

Wednesday, 4th July, 1860

PROCEEDINGS

OF THE

**LEGISLATIVE COUNCIL OF
INDIA**

Vol. VI

(1860)

nanted officer, while the Civil Servant who came out under a covenant was to be exempted. Why, again, should not a Colonel or Major in the Army pay? Why should Officers or Commanders in Her Majesty's Navy be excluded, while the carpenters on board their vessels or artisans in the Government Dockyards were to be subject to the tax? He did not make these observations with the view of throwing any difficulty in the way of the Right Honorable gentleman; but he would suggest to him the propriety of so altering this Section as to make it applicable to any person exercising any business or calling whatever.

Mr. WILSON said, the lateness of the hour prevented his making a reply, but he would only remark that the Honorable and learned Chairman's suggestions were worthy of consideration, and were so far different in character from those of the Honorable and learned Judge (Sir Mordaunt Wells) and the Honorable Member for Bengal, that, whereas the former were calculated to increase the revenue, the effect of the latter would be to decrease the revenue. With regard to the Honorable and learned Chairman's allusion to the exemption of landholders from the operation of this Bill, he (Mr. Wilson) thought it proper to mention that it was not considered advisable to tax them any further at present.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

The Council adjourned at 10 o'clock, on the Motion of Sir Bartle Frere, till to-morrow morning at 7 o'clock.

Wednesday Morning, July 4, 1860.

PRESENT :

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

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon'ble J. Wilson,	A. Scoones, Esq.,
	and
H. B. Harrington, Esq.,	Hon'ble Sir M. L. Wells.

ARMS AND AMMUNITION.

The Order of the Day being read for the adjourned Committee of the whole.

The Chairman

Council on 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)," the Council resolved itself into a Committee for the further consideration of the Bill.

THE CHAIRMAN said, when this Bill was last before the Council, he endeavored to draw up a Section to enable the Government to disarm certain districts. That Section had been printed and circulated, but since then he had made some slight alterations, and it was his intention to move the Section in its altered form. Since last Saturday some papers had been brought to his notice which had escaped his recollection. He alluded to certain communications received from the Lieutenant-Governor of the North-Western Provinces on the subject of this Bill, and reports from certain Officers of Government upon the working of Act XXVIII of 1857. To his great surprise, he read some extracts from these papers in the *Hurkaru* newspaper on Monday last. He did not wish to impute blame to any one, but what he wished to call the attention of the Council to was this. It was usual to notice in the margins of Reports from Select Committees the communications which were received on the subject of the Bill referred to them. Standing Order 67 provided as follows:—

"All written communications on the subject of Bills published for general information shall be addressed to the Clerk of the Council, who shall cause the same, and also all such petitions as shall be ordered by the Council to be referred to the Select Committee on the Bill, to be printed, and a copy thereof to be forthwith laid before such Select Committee, and to be sent to each Member of the Council."

He believed that these papers were sent to him some months ago, but at different times, and he remembered having read the first page, but he had laid them aside until the present Bill should come on for consideration, and as he had not seen them noticed in the Report of the Select Committee, his attention was not drawn to them.

Standing Order 68 provided as follows:—

“The Select Committee shall take into consideration the Bill, and all such written communications, and also all such petitions as shall be referred to them, and shall prepare a Report thereon, and shall in such Report propose any amendments of the Bill which they may think expedient. A copy of the Bill, signed by the Select Committee, shall be annexed to the Report, written or printed, in such a manner as to distinguish the amendments, if any, proposed by the Select Committee from the Bill as published.”

When the Report was received by him, he found that it did not allude to the fact that any communications had been received from the Lieutenant-Governor and the local Officers in the North-Western Provinces, nor to the reports on the working of Act XXVIII of 1857, which had been printed on the motion of the Honorable Member for Bengal. The Select Committee did not refer to any of these papers in their Report, and neither on Saturday week nor last Saturday had he any recollection of the existence of these communications. If he had had them in his mind, he should not have failed to have referred to them in support of his own opinion as to the necessity of a disarming Bill. The papers in question certainly suggested the necessity of disarming the Natives in the North-Western Provinces, and not only of preventing them from going armed, but from having arms in their possession also. He found that the North-Western Provinces had not yet been thoroughly disarmed, that a more stringent measure than the Act of 1857 was required, and that it was the opinion of the Lieutenant-Governor and of many experienced Officers in the North-West that Europeans should be exempted from its operation. He regretted that these papers had not been seen by him sooner. The Honorable Member for the North-Western Provinces had proposed to suspend the Standing Orders on Saturday, when the Report of the Select Committee on the amended Bill had not been sent to him until the preceding day.

