficit of 817 lakhs, but in the next year the deficit had risen to 13 crores. The difference between the deficit of the two years 1857-58 and 1858-59 was very considerable, and it would have been of interest to the Council to have been informed how in one year this difference of about five millions of money could have arisen. But again, in the year now in progress, the deficiency was estimated at 684 lakhs, thus falling from 13 crores to about 7 crores. Beyond these figures the Council knew nothing. Therefore it would have materially assisted the deliberation, and tended to the enlightenment of the Council, if Government had given it full information as to the circumstances which affected the rise of all the public charges. The subject represented itself in another light. He found, from the speech of His Excellency the Governor-General, that it had been ascertained that for the year ending April 1858, taking the total deficit to be 817 lakhs, out of that sum 350 lakhs arose from the loss of Revenue, and 130 lakhs from loss of Treasure, thus making 480 lakhs—from two special causes which would seem to be confined to the deficit of 1857-58. Now for the coming year, the estimated deficit was put down at 684 lakhs, and in comparing this deficit with that of 1857-58, as at this time neither loss of Treasure nor loss of Revenue should be anticipated, the loss sustained under these heads in the earlier year would now be added to the assets, and the actual deficit increased by the same amount. He made these observations, not as affecting the principle, or with the view of opposing the second reading of the Bill, but it seemed to him a matter of much importance that the fullest explanation should be placed before the Council as to the present state of the finances. It was hardly enough to know, as they knew

by yesterday's Mail, that a Loan was proposed to be raised in England; the capital might be found there, but the interest would have to come out of this country. As to the Bill, he was at one time looking at it in one sense, but its enlargement now would probably tend materially to change that view.

MR. HARINGTON here explained that the Honorable Member was laboring under a mistake. He (Mr. Harington) had proposed no alteration in the principle of the Bill. What had fallen from him was merely by way of suggestion. The principle of the Bill was exactly the same as when it was read a first time, and he had no desire to alter it. He said that it might perhaps appear that some of the provisions of the Bill were too vague and indefinite, and that when the Bill got into Committee, Honorable Members or others might make suggestions on this point to which he should be very happy to give full consideration. They might think the rates too high and that Bankers and Traders were not properly classed. This could of course be rectified in Committee, but he begged to assure the Honorable Member for Bengal that the principle of the Bill remained unchanged.

MR. SCONCE said, his remarks referred particularly to the alterations proposed in the Schedule. But he would proceed now to consider the Bill as it originally stood. The lowest rate was fixed at 2 Rupees yearly. Now his Honorable friend had told them that he was prepared to accept a rating of three per cent. on the profits: he would wish to know whether on the net or the gross profits. A tax of 2 Rupees on the net proceeds of a trade supposes a net profit of 66 Rupees per annum. Necessarily, if the tax were on the gross profits, the incidence of the Bill would very materially differ as to the parties brought within the classifications. Going up to the highest class as it formerly stood, a tax of 2,000 Rupees at three per cent. would pre-suppose a net profit of 66,666 Rupees. Now, with regard to the poorer classes of shopkeepers, if it were assumed that a trader, whose gross income amounted to 200 Rupees, should be placed in the lowest class of the Bill, the tax of 2 Rupees on his gross receipt would be 1 per cent.

Mr. Sconce

What then he wished to know was, whether a shop-keeper, whose gross profits in selling Rice, Dholl, Tobacco, and so on, did not exceed 200 Rupees, would be subject to the provisions of the Bill. In other respects, the objection which he felt to the form of the Bill had been much overcome by the explanations they had this day heard. He had entertained much objection to the power given to the Collector to determine arbitrarily the rate of assessment payable by the parties required to take out licenses: but it was intended to change this feature in the Bill, and the proceedings of the Collector, it was now admitted, should be regulated by the percentage chargeable upon the income of each individual.

He was not unwilling to agree to a considerable extent to the statement made by the Honorable Member who introduced the Bill, that a trader would reimburse himself by charging the amount of the tax to his customers; but he feared that this alternative would be only a partial relief, and that the tax would largely operate as a tax upon profits. In conclusion, he need only say that he was not prepared to throw out the Bill. He thought that if it were sent into Committee it might be considerably improved, and there was no doubt that many valuable suggestions would be received from all parts of India on the subject, which would considerably assist the Council in its deliberations.

MR. HARINGTON regretted that the Honorable Member for Bengal had not intimated to him his intention of asking for the information with which he now considered it desirable that the Council should be supplied. If the Honorable Member had asked him yesterday, he could have obtained from the Office of the Financial Secretary, and would have brought with him to-day the necessary papers. There was not the slightest disposition on the part of the Government to withhold from the Council any information which it was requisite that they should possess.

MR. SCONCE explained that he had no expectation of being supplied immediately with the information he had referred to. He should be satisfied if the information were furnished when the Bill was under the consideration of the Select Committee.

SIR CHARLES JACKSON quite agreed with the Honorable Member for Bengal. He thought the Council had a right to complain of the manner in which the financial measures of Government were brought forward. It was true that in March last the Governor-General had made a very lucid statement of the financial state of the Government. Since then five months had elapsed, and no further information had been laid before them. They had no knowledge of the actual reductions made or contemplated, or what was the amount realized under the new taxation, or any statement of the amount realized by the Customs Bill which had been passed by the Council, or of the amount expected to be obtained by the Bills now before them. Since the Governor-General's statement a great number of measures had passed into law or been proposed to the Council, namely, the Customs Act, the Bombay Abkaree Act, the Stamp Bill, the new Bombay Excise Bill which had passed two readings, and now there was this present Bill. The Governor-General, without the aid of the Council, had also raised the Duty on Malwa Opium. No complete financial scheme had as yet been presented to the Council, showing what the permanent deficiency would be, or what amount of Revenue was likely to be realized, or, in fact, what was the amount of taxation at the present time. It was quite time to put a stop to this piecemeal Financial Legislation. The Council were in fact legislating completely in the dark. Government ought to give them a full statement of their whole financial scheme, showing the amounts which had been raised under the new taxations, what the permanent deficiency was likely to be, and what measures Government intended to introduce to meet such deficiency. What did the statement of objects and reasons, submitted by the Honorable Mover of the Bill, say? Why, simply as follows:—

"The expenditure exceeded the income derived from all sources by upwards of 1,300 lakhs of Rupees. The deficit of the present year was estimated at between 650 and 700 lakhs."

That statement displayed a perfect horror of details, and a singular in-

dulgence in round numbers. The statement proceeded:—

"Reduction of expenditure in all departments is being made *as rapidly as possible*, but after this has been carried *as far as may be practicable* consistently with an efficient administration of the Government, it is feared that *for some time to come* the expenditure will be *in excess* of the income, the increase in the Public Debt alone, consequent on the large loans which it has been found necessary to take up during the last two years, both at home and in this country, *having added greatly to the annual charges*. Necessary Public Works on a *large scale and others* which, though not of the same urgent necessity, are likely to prove productive at no distant date, and to add greatly to the prosperity of the country, require to be carried on; and *demands in the Department of Education*, which cannot be disregarded without serious injury to the people, have to be met.

"Further taxation, *therefore*, seems to be an unavoidable necessity, and the mode of taxation contemplated in the accompanying Bill seems to be open to few, if any, of the objections which apparently exist to many of the other schemes which have been suggested."

Not a word was said whether further taxation in addition to this Bill was contemplated, or what it was, and this was all the information given on which they were called on to legislate. The Honorable Member opposite (Mr. Harington) might smile, but he would beg leave to inform him that under the present arrangement the responsibility of passing these Bills rested with that Council, and it was the bounden duty of the Executive Government to give them a full, clear, and ample explanation of their measures, in order to enable them as Members of Council to discharge their duties in an honest and efficient manner. Looking at the way in which the present Bill had been changed—

THE VICE-PRESIDENT here observed that he did not think the proposed alterations could be treated as having been made. No Motion for the purpose had yet been made, nor did he think that it was competent to the Honorable Mover of the Bill to do so in its present stage. The Council therefore could only debate on the Bill in the form in which it stood at the first reading.

MR. HARRINGTON was willing to withdraw for the present the amendments he had proposed.