MR. HARRINGTON explained that he did not propose to suspend the Standing Orders on Saturday week, but on Saturday last, on which day Act XXVIII of 1857 would expire.

THE CHAIRMAN resumed. What he had to complain of was that he had not been able to look over the Bill and the Report of the Select Committee, which did not come to him until Friday morning, as the time of the Judges of the Supreme Court was wholly occupied with other matters during the day. He did not wish to throw blame on any one, but he only wished to point out that it was right that Committees should hereafter notice in their Reports the communications which might be received by them, and not make their Report so late as not to give Members an opportunity of considering it before the Bill came on for discussion.

Then turning to these papers, he found in the Punjab Disarming Proclamation of July 1849 the following paragraph:—

“The classes exempted from the penalties of this proclamation are European British subjects, British soldiers while present with their Regiments or on service, and Government Officials employed on civil duties.”

Then he found in the communication from the Secretary to the Government North-Western Provinces a great deal that accorded so much with his own views. In paragraph 3 it was thus stated:—

“The work of disarming is hitherto incomplete. In some at least of the districts within the jurisdiction of this Government, the provisions of Act XXVIII have only very recently been put in force.”

He would not trouble the Council by reading extracts from the Reports of all the local Officers. He would only read the remarks of the Magistrate of Banda, Mr. Mayne, who said:—

“Of the necessity of thoroughly and permanently disarming the natives of this country there cannot possibly be two opinions, and an Act is of course necessary to empower the Magistrates to do so, but the law should be as simple and concise as possible, such as the Governors and the governed can both under-

stand. If we ever wish to govern the natives of India effectually, we must treat them as they are, and not as civilized and intellectual beings. The laws which we make for them should be adapted to their understanding, and contain rules of the most simple kind and the easiest to be obeyed. * * * Then again it cannot possibly be the intention of Government to disarm European British subjects; I think therefore it would be more honest and at the same time more dignified to declare the truth. It is not only useless but most injudicious to irritate the English settlers by even nominally including them in such an Act. The time is past for placing no distinction between the European settlers and the natives of the country. The latter have caused the breach and let them take the consequences."

The opinions of many of the other Officers were to the same effect, and they were the opinions of the Officers who had actually been engaged in working out the Act. Then again Mr. Mayne wrote as follows regarding Section V, which related to the disarming of persons going armed:—

"In Section V authority is given to disarm a person, if, in the judgment of the Magistrate or other person it is dangerous to the public peace to allow such person to go armed: disarming should be compulsory, and not left to the judgment of individuals."

The Lieutenant-Governor had offered a similar opinion on this subject. It was said in the letter from the Secretary to the Government of the North-Western Provinces:—

"It appears to the Lieutenant-Governor therefore, that, instead of passing the Bill under notice, simply declaring Act XXVIII of 1857 to be perpetual, it will be preferable to frame a new Act, which shall proceed on the principle that the possession of arms and ammunition and military stores, by the natives of this country, is fraught with danger to the public peace, and which shall arm the Magistrates with ample authority to enforce the surrender of arms, ammunition, sulphur, and military stores of every description, as well as to control and regulate the manufacture and sale of all such articles."

The letter from the Secretary to the Government of the North-Western Provinces went on to say:—

"The general principle declared, certain exemptions from the prohibition to possess arms and ammunition will of course be necessary; and to those set forth at the 6th Section of the present Act, His Honor would

certainly add Europeans, Americans, and other similar classes. To all these the Lieutenant-Governor would concede the privilege of keeping arms and ammunition for their private use (though not of course for sale) without question. Aliens as they for the most part are in a land the population of which has but recently shown the most inveterate hostility to their race and creed, they cannot with any justice (His Honor thinks) be denied the free possession of weapons which they may have occasion at any time to use for their personal protection, or the protection of their property. It cannot for a moment be assumed of these that they will abuse the privilege: no danger to the public peace can be reasonably apprehended from its concession: just the contrary may be anticipated; and lastly, it appears to His Honor extremely invidious to place this class of Her Majesty's subjects in the same category and under the same restrictions as those who have taught us by bitter experience, how treacherous and truculent they can be, and how unworthy, consequently, they are to be again entrusted with arms of any description. Few, the Lieutenant-Governor imagines, of those even who are opposed on principle to class legislation, will refuse to admit and practically to recognize the broad distinction between the one class and the other in respect of this matter.