SIR CHARLES JACKSON continued:—This Bill, though called a licensing Bill, appeared to him to be a modified income tax affecting particular classes only. But they did not know what were the ulterior intentions of Government. For aught the Council knew, Government might have an income tax in reserve, and an income tax and a license tax, such as this, would be most tyrannical and unjust, for trades and professions would have to bear both taxes, and the owners who derived their income from Company's Paper would only be liable to the income tax. It had dropped from the Honorable Member of the Executive Government that an income tax had been under discussion, but they had no clear statement of the intentions of Government for the future. The Bill as originally proposed appeared to be a sort of very mild income tax, but if, as subsequently suggested, they were to raise it by an assessment of three per cent., it would be a most severe one, and one which it would be very difficult to carry out effectually so as to make native traders equally liable. He could not however understand upon what principle all Officials, Judges, &c., and persons in Government employ, were to be exempt. As for the Judges, the point raised was that the Council could not possibly tax them, inasmuch as their salaries were fixed by an Act of Parliament. That might be a question in point of law with respect to the present frame of the Bill as a licensing Bill, but the difficulty might be avoided by making it an income tax. But why should the Civil and Military Officers of Government, and others receiving large salaries, be exempt? He could not for the life of him see any ground for exemptions which were preposterous in themselves and very invidious, considering the materials of which that Council was composed: He was certain the Bill would have to be greatly altered and modified in these and other respects before the Council could allow it to pass.

Then again the Honorable Mover said that the Government intended to cut the salaries of their own Officers. He (Sir Charles Jackson) himself very much questioned the justice of such a proceeding. He doubted whether the Government had any right to make any

reduction in the salaries of parties who had entered upon their present offices and duties in the expectation of a certain consideration. It would be all very well to reduce the salary of an incumbent of the Office, but he thought Government should fortify themselves with an Act to impose such a deduction from the salaries of their Officers. Why should they not tax this class with the others, as was the case in England? The Honorable Mover said, the Bill had not been changed, but that he only intended to propose alterations in Committee. The Bill might not be changed in principle, but practically the alterations proposed would change a licensing tax into a somewhat severe income tax, and the income tax then imposed would only apply to certain classes of professions. He (Sir Charles Jackson) did not object to the second reading of the Bill, but he reserved to himself the right of opposing it at a future stage, if the principles of it, as it now stood, were not materially altered.

THE VICE-PRESIDENT said that, if he thought by referring the Bill to a Select Committee any time might be saved, he would not object to the second reading. But it appeared to him that such a course would rather delay the passing of the Bill, for, unless the Bill were very materially altered, he certainly could not vote for the third reading; and if the alterations proposed by the Select Committee should be of an important character, the Bill would have to be republished for general information. Thus there would be a delay of another three months. He thought therefore that, in opposing the second reading, he would rather be expediting the business than otherwise.

In the first place he wished to know the principle of the Bill. This, as he understood, was to license trades and professions, and it appeared that the highest income would not have to pay more than 2,000 Rupees yearly, and the lowest not less than 2 Rupees. To whom, however, was the classification to be left? Why, to the Collector, subject to the orders of Government. What those would be was not explained. Section XXVI provided—

“It shall be lawful for the Governor-General of India in Council from time to time to

make rules for the guidance of Officers in matters connected with the enforcement of this Act, provided such rules are not inconsistent with any of the provisions herein contained."

No principle was laid down for the guidance of the Collector in making the assessment. It seemed to be left entirely to the discretion of the Collector to assess some at 2 Rupees, others at 5 Rupees, others at 7 Rupees, others at 10 Rupees, and so on. There was nothing in the Act declaring that the amount of assessment should have reference to the amount of profits. In short, they were asked to pass an Act which left it to the Collector to do nearly as he pleased. It was true that the party could appeal, but then no rules were laid down for the Appellate Court. If there was no rule to guide the Collector, how was the Commissioner on appeal to say whether he was right or wrong?

Then again he saw no reason why a Banker should be taxed 2,000 Rupees, and another 1,000 Rupees, when the highest class for other traders including Bankers also, was the third class, namely, 500 Rupees. The first two classes were confined only to Bankers. A man might carry on the business of a Banker, and make an annual profit of only 5,000 Rupees, and he might be assessed at 2,000 Rupees; whereas other traders (take Messrs. D. Wilson and Co. for instance) might make a clear profit of a lakh of Rupees a year, and yet not be taxed higher than 500 Rupees yearly. Why should this dead set be made against Bankers? They had been told that many Native Mahajuns made large profits, and contributed nothing to the taxes of the country. But this was not a sufficient reason for taxing them in a proportion higher than other trades. There was no reason why any person realizing large profits by any trade or profession, whatever it might be, should be excepted from the two first classes. If the Bill were to be confined to trades and professions, for what reason was a certain class to be altogether exempt? He would put it, why should the Chief Justice be exempt? Why should he not pay his 2,000 Rupees a year, as well as any one else? It had been said that the Council had not the power to tax the

Chief Justice, because his salary was fixed by Act of Parliament, but he (the Vice-President) would say that, in his opinion, the Council had the power. He might however be alone in that opinion, but such it was. But even supposing that statutory salaries could not be taxed, he should not feel himself justified in taking advantage of such objection, and, whether assessed or not, would willingly pay the tax on his salary. He should feel it his bounden duty as a man of honor to do so, and not to claim any exemption whilst others around him were taxed. But he should not feel inclined to pay unless others were compelled to do the same. That was the feeling which he and, as he thought, most others entertained. When they saw the state in which the public finances were at present, he thought very few persons would object to pay a fair and moderate tax, provided it were general, and not confined to particular classes. The Honorable Mover had relieved him to some extent of the objections which he had felt to the Bill, by stating that the salaries of Government Officers, excepting certain classes, were to be taxed three per cent. simultaneously with the passing of the Bill.

It was proposed, independently of the Act, to tax Civil Officers at the rate of three per cent., but he did not clearly understand whether the tax was to be on the present salary, or on the reduced salary recommended by Mr. Ricketts. His principle would be to tax all equally and fairly. The Honorable Mover would however exempt all Regimental Officers, so that a Colonel or Major would be allowed to put all his salary into his pocket, while a poor man, making only about 100 Rupees per year, would have to pay a tax of 2 Rupees, that is at the rate of two per cent. Why was one to be taxed and not the other? The Subaltern said, his present salary was not sufficient. The poor man might say the same, and yet the latter, perhaps with wife and children, was to be taxed and not the former. This, as a matter of course, would give rise to endless discontent. The poor man would naturally say—"I am making only 100 Rupees a year and am taxed, and yet there is another drawing £1,000 a year, and he pays nothing." Such a pro-

ceeding was not fair. He should wish the whole country to see that they were taxing fairly and properly. In England no classes were exempt from the income tax. Every one there was taxed alike, except in cases in which his income was below a certain amount; and this should be the case in this country. The Honorable Member, in his Statement of objects and reasons, stated that, when the trader was taxed, the tax did not rest with him, but was really paid by his customer. Had the Honorable Mover forgotten the 20th Section :—

“Persons holding any offices or employments mentioned in Section XXII of this Act, shall be deemed to be, in respect of the salary, fees, wages, perquisites, and profits of such offices or employments, persons carrying on trade or exercising a profession within the meaning of this Act.”

So that any Clerk in a merchant's office would have to pay something in respect of his salary. This might happen to any European Clerk who might have a wife and family to support, and he (the Vice-President) could see no sufficient reason why he should be taxed, whilst a Subaltern was to be exempt. If his income was less than that of a Colonel or Major, why should he be taxed more than they? He might say, the Colonel is earning more than I. He ought to be able to live within his income as well as I, and be able to pay three per cent. upon his pay as well as myself. He (the Vice-President) would prefer an income tax of say two, three, or four per cent. all round. He himself thought that three per cent. would be a very fair proportion, and he would suggest a classification to be as near as possible to a tax of three per cent. according to the income. It was very evident that some principle ought to be laid down.