"The class of Europeans and others excepted, none should be permitted to possess arms or ammunition even for their private uses without a license to be granted by the Magistrate subject to such conditions of payment, or otherwise as shall be thought necessary."

When this was the opinion of a person of such high standing as the Lieutenant-Governor of the North-Western-Provinces, where the Act had been more stringently carried out than elsewhere, the Select Committee should have noticed in their Report that such a recommendation had been made, but that they did not agree in it. They might have said—"Among the papers referred to us, we find one from the Lieutenant-Governor of the North-Western Provinces, who declares that, in his opinion, Europeans ought to be excepted from the operation of the Act."

Without troubling the Council with any further observations, he begged to move the insertion of the following new Section after Section XXXI:—

"It shall be lawful for the Governor-General in Council or for any Local Government, if it think necessary for the public safety, to order that any district or place shall be disarmed, and in every such district or place

as well as in any district or place to which Act XXVIII of 1857 or Section XXIV of the said Act has been extended, it shall not be lawful for any person to have in his possession any arms mentioned in Section V of this Act, or any percussion caps, sulphur, gunpowder, or other ammunition without a license from the Magistrate or Chief Officer charged with the preservation of the peace of the district. In every such district or place, the order of the Governor-General in Council or of the Local Government shall be published in the *Calcutta Gazette* or in the *Gazette* in which the orders of the Governor-General in Council or of the Local Government making the order, as the case may be, are usually published, and shall also be made public in such other manner as the Governor-General in Council or the Local Government shall direct; and every person who, after the expiration of the time mentioned in such order shall have in his possession or custody any such arms as aforesaid, or any percussion caps, sulphur, gunpowder, or other ammunition, without such license as aforesaid, shall be liable to be imprisoned, with or without hard labor, for a term not exceeding two years, and also to a fine not exceeding one thousand Rupees; and it shall be lawful for the Magistrate or other Officer mentioned in the order to exercise in such district or place the powers of entry, search, and seizure, given by Section XXXI of this Act, subject to the limitation contained therein. The provisions of this Section shall not extend to any person exempted by the authority issuing the order for disarming the district or place, nor to Europeans, Americans, or Eurasians."

Mr. HARRINGTON said, he proposed to defer any remarks that he might have to make on the Section, the introduction of which had been moved by the Honorable and learned Chairman, until a later stage of the debate which would, doubtless, take place on the proposed Section. But he was anxious to seize the earliest opportunity of saying a few words by way of explanation in reference to what had fallen from the Honorable and learned Chairman respecting the omission of the Select Committee, of which he (Mr. Harrington) was a Member, to notice in their Report on the Bill before the Council the reports received from the Governments of the North-Western Provinces and Bengal; and, first, he begged to acknowledge the calm and temperate manner in which the Honorable and learned Chairman had spoken on the subject of the omission of which he had complained; secondly, he had to express

his regret at the occurrence of that omission, and to say that the regret which he felt would be greatly increased if the omission specially to notice the reports in question had caused, or was likely to cause injury to any class which would be affected by the Bill; and, thirdly, he begged to assure the Honorable and learned Chairman, that there was no desire, and that there could have been no intention on the part of the Select Committee to keep out of the view of the Council any papers that had been received on the subject of this Bill. The Council must be aware that, even supposing the Select Committee could have entertained such a desire as that which he had mentioned, they must have been sensible that it was not in their power to accomplish what they wished, simply because they knew that, equally with themselves, a copy of the reports to which he was referring had been previously sent in regular course to every Member of the Council, including the Honorable and learned Chairman, and the Honorable and learned Judge on his right (Sir Mordaunt Wells).

SIR MORDAUNT WELLS here interrupted the speaker, and said that the reports had not come to him.

Mr. HARRINGTON resumed. The Honorable and learned Chairman did not deny that he had received the reports, and he (Mr. Harrington) had no doubt that he could show by the office despatch books, that the reports had been sent both to the Honorable and learned Chairman, and to the Honorable and learned Judge's predecessor, Sir Charles Jackson, to whose papers he (Mr. Harrington) took it for granted that the Honorable and learned Judge had succeeded at the same time that he succeeded to his seat in this Council.

SIR MORDAUNT WELLS said, Sir Charles Jackson had left Calcutta before he was appointed to the Council, and he had received no papers from him.

Mr. HARRINGTON continued. He presumed then that the Honorable and learned Judge on his appointment had applied to and received

from the office all the papers belonging to his predecessor, relating to Bills and other matters pending before the Council. This was what took place in his own case when he joined the Council, and he believed that it was what was usually done on the occasion of every new Member taking his seat.

MR. FORBES confirmed what Mr. Harrington had stated as to the practice of the Council on a change of Members, and added that he did not arrive in Calcutta until after the departure of his predecessor, Mr. Elliott, but that, on his arrival, the whole of Mr. Elliott's papers were sent to him.

SIR MORDAUNT WELLS said, he had not received any papers from the office, except the current papers which had been sent to him in common with the other Members.

MR. HARRINGTON said, if all the papers relating to pending Bills had not been sent to the Honorable and learned Judge, he was not to blame. It was the fault of the office. He (Mr. Harrington) was not in charge of the office, and was not answerable for its omissions.

The Honorable and learned Judge had also complained of the delay which had taken place in the presentation of the Select Committee's Report on this Bill, which he observed had not been given in until long after it was due. He (Mr. Harrington) at once admitted that there had been great delay, for which he was exceedingly sorry, but in self-defence he must say that it arose in a considerable degree from circumstances beyond his control. These circumstances he would proceed to explain. The explanation would bring him to the causes of the omission noticed by the Honorable and learned Chairman in the Report of the Select Committee, and would enable him to show how that omission had occurred. The Bill was read a second time on the 27th August 1859, and in order that it might undergo a full and fair discussion, he (Mr. Harrington) put upon the Select Committee the Honorable Member for Bengal, and the Honorable and learned Judge, Sir Charles Jackson, who had spoken most strongly

Mr. Harrington

against the Bill, and the late Member for Bombay. This clearly showed that there was no desire on his part to avoid enquiry and discussion, but the contrary. The Council was prorogued from the 6th September till the 12th November, and it did not resume its sittings until the 3rd December. On that day the Honorable Member for Bengal moved for certain returns as to the working of Act XXVIII of 1857. He (Mr. Harrington) did not think it necessary to resist the motion, which was acceded to. The returns asked for by the Honorable Member for Bengal were not received until late in March, and the order for their being printed not having been made until the 24th of that month, it was not until the beginning of April that copies were in the hands of Honorable Members. Shortly after it devolved upon him, as a Member of the Select Committee, to revise the Income Tax Bill, and he might say that, until that Bill was settled by the Select Committee and reprinted, it occupied almost the entire time and attention of the Select Committee. He would appeal to the other Members of the Committee whether such was not the case. It was a most difficult Bill to settle. As soon as he could command leisure from the Income Tax Bill, he had taken up the Bill before the Committee, which was another very difficult Bill. In the meantime Sir Charles Jackson had left the Council, and the illness of the Honorable Member for Bombay, which had terminated in his death, prevented him from giving much attention to business. The consequence was that he and the Honorable Member for Bengal were left to settle the Bill by themselves. But they differed so materially upon some of the most important parts of the Bill, that at one time he quite despaired of the Select Committee being able to make a Report, and he feared that the Bill would have to be over. The Bill relating to Public Conveyances, and he believed the Bill relating to the cotton frauds at Bombay, were in this predicament. At last, by mutual concessions, he and the Honorable Member for Bengal came

to an agreement as to the alterations which should be recommended to the Council for adoption in the original Bill, or he might say in the present law, and the Honorable Member for Bengal having agreed with him that they might report the Bill, he at once desired the Clerk of the Council, who usually prepared the Reports of Select Committees, to draw up the Report, and he furnished that officer with a memorandum of the alterations proposed to be introduced into the Bill. He presented the Report of the Select Committee the same evening and having explained to the Council the alterations which the Select Committee advised should be made in the Bill, he gave notice that at the next meeting of the Council he should move that the Council should resolve itself into a Committee of the whole Council upon the Bill. He gave this early notice as the period for which the law then in force was passed was drawing to a close, but there was still ample time for the new Act to pass before the expiration of that period, and he took steps to secure the early receipt by Honorable Members of the amendments proposed by the Select Committee. This was the explanation which he had to give of the delay that had taken place in the presentation of the Select Committee's Report, and now as regarded the omission noticed by the Honorable and learned Chairman in that report. It was formerly the practice to enter in the margin of the second paragraph of the Reports of Select Committees all petitions, communications, and other papers referred to the Select Committee for consideration, and they were generally alluded to in these words:—"The communications and petitions mentioned in the margin were referred to the Select Committee, and have received their attention." This paragraph was inserted by the Clerk of the Council or one of his assistants, as a matter of course, and its insertion may be said to have been a mere mechanical process. For some little time past the paragraph had been omitted. The reason for the change he was unable to explain,