Then, again, there was another class, the landholders under the Perpetual Settlement, who were not included. It might be said that, like Officers whose salaries were fixed by Act of Parliament, they could not be taxed. He admitted that it would be unfair to tell the zemindars that a particular tax was to be imposed upon them, and not upon others. But when the profits of official and professional labor were going to be taxed generally, he did not see according to

The Vice-President.

what principle of justice they could be exempted from taxation. What he understood by the Perpetual Settlement was that the proprietors of land at the time of that settlement were allowed to hold their land for ever at a certain fixed rent or revenue which was never to be increased. If Government were to throw on that class a particular burden, they would be guilty of a breach of faith. He recollected having written a Minute some time ago, in which he stated that he thought it was contrary to principle to say that proprietors of estates which they held permanently should be compelled, at their own expense, to keep up a certain number of Police Officers and Chowkeydars, according to the value of their estates. But to say that zemindars could not be included in a general income tax was, in his opinion, going a step too far. With regard to the other Presidencies and the North-Western Provinces, perhaps a distinction might be made, for there the assessments could be increased by Government every twenty-one years. There was a difference in these two cases; in the one the rent was increased according to the improved trade of the country, but in the other, whatever benefit was derived went all to the proprietor, whose rent was always at the same rate. What would the zemindar do if there were no Military, if there were no trading vessels, if no Navy were kept up, and there were no traders or merchants? The increased Military had thrown an additional burden on the country, and the zemindars as well as others had the benefit of the protection afforded. It was said—“throw the burden upon trades and professions, but don't tax the zemindars.” It might or might not be politic to tax the zemindars, but it appeared to him that they could, without any breach of faith, be compelled to bear an equal proportion of the tax according to a fair valuation of their net income.

He thought that Regimental pay ought to be taxed as well as the salary of the Clerk who had not the same means as the trader to realize it from his customers.

As this Bill at present stood, there were many persons drawing large salaries who could not be taxed higher than at the rate included in the third

class. For example, he would put the case of the Secretary to the Bank of Bengal, whose salary was something about £3,000 or £3,500 a year. Why should he get off so cheaply as by paying only Rs. 250 per annum? Why should he pay so little, when it was proposed that Civil Servants should be taxed at the rate of three per cent. upon their salaries?

Then with regard to professional persons, why tax medical men, not being Government servants, who came out to this country to set up for themselves, and whose income for the first two or three years was very small, and not Military Surgeons? Barristers too had to struggle for many years before they could realize any thing approaching the salaries of some of the Civil Servants, and it was proposed to subject them to taxation, whilst the Regimental pay of all Military Officers, some of whom were better able to bear it, were to be exempted.

With regard to the Appeal Clause also, he did not see how the Act would work. Take the case of a man whom the Collector had assessed and placed in a certain class. The party taxed was dissatisfied and appealed to the Commissioner, but how was the Commissioner to decide? And how could he ascertain the merits of the appeal? He had no power to summon witnesses, or to compel the production of books; and even if the parties to be assessed should appear before him, he had no power to compel them to give evidence. Even supposing that he should ascertain the amount of net income, if he had no principle to guide him, how was he to act?

Under these circumstances, he would suggest to the Honorable Member the expediency of withdrawing this Bill, and of introducing another with respect to which the Council would know how to act. If the Honorable Member pressed the Bill in its present form, he (the Vice-President) would consider it his duty to oppose the second reading, unless the Honorable Member consented to refer the Bill to a Select Committee for the purpose of being amended before publication.

If it should be read in its present state and published, he thought that great delay must necessarily be occasioned by republishing the Bill.

MR. LEGEYT said, he came here to-day with no intention of opposing the Bill, though he would not deny that he saw it was full of difficulties. What he had heard that day in Council had shown him that those difficulties were greater than he at first supposed. If, however, the Honorable Mover was prepared to carry it through, and if he was sufficiently prepared to meet the difficulties as to the details, and would make the alterations he had suggested, he (Mr. LeGeyt) should not feel justified in opposing the second reading. If it did pass the second reading, it might in Committee be so altered and modified that they would find it necessary to republish it, and then the delay would arise which had been foreseen by the learned Vice-President. It was no doubt the object of every Member of this Council to assist the Government in their present difficulties in respect to finance, and he should feel he was wanting in his duty if he opposed, without the gravest reason, any measure that would tend to assist it at the present crisis. But he could not help hoping that the further consideration of the Bill would be deferred to enable the framers of it to consider the objections which had been brought forward and to make such modifications and alterations as would meet those objections, some of which, such as the absence of any specified principle on which the different classes were to be formed, appeared to him to be absolutely necessary to the working of the Bill. If this were secured, he should support the Bill.

MR. HARRINGTON said, he was of course most anxious to defer to the wishes of the Council; but with regard to the suggestions which had fallen from the Chair, or rather he might say the second of those suggestions, for he certainly should not withdraw the Bill, though Honorable Members might of course throw it out if they thought proper, he should like to have a little time to consider it, and he should therefore move that the debate be adjourned until the next meeting of the Council. Before making this Motion, however, he desired to offer a few observations in reply to the objections which had been taken to the Bill. These objections resolved themselves

into objections of principle and objections of detail. With regard to the objections falling under the latter head, he had distinctly stated in the remarks with which he introduced the Bill, that he had no intention or wish to bind Honorable Members to any of the details of the Bill. He had admitted that the Bill was no doubt chargeable with many imperfections; but these he hoped would be remedied in Committee. As remarked by the Honorable Member for Bengal, and as he himself had said, many valuable suggestions and much good advice might be expected to be received on the publication of the Bill from all parts of India, as well from the Officers of Government, as from others, which would prove most useful when the time for considering the Bill in Committee arrived.

With regard to the objection of the Honorable and learned Vice-President, that there was nothing in the Bill, as now drawn, to show how the Officers, whose duty it would be to assess persons under it, were to administer the law, he had acknowledged that the rule laid down might be considered vague and indefinite, and he had also said that he was quite prepared to adopt any proposition which the Council at large might make to meet this objection. He did not think that any mere alteration of that kind would change the principle of the Bill, so as to render a republication necessary before it was read a third time and passed. The greater part of the Bills brought into that Council underwent material alterations after being read a second time, either at the hands of the Select Committee, or when before a Committee of the whole Council, and he could point out Bills, the form of which had been completely changed in this way. If the Select Committee, to whom the Bill would be referred, proposed that the duty to be charged on licenses should be generally at the rate of about three per cent. on the profits or emoluments of the party taking out the license, a rule to that effect, which would be restrictive in its character, would not, he thought, alter the principle of the Bill. But if the maximum rate was considered too low, and it should hereafter be proposed to raise the rates, that would undoubtedly necessitate the republication of the

Mr. Harington

Bill before it was read a third time. It was on that account that he had asked the Council to allow him at once to add three higher classes, but he withdrew the application as soon as he found that Honorable Members opposite considered it objectionable, and he was very willing that the Bill should be read a second time in the form in which it had been introduced.

The Honorable and learned Judge opposite (Sir Charles Jackson) had characterized the exemption of Government Servants from the operation of the Bill as most preposterous. It would have been so if it had been proposed to impose an income tax; but that was not the character of the Bill, and he (Mr. Harington) did not see how Government Servants could properly be included in a Bill for licensing trades and professions. Was the Governor-General of India to take out a license before he could exercise the functions of his high Office? Was the Honorable and learned Chief Justice, or were the Judges of the Sudder Courts, to take out a license before they could be allowed to sit on the benches of those Courts? Was the Bishop of Calcutta to be required to take out a license before he could preach in his own Cathedral?

With regard to salaries fixed by Act of Parliament, he deemed it sufficient to observe that the Government had been advised by those who were the legal advisers of the Government on questions of this nature, that neither the Government nor the Legislature of this Country could interfere with the salaries so fixed with a view to reduce their amount. The Government might of course have consulted the Honorable and learned Judges of Her Majesty's Supreme Court also, the point at issue involving the construction of an Act of Parliament, but they had not considered it necessary to do so. The Honorable and learned Judge opposite (Sir Charles Jackson) had expressed a doubt as to whether the Government could, by a mere order or resolution, legally carry out their intention of reducing the salaries of their servants other than those whose salaries were fixed by Act of Parliament by a percentage, and he gave this as a reason why those servants should be included in the Bill. He (Mr. Harington) could not agree with

the Honorable and learned Judge. Supposing the Government were to direct that, from the 1st January next, all official salaries under their control should be reduced by one-half, who, he would ask, could prevent the Government from carrying this order into effect? He (Mr. Harington) had no doubt that every Officer in the country, knowing the state of the finances, and that what was now proposed to be done was a matter of urgent necessity, would follow the excellent example of the Honorable and learned Vice-President, and cheerfully surrender, as the Honorable and learned Vice-President had expressed his intention of doing, what was proposed to be taken from other persons; but if any Officer was unwilling to serve the Government on a reduced salary, he had the remedy in his own hands—he could resign. It being then fully within the competency of the Government to make whatever reductions it pleased in the salaries of its own servants, unless they were protected by Act of Parliament, he submitted that no law was required for the purpose. It was unusual to have recourse to legislation for an object which could be equally well effected without it.