but the fact of the omission might be established by several Reports presented before the Report under consideration, and more particularly by the Report presented on the Income Tax Bill, in the margin of which no list was given of the numerous petitions presented against that Bill. He mentioned this to show that, whether the discontinuance of the practice was right or wrong, it took place before the presentation of the Report on the Arms Bill and was no act of his. He did not see the Report on the Arms Bill until just before he presented it, and he did not notice at the time that there was no specification in the margin of the reports or petitions received and referred to the Select Committee on the Bill. Had he observed the omission, it was quite possible that he should not have noticed it in reference to what he had just stated as regarded the recent practice in drawing up Reports of this nature. There could be no doubt that, as observed by the Honorable and learned Chairman, the Standing Orders of the Council had latterly been disregarded in this respect as well as in other respects, and he quite agreed with the Honorable and learned Chairman that they should at once revert to the former practice, which was in accordance with the Standing Orders. At the same time he must say in excuse of what had taken place, that the duties of the office had for some time past been extremely heavy, and it ought to be no matter of surprise, much less of blame if, while the pressure lasted, the prescribed forms were not attended to with all the regularity and strictness which were observed in the office of the Clerk of the Council when the work of his Office was of a less laborious character. In conclusion, he begged to assure the Council that the reports received from the Lieutenant-Governors of the Lower and North-Western Provinces of Bengal, and the officers subordinate to them, had been most carefully considered by the Select Committee, and had been discussed by that Committee again and again. He was sure his Honorable friend the Member for Bengal would bear him

out in this statement. (Mr. Sconce intimated his assent.) There was one other remark which he wished to make in reference to some of the suggestions of the Honorable the Lieutenant-Governor of the North-Western Provinces, which the Select Committee had not judged it proper to adopt, namely, that for some time past the idea had prevailed that, when the Select Committee did not follow the suggestions of the local Governments, it was hardly respectful to those Governments to discuss their suggestions in the Reports of the Select Committee, and to give reasons for not adopting them. He begged to apologise for having occupied so much of the time of the Council about a matter personal to himself and the other Members of the Select Committee on the present Bill, and to thank the Council for the hearing that they had so kindly accorded to him.

SIR MORDAUNT WELLS said, it was quite impossible, after the explanation given by the Honorable Member for the North-Western Provinces, to suppose that the omission in question arose otherwise than from an accident. Indeed, it appeared that the omission was rather in accordance with practice than otherwise, and therefore no imputation whatever rested on his Honorable friend; and he (Sir Mordaunt Wells) entirely concurred in all that his Honorable and learned friend in the Chair had stated on the subject. But still the fact remained that, in consequence of his (Sir Mordaunt Wells') having so recently joined the Council, he had not known of these papers till he saw extracts from them in the *Hurkaru* newspaper; and he therefore wished the Council to see the situation in which he was placed last Saturday, when he voted against the amendment of his Honorable and learned friend. Very shortly after his (Sir Mordaunt Wells') appointment to the Council, this Bill was brought up for consideration. He saw and knew nothing personally about the past history of the question. The first papers which he received on the subject were the Report of the Select Committee and the amended Bill. They were sent

to him on Friday morning, the following day (Saturday) being the day fixed for the consideration of the Bill. In looking into the Bill, finding a reference made to the Act of 1857, he compared it with the Bill Section by Section, and he was surprised to find the Bill totally different from the Act. Among the papers which he received with the Report was the statement of objects and reasons, in which he read as follows:—

“So far as I am aware, the Act has worked well. Every one of its provisions was carefully considered by a Committee of the whole Council before it was allowed to stand as part of the Act. No modifications have been proposed, and none seem to me to be called for.”