On the question raised by the Chair as to the liability of the Zemindars of Bengal to further taxation, he was not prepared to express a decided opinion; but he must say he was greatly surprised at what had fallen from the Honorable and learned Vice-President on that subject.

The Honorable and learned Vice-President had referred to a Minute which had been recorded by him, when a Bill to amend the law relating to the appointment and maintenance of Police Chowkeydars in Bengal was proposed by a former Honorable Member for Bengal. That Minute had been printed, and a copy of it was in the hands of every intelligent Zemindar in Bengal. From this Minute he (Mr. Harington) would read some extracts to show what was the opinion of the Honorable and learned Vice-President at that time on this most difficult question. He said:—

“It is clear that, according to the engagement entered into at the time of the Per-

manent Settlement, the jumma then fixed cannot be altered. It was declared by the Governor-General in Council that the Zemindars and other proprietors of land and their heirs would be allowed to hold their estates at such assessment for ever (See Regulation I. 1793, Section IV), and that the orders fixing the amount were to be considered irrevocable and not liable to alteration by any persons whom the Court of Directors might appoint to the administration of the affairs of the Company (Section VII). At the conclusion of the Permanent Settlement the Governor-General in Council expressed his confidence that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, would exert themselves in the cultivation of their lands, under the certainty that they would enjoy exclusively the fruits of their own good management and industry, and that no demand would ever be made upon them for an augmentation of the assessment in consequence of the improvement of their estates.”

The words “public assessment being fixed,” “under the certainty that they would enjoy exclusively,” “and that “no demand would ever be made,” were italicised by the Honorable and learned Vice-President in the Minute, in order to draw particular attention to them. He then went on to say—

“The same principle which prevents an augmentation of the assessment equally precludes the taxation of the owners in respect of the rent or produce of their estates; such taxation must necessarily prevent them from enjoying exclusively the fruits of their own good management and industry.”

And that his meaning might not be misunderstood, he proceeded to illustrate what he had just stated—

“Suppose,” he said, “a Zemindar pays a fixed jumma, say of ten thousand Rupees a year, for an estate which at the time of the Settlement produced eleven thousand a year clear, that being the rate of assessment mentioned in Regulation II. 1763.

“The Government cannot raise his jumma ten per cent.; but if they tax his rents ten per cent. they do him a greater injury than if they were to increase his jumma ten per cent.; for, in the one case, assuming the lands to remain in *statu quo*, they compel him to pay eleven hundred Rupees, in the other only one thousand Rupees.

“Suppose that, by good management or the expenditure of capital, the lands are improved, and that the estate which produced eleven thousand Rupees a year in 1793, and for which the jumma was fixed at ten thousand

Rupees, now produced fifteen thousand Rupees."

There was nothing here to indicate that what was said by the Honorable and learned Vice-President was said in a limited sense, or in reference to any particular tax. The words were as general as they could possibly be, and were of universal application.

Now he (Mr. Harington) did not mean to say that, in giving the opinion just quoted, the Honorable and learned Vice-President was right. But if he were so, and the Government were really precluded by the terms of the perpetual settlement from taking away, by any means, any part of the rents or profits of the Zemindars of Bengal (for the rents of the land were their profits), what right, he would ask, had they to impose an income law upon those persons? He begged it to be understood that he did not say he agreed with the Honorable and learned Vice-President. In fact, he would admit that he had not made up his mind upon the point, nor did he mean to say that the Honorable and learned Vice-President could not change his opinion; he had a perfect right to do so, but still the opinion which he had formerly given would always be quoted in favor of the exemption claimed.

From what he had just said it was manifest that, had a general income tax been proposed, the question as to whether it could be legally imposed upon the Zemindars of Bengal must have been raised, and from them it would have been necessary to go to the Maafēdārs or holders of rent-free-estates, and the Zemindars in the North-Western Provinces and in Madras. But, as he had observed on a former occasion, the Government could always increase its demands whenever an estate, not permanently settled, came under revision of settlement, and no fresh law was required to enable it to do so. It seemed however to be generally admitted that both at Madras and in the North-Western Provinces the lands were assessed at as high a rate as they could bear, and that if the settlement were raised the Zemindars would be unable to pay their revenue, and the consequence would be that many estates would come into the market, thus increasing

the number of alienations which many were so anxious to prevent.

If the present Bill passed, it would not prevent any Honorable Member, who thought proper, from introducing a Bill for imposing a general income tax; and were such a Bill brought in, he (Mr. Harington) would give it his best consideration, though, before it could pass, it would be necessary to determine many difficult questions not involved in the present Bill. The Honorable and learned Judge opposite (Sir Charles Jackson) seemed to think that, should the Government hereafter propose a general income tax, it would operate with great hardship towards the parties who would be required to take out licenses under the Bill before the Council, but he could not conceive that any Honorable Member would consent to those parties being subjected to both taxes. Having offered these remarks, he begged to move that the debate be now adjourned.

THE VICE-PRESIDENT desired to say a few words in explanation, with reference to the Minute from which the Honorable Member had just read. That Minute was written upon the question then before the Government, namely, as to the right of Government to impose upon the landholders, and upon them alone, an additional burden in respect of their lands, by compelling them to maintain a Police Force. He might not have been sufficiently explicit, but that Minute had reference to the subject then under consideration, and not to the question of including them in a general income tax. If Government were precluded from including zemindars in any measure of general taxation, it might be concluded that it precluded Government from levying a duty on the exportation of rice produced in lands held under the Perpetual Settlement.

After some further discussion, the further consideration of the Bill was adjourned.

NATIVE PASSENGER VESSELS (BAY OF BENGAL).

MR. FORBES moved the second reading of the Bill "to prevent the over-crowding of Vessels carrying

Native Passengers in the Bay of Bengal."

The Motion was carried, and the Bill read a second time.

ARMS AND AMMUNITION.

MR. HARRINGTON moved the second reading of the Bill "to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)."

SIR CHARLES JACKSON said, he rose for the purpose of opposing the second reading. This was a Bill which affected the right of Europeans to keep Arms for self-protection without a license. Really, he thought that, after the experience of the years 1857 and 1858, Government had had a sufficient lesson not to deprive the European community of the means of self-defence. Considering that the Europeans were a small dominant class compared with the large Native population, and many of them residing in isolated districts, it was absolutely necessary that they should have the means of protecting themselves. The reason assigned for depriving them of arms was that it would be invidious to make any distinction between Europeans and Natives, and that in this country it was particularly dangerous to do so. Now, he did not wish to be misunderstood. He was as anxious as any one that the Natives should be kindly and paternally governed, that they should enjoy absolute personal freedom and as much political freedom as they were fitted for or could be trusted with; but it was cant, nay more, it was mere hypocrisy to pretend that we shrunk from making invidious distinctions between Natives and Europeans. In point of fact we made that distinction between the two classes constantly. Why were not Natives allowed a seat in this Council or in the Sudder Court? Why were they debarred from holding many other important Offices in this country? The reason was that Natives were not as yet thought fit to be trusted with powers now exercised exclusively by Europeans. He put his objection to this Bill on the same principle. The Government had come to the conclusion (he thought

rightly) that the Native community generally were not fit to be trusted with Arms, but the same reason did not apply to Europeans, for there was no pretence for saying that they would use their Arms against the Government. He thought, therefore, that the argument, that it was invidious and impossible to draw a distinction between Natives and Europeans, was quite fallacious.

But the Bill was a specimen of a double hypocrisy in itself, because, although it professed not to exclude Europeans from its operation, it nevertheless imposed on the Government the power of dispensing with its provisions as regards Europeans, and we all knew that the Act we were called on to renew had only been worked under this Clause, and Government had nowhere attempted to bring Europeans within its provisions. What was the use, therefore, of provisions imposing restraints on the use of Arms by Europeans, when the real intention was to dispense with those provisions in practice, and allow Europeans the use of Arms?

For these reasons it appeared to him that the Bill was founded on no correct principle as applicable to this country.

MR. SCONCE said, he entertained objections of another kind to this Bill. To describe his idea of the Bill generally, it was a Bill to make perpetual a law passed at the time of mutiny and internal commotion, which was constructed for a temporary purpose, and did not bear the character of a permanent enactment. One of the most material Clauses in it was Section XXIV, which provided for a general search for Arms and Ammunition, wherever Government thought fit to order. Now supposing a search to have been made, how was it to be followed up? How would the result be secured? And when a search was once made, would the Bill authorize a second or a third search?

Further, he observed that the earlier Sections of the Act proceeded upon a different principle from that embodied in Section XXIV. This Section authorized a general search and seizure; whereas the object of Sections I and II was to require persons to give notice of the Arms held by them, and upon the delivery of a certificate or license

to retain the Arms so held. Section IV, it was true, provided for the seizure and detention of Arms for such time as might be deemed necessary: nevertheless, the principle of the earlier Sections of the Bill appeared to be to license the possession of Arms, and it seemed to him that it might be desirable to bring these Sections more in conformity with the provisions by which, under Section XXIV, a general search had been or might be made.

His view therefore would be to pass the Bill to a second reading, and then refer it to a Select Committee; but it seemed to him that the deliberations of the Committee would be materially assisted if they were informed as to the extent to which the powers given by the Act had been exercised. It was desirable to learn in what Districts, under Section XXIV, a general search had been made, and what result had followed from it. Knowing such points as these, the Council would be better able to determine how to provide for the future possession of Arms.

Again, he would remark that considerable apprehension was expressed as to the mode in which the power conferred by Section XXV of the Act was exercised. By this Section any person who refused to produce Arms was liable, on conviction, to imprisonment not exceeding two years. Subsequently Act XI of 1858 provided that, in lieu of the penalty of imprisonment, a fine might be imposed, and in lieu of fine corporal punishment. That is, as he understood, on the discovery of Arms which any person, in whose possession they were discovered, refused to produce, that person might, in the first instance, be fined, and then, on failure to pay the fine, might be flogged. Now there appeared to be reason to fear that the process contemplated by the laws was reversed, and that men were flogged that they might be made to produce their Arms, and not flogged after the Arms had been found. With the permission of the Council he would read an extract from the *New Times* newspaper, published at Allahabad, which bore upon this subject. It was there said:—

“In our last number we made some hurried remarks, occasioned by circumstances which had come to our knowledge, upon the

Mr. Sconce

discontent produced among the populations of these Provinces by the Disarming Act. We should perhaps have explained at the time that the objection is less to the Act itself, the principle of which has been put in practice with success elsewhere, than to the manner in which it is enforced. We know, and it is well known to many, that the Act is made a pretext for the grossest cruelty and extortion, and that deeds are daily committed in the name of the British Government which would be sufficient to render any Government detested. We need scarcely add that these deeds are committed by Native subordinates, and in violation, not in aid, of their duty. It is one thing to take Arms, wherever they can be found, by the fair exercise of authority; but it is quite another thing to extort them by the most brutal means from the poor and inoffensive, and to allow the rich and designing to retain them for the next opportunity that may arise for their use. The readers of *Uncle Tom's Cabin* all thought it monstrous that poor Topsy should be compelled by ill-treatment to declare herself guilty of an offence which she had never committed, because she thought she was required to confess something; but it is quite as bad that men should be compelled even to purchase weapons in order to give them up, and make for their tormentors an appearance of zeal and honesty, when they have in reality been guilty of nothing but cruelty and fraud.”

From other sources he had heard that the general seizure of Arms was attempted to be enforced by violence, which the law, as he understood it, did not countenance; and he should be glad if some information were communicated to the Council as to the mode in which convictions were pronounced and corporal punishment inflicted within or beyond the provisions of Section XXV, Act XXVIII of 1857 and of Act XI of 1858.

MR. LEGEYNT said, he did not rise with the intention of opposing the second reading. But he proposed, if it was carried and referred to a Select Committee, to instruct the Select Committee to make enquiries and obtain information how those portions of the Act relating to the search and seizure of Arms had worked. He had heard, and from authority he could not question that the powers created by this Bill had been grossly and cruelly exercised. It might be said that there was no chance of such misfeasance occurring again. But it might occur, and he thought that no Bill of this kind should be passed without containing stringer provisions to restrain such abuses. Th

might be done in Select Committee, and he would not therefore oppose the second reading. But if it was not provided for in Select Committee, he reserved to himself the right to raise this question again in a Committee of the whole Council. He hoped that the publication of the Bill would elicit information which would enable them better to determine whether any measures and what measures should be adopted to prevent the possibility of the occurrence of such abuses as had been pointed out.

THE VICE-PRESIDENT said, it was not his intention to oppose the second reading of this Bill, because he thought that, on the publication of the Bill, it would not be necessary for the Select Committee to make it more stringent than it then was, and the Council would have it in its power to except Europeans from such of the provisions of the Bill as they might think proper. He thought himself that Europeans should be excluded from some of its provisions, but not from the whole. They might very reasonably be prohibited from the sale or manufacture of Arms, except under the provisions of the Act, but the provision authorizing a Magistrate to seize Arms in the possession of any person, if in his judgment they could not be left in his possession without danger to the public peace, was taken from an Act which was passed for Ireland. In the debate upon that Bill strong opposition was shown to such a provision even in Ireland, but it was wholly inapplicable to Europeans in the existing state of circumstances in India. It was not probable that Europeans would use Arms against the Government, and there was therefore no necessity for including them in that Clause; on the contrary, their numbers were so small compared with the Natives, and their position in many cases so isolated, that it was necessary to allow them to retain Arms for self-defence. With regard to other Clauses, however, such as those which related to trading and dealing in Arms and Ammunition, it was very necessary that Europeans should be subject to this Bill as well as any one else, and they should be compelled to keep their books open for inspection at any time, so that Government might always know to whom they were sell-

ing Arms, or the nature of the traffic they were carrying on in Arms. With reference to the general Clause to which the Honorable and learned Judge (Sir Charles Jackson) had objected, he (the Vice-President) would mention that, when the Act was extended to Shahabad, Europeans and Eurasians had been excepted by Government. If Government thought it necessary to exempt them there at that time, he thought that the Council now, in making the Act a permanent law of the land, ought to introduce an exemption of that sort into this Bill.

In conclusion, he desired to suggest that, considering the nature of the subject, the Act itself should be published *in extenso*, together with the Bill which proposed to make it perpetual, so that the public might have an opportunity of sending in any objections they might have to any part of the Act.

MR. HARRINGTON said, he was quite willing to accede to the suggestion which had fallen from the Chair if the Standing Orders of the Council admitted of the Act, which it was now proposed to make permanent, being published in the Gazette, along with the Bill which had been introduced for that purpose. He could have no objection to the fullest discussion of the subject. It was quite proper that the public should know what the provisions of the existing law were, and that they should have every opportunity afforded them of stating their objections to any parts thereof.

The Honorable and learned Judge ~~opposite had opposed the second reading of the Bill, on the ground that it did not exempt Europeans; he said that he should have supposed that there would have been some reluctance on the part of Government to make the law applicable to that class of its subjects. But looking to the time when the Act was passed, namely, during the height of the mutinies, when the life of every European in the country was in danger, it appeared to him (Mr. Harrington) that if the exemption now claimed for Europeans was proper, it should have been made at that time, and not having been allowed then, it could scarcely be permitted now when the circumstances of the country were so~~

different. At the time Act XXVIII of 1857 was passed, he (Mr. Harington) had not the honor of a seat in this Council, nor had the Honorable and learned Judge opposite (Sir C. Jackson), or the Honorable Members for Madras and Bengal, or the Honorable and gallant Member on his left (Sir James Outram); but the Honorable and learned Vice-President and the Honorable Member for Bombay had given their assent to the Act in its present form. For himself he should be very glad if the Council could with propriety say that the Act should not extend to Europeans; but he did not see on what ground the exemption could be put without making a most invidious distinction. Honorable Members had no doubt heard that large bodies of "lattials" or clubmen were sometimes kept up by Europeans in Bengal in order to maintain by force what they considered to be their rights, and that battles frequently took place between the clubmen of one party and the clubmen of another party. He himself recollected to have seen a letter written by one Indigo Planter to another, in which the writer threatened that, unless certain parties discontinued to cultivate a particular piece of land, "he would plough their backs with pepper and salt." Surely that was not a state of things which should be allowed to continue. If this law were to pass, and Europeans were exempted from its operation, it would be very easy for any European to keep arms for his followers who could not themselves keep them, and thus to have an armed mob ~~always~~ at his disposal for any purpose, lawful or unlawful.

The Honorable Member for Bengal had said that particular parts of the Act had been abused, and he had read an extract from a Newspaper to show that such had been the case. But they were not told that the Act had been abused in respect of Europeans. Then, on what grounds could they, with any degree of consistency, continue the law for Natives but not for Europeans? There were the learned Clerk of the Council and the learned Clerk Assistant, the one an English Barrister, the other a Native Barrister. How could the Council with propriety say that the law should not extend to the former, but

Mr. Harington

that it should extend to the latter? He (Mr. Harington) was at a loss to discover any sufficient ground for making such a distinction. There were many other Native gentlemen who, if Europeans were exempted, ought also to be exempted. He must therefore repeat that, in his judgment, no exception in favor of certain classes could be made in the law without doing injustice to other classes. If, however, the Council would allow the Bill to be read a second time, the subject could be fully discussed in Committee. He certainly had no disposition to throw any obstacles in the way of such discussion. The objections taken by the Honorable Member for Bombay and the Honorable Member for Bengal were not against the principle of Act XXVIII of 1857, but to the manner in which that Act had been worked. No law however was ever passed which might not be abused, particularly in this country, but the abuse of a law furnished no ground in itself for its repeal, though it might render some additional provisions necessary and proper to prevent similar abuse for the future. The Code of Civil Procedure lately passed by the Council might be and no doubt would be abused; so also the new law of limitation; and the same might happen in respect of the new Penal Code and the new Code of Criminal Procedure when they should become law, but this would be no reason for repealing them. He (Mr. Harington) had not seen the paper from which the Honorable Member for Bengal had read an extract, but he could say that there was no disposition on the part of the Government to screen its Officers who might be guilty of acts such as those complained of, and it was only the other day that, on its coming to the notice of the Government, that some degree of violence had been used to compel a party to deliver up arms supposed to be in his possession, a most severe reproof was administered to all concerned.

He did not know that he could say anything more in support of the Bill, and it only remained for him to press his Motion for the second reading.

SIR JAMES OUTRAM said, no one could feel more grateful for the services rendered by his countrymen during the late troubles than he did. But he

could not assume even for Englishmen that they were immaculate, and that some among them might not commit gross excesses if allowed the unrestricted use of Arms. He thought that the Honorable and learned Judge opposite (Sir Charles Jackson) himself had lately had to try more than one European brought down from the Mofussil, who had grossly misused weapons in their hands. He therefore thought that it was but right to prevent the recurrence of such cases by investing Magistrates with the power of disarming, at their discretion, any such persons as they might consider unfit to be trusted with dangerous weapons. This Bill did not prevent every European from possessing Arms. It was made to meet the case of all classes of our subjects, and, as he understood, it would seldom be enforced against Europeans, and the Governor General had the power of exempting any respectable and trustworthy person from its operation. The Bill was intended to be enforced only against those who might be considered dangerous characters.

SIR CHARLES JACKSON said, he would observe only, by way of explanation, that the cases referred to by the Honorable and gallant Member were cases of private injury which the ordinary law was sufficient to take cognizance of and repress. This, however, was a political question, and looking at it in that view, it was impossible to say that Europeans would use Arms against the Government.

The Motion was carried, and the Bill read a second time.

MALABAR OUTRAGES.

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George," and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to VIII were passed as they stood.

Section IX proposed to render liable to fine, not only the inhabitants of the Umshum to which the perpetrators of

a fanatical outrage belonged, or in which they resided at the time of the commission of the outrage, but also the inhabitants of the Umshum within which the outrage was committed.

MR. SCONCE said, he wished to state shortly the grounds of the objection which he had taken in Committee to two lines of this Section. The lines to which he referred were lines 18 and 19, and they were in the following terms:—"and also within the Umshum in which the outrage shall have been committed." That is, as he understood the Section, supposing the Umshum in which an outrage was committed to be at any distance from the Umshum to which the perpetrators belonged, or from which they had come, although the residents of the former Umshum might be perfect strangers to the perpetrators of the outrage, and quite ignorant of their intention to commit the outrage, nevertheless they would be liable to fine. He observed that this provision was stated to have been recommended by the Madras Government on the suggestion of Mr. Frere, the Sessions Judge of Tellichery. But he (Mr. Sconce) submitted that the provision was not in accordance with the intention of Mr. Frere's proposition. Mr. Frere said—

"I should also be disposed to recommend that the provisions of Section VII, Act XXIII of 1854 should be extended to the Umshum or Umshums in which the crime may have been committed, as well as those in which the criminals may be resident, whenever it may be ascertained, from presumptive evidence or otherwise, that the crime was perpetrated with the knowledge and consent of the Mopla inhabitants of the neighbourhood."

Unless, therefore, an amendment were made requiring proof equivalent to reasonable presumption that the residents were cognizant of the intended outrage, he (Mr. Sconce) should move the omission of the words referred to.

SIR JAMES OUTRAM said, he quite concurred with the Honorable Member for Bengal in objecting to the intrusion of the words in question. It appeared to him an exceedingly stringent measure to make a community answerable for a crime committed by strangers, and of which they might have had no cognizance. He thought that

what Mr. Frere intended was that such a measure should be had recourse to only when there was presumptive evidence of the complicity of the residents of the Umshum in which the outrage was committed. Moreover, the former Act was more stringent than the provisions in force in any other part of India. That Act had been in operation for about four years, during which period it had proved efficacious so far that there had been no further outrage.

MR. FORBES said, the Honorable and gallant General had remarked very truly, that since the present law had been in operation no fanatical outrage had been committed by the Moplas. But the district of Malabar had always been subject to periodical fits of fanatical outrages and to periodical fits of peace. There would be no outrages for years, and then one would suddenly break out. But because no outrage had been committed since Mr. Conolly's murder, it was yet too soon to argue that the Act had been completely successful, and that no change in its provisions was necessary. He must further remind the Committee that the words now objected to were no new provision of law; they were simply a slight extension of a provision of law which had already received the sanction and approval of the Council. In an earlier part of this very Section it was enacted that—

“It shall be lawful for the Magistrate, with the sanction of the Governor in Council, to levy such sum of money as the Governor in Council shall authorize, from all the Moplas within the Umshum or the several Umshums to which the perpetrator or perpetrators, or any one of such perpetrators of such outrages, shall be found to belong, or wherein any such perpetrator shall have been resident at the time of the commission of the outrage, and also within the Umshum in which the outrage shall have been committed.”

These words, now inserted in the Bill, and objected to by the Honorable Member for Bengal and by the Honorable and gallant gentleman, involved no new provision of law, but merely extended to the inhabitants of a village in which a fanatical outrage was committed, the same provisions of law as were already applicable to those residing in the village to which the perpetrator of the outrage might belong.

Sir James Outram

Then, again, the Honorable and gallant Member seemed to be under the impression that this provision was quite unknown in any civilized country, but he (Mr. Forbes) took leave to inform the gallant gentleman that, so far from that being the case, the principle embodied in this Section had been introduced in Ireland by the Peace Conservancy Act of 1856, and that the Executive Government of that country had power to quarter a Police Force in any village in which a violent crime had been committed, and to collect from the inhabitants of such village the sum required for the payment and expenses of the Force. In the papers laid before the Council with this Bill would be found evidence of this fact, and, with the leave of the Committee, he would read what would support the assertion he had now made. The extract was taken from the *Times* newspaper of the 2nd November 1857, and related to the murder of Mr. Ellis, then lately perpetrated—

“An extra constabulary Force of about twenty men, commanded by a vigilant Inspector, have been sent to the locality, and the charge, about £800 per annum, must be paid by the neighbouring inhabitants, under the Peace Preservation Act of 1856. The provision of the Statute which imposes this heavy penalty is but a renewal of the law of Alfred, which made the hundred answerable for any felony committed within its circuit, unless hue and cry were made, and the felon detected and brought to justice; but the Peace Preservation Act gives the Lord Lieutenant power to allocate the charge so as to exempt the innocent and place it on the shoulders of those who have connived at the crime or sympathize with the criminal. In many instances the pressure of the tax has coerced the peasantry to give the murderer up to justice.”

Such was at present the law in Ireland whenever a single murder was committed, but where, even in Ireland, had there been a case of a whole family of fifteen persons being murdered in one night with the consent of the community generally in the neighbourhood where the murder was committed? Such cases had occurred in Malabar, and was it to be said that a law which might be passed to prevent individual murders in Ireland could not be tolerated for the prevention of wholesale butcheries in India?

Facts were not wanting in support of the words now objected to. In the case of the sanguinary outbreak which took place at Mattanoor in 1852, in which a substantial Brahmin landholder and his entire family, fifteen persons in all, were murdered in one night, the perpetrators came from a distance, but it was well established that the murder was committed with the perfect knowledge and consent of the Mopla community in the neighbourhood where the crime was perpetrated, and some of them were, in fact, convicted and punished as accessories. Besides this, there was the case of Mr. Connolly, the Collector and Magistrate, and representative of Government in the Province, whose intended murder was certainly known to scores of people for some time before the crime was perpetrated.

The Madras Government, in expressing their approval of the present Section, observed :—

“ It is possible that the inhabitants of the Umshum in which the perpetrator of an outrage resides may not be aware of the intended crime. The plan may be, and not unfrequently is, formed by persons at a distance, and the individual selected as a fit agent may be called away secretly to the scene of outrage where he may be detained awaiting a suitable opportunity. That he is there for such a purpose can hardly fail to be known to the Mopla inhabitants of that Umshum. This was actually the case as respects the Moplas of Calicut, on the occasion of Mr. Connolly's murder.”

He (Mr. Forbes) thought that sufficient ground had been shown for the stringency of the proposed clause to which objection had been taken. It must be remembered, moreover, that this provision was not obligatory on the authorities, but was to be enforced at the discretion of the Magistrate with the sanction of the Governor in Council. Considering therefore the desperate character of the Moplas, the nature of the outrages committed by them, the fact that there was now in force in Ireland a law precisely similar in principle to that now proposed, and that the clause objected to was not after all new, but was a provision already sanctioned by the Council, he did not think that this Council would refuse to give weight to the opinions of the Government of Madras and of the local Officers of the Province, on whom rested the respon-

sibility of maintaining the public peace, and who concurred in the necessity for the proposed provision.

On these grounds he should go to a division on the amendment proposed by the Honorable Member for Bengal.

MR. SCONCE'S Motion was then put and negatived, and the Section was passed as it stood.

Section X provided a penalty for Moplas refusing to deliver up an offender.

MR. SCONCE said, this Section provided a penalty to be inflicted under three different sets of convictions. It empowered the Magistrate to call upon three classes to deliver up the perpetrator of an outrage, and, on their failure to do so, to levy a fine from them. The first of these classes were the residents of the Umshum to which the perpetrator belonged. A man might belong to one Umshum, and yet have fled to another. He might commit a murder fifty miles to the north, and flee to an Umshum fifty miles to the south, and it would be hard to compel the inhabitants of an Umshum at a distance of a hundred miles to deliver him up.

The next class were the inhabitants of the Umshum wherein the perpetrator resided at the time of the commission of the outrage, and necessarily objections similar to those he had just expressed applied to this second class of cases. Altogether it appeared to him beyond every just principle to propose a law which should impose an obligation of that character.

The third class were the inhabitants of the Umshum where the perpetrator might be found after the perpetration of an outrage, and to this he saw no objection, if it be so expressed, as indeed the word “found” seemed to imply, that proof was adduced to show that a person charged with committing an outrage had fled to the Umshum of which the inhabitants were required to produce him.

He would further observe that this law was introduced at the instance of the Acting Magistrate of Malabar, who said that—

“The Magistrate should be empowered to call on the principal Mopla inhabitants of the parish to which the fanatics belong, as well as of that part of the country in which they are found, to seize and deliver them up, dead or alive, to him; in the event of their failing to

do so, and on proof of their having evinced sympathy with fanatics, that the provisions of Act XXIII of 1854 shall be applicable to them."

Unless, therefore, it could be shown that the perpetrator of an outrage had, after the commission of an outrage, fled to an Umshum the inhabitants of which were cognizant of the same, it would scarcely be proper to impose the obligation upon them. For these reasons he begged to move the omission of this Section.

SIR JAMES OUTRAM said, he begged to support the Honorable Member's Motion. The Section under consideration was one which it was proposed to add to the former law, and as that law had, after a practical operation for four years, been found quite sufficient for the purpose for which it was intended, he saw no necessity for any additional provision of greater stringency.

MR. HARINGTON said, he thought that the Honorable Member for Bengal and the Honorable and gallant General (Sir James Outram) had treated this Section as if the rule contained in it were imperative and left the Magistrate no option, whereas it was permissive only. He could not suppose that the rule would be enforced in every case, but only in those cases in which the Magistrate might consider its application just and proper. The whole Bill was an exceptional one. No doubt it was a great misfortune to a Mopla, who was a good man, to belong to a class for which a law of this kind was found necessary, but so long as the necessity existed, he (Mr. Harington) could not see any objection to the inclusion in the law of the Section in question, the terms of it, as he had said, being permissive not imperative. He should therefore vote for the retention of the Section.

MR. FORBES said, he would not trouble the Council with a repetition of what he had already said on the proposed amendment in Section IX; the arguments there used were equally applicable to the question now before the Committee, but he did not intend to reiterate them. The Honorable Member for Bengal had said that, if a man committed a murder fifty miles north of his place of abode, and led to a village fifty miles south, it would be very hard

Mr. Sconce

to punish the inhabitants of an Umshum at a distance of a hundred miles, for failure to deliver him up. But, as the Honorable Member on his left (Mr. Harington) had just remarked, the provision was not obligatory but permissive. Nor were they to suppose that the Magistrate would desire to enforce the provision, or that the Government would sanction his doing so in a case in which its enforcement would be obviously and manifestly unjust. Further, the Committee would notice that the wording of the Section was not such as would enable the Magistrate to assume that an offender had taken refuge in any village, and on mere suspicion to assess a fine upon the inhabitants for not delivering up a man who, after all, might not be there. The words in the Section were, "or wherever any such perpetrator may be found," and the actual fact of the presence of the offender in a village would be a necessary preliminary to the enforcement of this part of the law.

With regard to the information possessed by the Moplas generally of the acts of their countrymen, he would read an extract from the Report of the Commissioner who was sent to the Province to investigate their fanatical outbreaks:—

"These outbreaks, saving where a solitary individual may break out, as in the early cases, are brought about by concert, and are not executed until some time has passed, during which the plan is being matured. The mind has to fortify itself for execution of a tragedy which involves the agent as well as the victim in destruction. The fanatic doctrine needed for this has to be imbibed and to work. Comrades have to be gained; the priest consulted; and the consent of parents obtained. When the resolution to die has been taken, some further time is passed in devotional exercise, and the affairs of this life should be settled; debts should be paid off, or forgiveness for them obtained, and the wives should be put away, and their dowries in like manner adjusted. The very demeanor when a man has thus doomed himself to leave the world must undergo a change, and it is prominently marked in the instances of these fanatics, in their hardening themselves against any show of affection for their families. All these characteristics have been brought to light more or less in the course of the outbreaks, or threats of outbreaks, and some are also dwelt upon in the commemorative songs to which I have before alluded. The consent of parents is there described as obtained at times with difficulty, and as finally given under the consideration

that the merit of the martyrdom will extend also to them by virtue of such consent. It is impossible hence, but that the priest, the neighbors, and the families of the fanatics, must have that knowledge or inkling of their design which would serve to expose it. In every case, therefore, where it may appear that an outbreak has been premeditated, these parties should be punished, if they have not given timely intimation thereof, and can adduce nothing to purge themselves from the charge of suppressing information arising presumptively and naturally against them. The influential men of the caste in the vicinity may also be often justly held to the like liability. I would however give all such the opportunity of absolving themselves by any good service they may be able to execute by bringing in or putting down fanatics after they may have broken out. The influence of these parties, exerted on the fanatics under these circumstances of danger to themselves, might possibly in some cases be of effect, while the knowledge that all associated with them would be liable to ruin by their act would, no doubt, operate to check parties from engaging in these outbreaks."

When therefore it appeared that these terrible crimes were perpetrated with such publicity as to require the consent of parents to be obtained, and the blessing of a priesthood to be sought, when debts were to be paid of the absolution of creditors obtained, when wives were publicly dowered, and songs even were sung in celebration of the projected enterprise, it surely was not assuming too much to believe that the Mopla community generally in any village to which the fanatic belonged, or in which he might take refuge, were cognizant of his mind, and to insist on their delivering him up, or suffering the penalty of their complicity. He should feel it his duty to oppose the present amendment.

MR. SCONCE'S Motion being put, the Council divided—

<p><i>Ayes 3.</i> Mr. Sconce. Sir. James Outram. The Chairman.</p>	<p><i>Noes 4.</i> Sir Charles Jackson. Mr. Forbes. Mr. LeGeyt. Mr. Harington.</p>
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So the Motion was negatived and the Section was passed as it stood.

Sections XI and XII were passed as they stood.

Section XIII was passed after an amendment, limiting the duration of the Act till the end of the year 1869.

The Preamble and Title were passed as they stood.

The Council having resumed its sitting, the Bill was reported.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

Section 1 of the proposed Jury Rules prescribed the qualifications of a Juror.

MR. HARINGTON proposed to reduce the maximum age of a Juror from sixty to fifty years.

MR. LEGEYT moved that the maximum be reduced to fifty-five years.

MR. HARINGTON'S Motion was negatived, and Mr. LeGeyt's was carried.

MR. HARINGTON moved to reduce the minimum age from twenty-five to twenty years.

The Council divided—

<p><i>Ayes 2.</i> Mr. Harington. Sir James Outram.</p>	<p><i>Noes 5.</i> Mr. Sconce. Sir Charles Jackson. Mr. Forbes. Mr. LeGeyt. The Chairman.</p>
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So the Motion was negatived, and the Section as previously amended then passed.

Section 2, which prescribed the disqualifications of a Juror, was passed after verbal amendments.

Section 3 was the Exemption Clause.

MR. HARINGTON proposed an amendment to the effect that all (and, not as the Section already provided, certain specified) Officers of Government should be exempted from the liability to serve on Juries.

After some discussion, the Motion was by leave withdrawn.

MR. FORBES moved to substitute "All persons in the Military Service" for "Officers in the Military Service."

The Council divided—

<p><i>Ayes 5.</i> Mr. Sconce. Sir Charles Jackson. Mr. Forbes. Mr. Harington. Sir James Outram.</p>	<p><i>Noes 2.</i> Mr. LeGeyt. The Chairman.</p>
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So the Motion was carried, and the Section as amended then passed.

Section 4, which related to the preparation of lists of Jurors, was passed after amendments.

Sections 5 and 6, relating to the publication and revision of Jury Lists, were passed as they stood.

Section 7 provided that "the Court of Session shall, *three days at the least before the time fixed for the holding of Sessions,*" summon Jurors, &c.

MR. HARINGTON moved the omission of the words in italics. He said that, if the Section were passed as it now stood, and if the Council resolved that Sessions trials should be held only on particular days, he feared that great difficulties would arise, and that it would be impossible for the present number of Sessions Courts to dispose of the work coming before them within a reasonable period. Under the present system cases committed to the Sessions were disposed of as soon as they were ready for hearing, which was a great convenience to the parties and witnesses as well as to the Judges, but if trials were to be held only at stated periods, he apprehended that there would often be a great accumulation of cases, which would lead to much delay in their determination and the whole work of the Judge's Court would be thrown back in consequence. The present system worked well, and he was strongly in favor of its continuance.

MR. LEGEYT said, unless a rule were adopted such as that which the Honorable Member proposed to omit, there would be an end altogether to the Jury system. His experience was certainly in favor of a fixed term for holding Sessions. There was no necessity whatever for subjecting Jurors to the inconvenience of attending unnecessarily until a case was ready for trial; whereas he saw no hardship in making a prisoner wait for a day or two. On the contrary, he was not one of those who would take a prisoner by surprise, but he would let him have time to consult his Counsel and prepare for his defence. On the whole, therefore, he thought that fixed Sessions would be a very great improvement upon the present system.

MR. FORBES said, so far from joining the Honorable Member for Bombay

in the opinion that fixed Sessions would be any improvement upon the present system, even the amendment proposed by the Honorable Member on his left (Mr. Harington) would hardly make the Section applicable to the Southern Presidency of India. Immediately that a case was closed, the Magistrate was required to transmit it to the Sessions Court, without any previous intimation to the Court that the case was ready for committal, or any instruction from the Court to commit it. It would therefore be impossible for the Court in the Madras Presidency to give three days' notice to the Jurors, as it would not be known that a case had been committed for trial until the parties arrived at the Court, and it would be extremely inconvenient, and in many ways objectionable, that the trial should be postponed. The great size of many of the Provinces in Madras must also be considered. It might be very easy for the Judge in a Bengal District of 2,000 or 3,000 square miles to hold communication with a Magistrate before a case was committed, but the question assumed another aspect when, as in Madras, some Districts contained 13,000 square miles and had from fifteen to twenty committing Officers scattered over them, at distances from the Court varying from ten to ninety miles. The Honorable Member for Bombay seemed to think it hard that Jurors should have to wait. But he (Mr. Forbes) apprehended that it would be very hard indeed to make witnesses wait, and he would suggest the substitution of the words "wherever necessary" for the words proposed to be omitted.

After some further discussion, Mr. Harington's Motion was negatived, and the further consideration of the Bill postponed on the Motion of Sir James Outram.

STANDING ORDERS.

MR. HARINGTON postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Report of the Select Committee on the Message from the Governor-General in Council calling for a Report on the practical working of the Standing Rules and Orders of the Legislative Council.

ACQUISITION OF LANDS FOR PUBLIC PURPOSES.

MR. SCONCE moved that the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, Sir Charles Jackson, and the Mover.

Agreed to.

ARMS AND AMMUNITION.

MR. HARRINGTON moved that the Bill "to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)" be referred to a Select Committee consisting of Mr. LeGeyt, Sir Charles Jackson, Mr. Sconce, and the Mover.

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table, and referred to the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the settlement of Prince of Wales' Island, Singapore, and Malacca)."

Agreed to.

CUSTOMS DUTIES (BOMBAY).

MR. LEGEYT gave notice that he would, at the next Meeting of the Council, move for a suspension of the Standing Orders, in order to carry the Bill (as consolidated by the Select Committee) "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)" through its remaining stages.

CONSERVANCY (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

THE VICE-PRESIDENT moved that Sir Charles Jackson and Mr. Sconce be added to the Select Committee on the Bill "to amend Act XIV of 1856." Agreed to.

The Council adjourned at $\frac{1}{2}$ past 4 o'Clock on the Motion of Sir James Outram, to Tuesday, the 30th Instant, at 11 o'Clock.

Tuesday, August 30, 1859.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President* in the Chair.

Hon. Lieut.-Genl. Sir James Outram,	Hon. Sir C. R. M. Jackson,
Hon. H. B Harrington,	and
P. W. LeGeyt, Esq.,	A. Sconce, Esq.
H. Forbes, Esq.,	

TRADES AND PROFESSIONS.

The adjourned Order of the Day for the second reading of the Bill "for the licensing of Trades and Professions in India" being read—

MR. HARRINGTON said, the adjournment of the Debate on this Bill, at the last meeting of the Council, arose out of two suggestions which fell from the Chair. The first of those suggestions was that he should withdraw the Bill, and, if he deemed it right, bring in a new Bill, which should be free from what were considered to be the imperfections of the present Bill. The second suggestion was that, if he objected to withdraw the Bill, it should be read a second time by consent, and then submitted before publication to a Select Committee, with instructions to consider whether certain alterations should not be made in it. What those instructions were to be was not said. To the first suggestion he had no hesitation in at once declining to accede. Violent though the attacks made upon the Bill by the Honorable and learned Vice-President and the Honorable Members opposite (Sir Charles Jackson and the Honorable Member for Bengal) had been, not a single reason, to his mind, had fallen from them to render the adoption of the first course, either proper, necessary, or expedient. As regarded the second suggestion, he had some difficulty in dealing with it, seeing that the purpose for which the Bill was to be referred to a Select Committee was altogether undefined. The treatment which the Bill had met with at the