He was in total ignorance as to the reason of the change, and asked the Government to be satisfied with the former Act, against which he was not then aware there were any complaints. Consequently his vote against the amendment of his Honorable and learned friend was one which he was obliged to give after the alteration proposed by his Right Honorable friend, which he understood to have placed the Bill on the same footing with the Act of 1857. If he had seen the opinions of Mr. Mayne, one of the ablest gentlemen in the Civil Service, of Mr. Batten, Captain Fenton, Mr. Williams, and others, all of them Civil Officers of several years standing, and if he added to these the opinion of the Lieutenant-Governor of the North-Western Provinces, that Europeans ought to be exempted, he would ask the Council whether he could have voted in favor of the continuance of the Act of 1857 without exempting Europeans. The following was the Report of the Lieutenant-Governor of the North-Western Provinces:—

“It appears to the Lieutenant-Governor, therefore, that, instead of passing the Bill under notice, simply declaring Act XXVIII of 1857 to be perpetual, it will be preferable to frame a new Act, which shall proceed on the principle that the possession of arms and ammunition and military stores, by the natives of this country, is fraught with danger to the public peace, and which shall

Mr. Harington

arm the Magistrates with ample authority to enforce the surrender of arms, ammunition, sulphur, and military stores of every description, as well as to control and regulate the manufacture and sale of all such articles.

"The general principle declared, certain exemptions from the prohibition to possess arms and ammunition will of course be necessary; and to those set forth at the 6th Section of the present Act, His Honor would certainly add Europeans, Americans, and other similar classes. To all these the Lieutenant-Governor would concede the privilege of keeping arms and ammunition for their private use (though not of course for sale) without question. Aliens as they for the most part are in a land the population of which has but recently shown the most inveterate hostility to their race and creed, they cannot, with any justice (His Honor thinks) be denied the free possession of weapons which they may have occasion, at any time, to use for their personal protection, or the protection of their property. It cannot for a moment be assumed of these that they will abuse the privilege; no danger to the public peace can be reasonably apprehended from its concession: just the contrary may be anticipated; and, lastly, it appears to His Honor extremely injudicious to place this class and under the same restrictions as those who have taught us, by bitter experience, how treacherous and truculent they can be, and how unworthy, consequently, they are to be again entrusted with arms of any description. Few, the Lieutenant-Governor imagines, of those even who are opposed on principle to class legislation, will refuse to admit and practically to recognize the broad distinction between the one class and the other in respect of this matter.

"The class of Europeans and others excepted, none should be permitted to possess arms or ammunition even for their private uses without a license to be granted by the Magistrate, subject to such conditions of payment or otherwise as shall be thought necessary."

Could he have supposed that the Honorable Member for the North-Western Provinces would have recommended a measure which was directly opposed to the opinions of his own Lieutenant-Governor and other high officials under him, who had the responsibility of carrying on the work of disarming, without even noticing those opinions? Was there any thing settled or defined, on the part of the Executive Government, stated to the Council, which could induce him to accept their opinion instead of these? It must be remembered that what the Lieutenant-Governor and the Officers in the North-Western Provinces had said could not be attributed to mere

fancy on their part, nor to any class feeling. Theirs was the language of experience. Could we set at naught the strong advice which these gentlemen had given us, namely, that you must not disarm the European population, because, if you did, you would jeopardize their lives and property. Disregard if you pleased the opinions of the commercial community in Calcutta; disregard the opinions of the Judges of the Supreme Court. But could this Council disregard and ignore the well-defined and firmly expressed opinions of the Lieutenant-Governor and the officials of the very Province regarding which they were proposing to legislate? If it were to be said that we were to act on private communications, he was of opinion that we ought not to do so. We must act on public communications and them only. When Mr. Mayne and the other gentlemen expressed these opinions, they did so on public grounds, and they had a right to be heard and listened to. It had been said that there was an antagonism existing between Civilians and Non-officials; he did not believe it. He believed the opinions of the Civilians were in full harmony with those of the other classes on this question. On the whole, then, he did not see why he should allow a law to be re-enacted contrary to the opinions of those who might be supposed to be the best judges in the matter, and therefore he saw no reason for continuing to vote against the exemption of Europeans. If we went against the opinions of such men we should not be acting on safe grounds. The Honorable Member of Council opposite (Sir Bartle Frere) had said that the Government were prepared to take the Bill without the disarming Clause. Had the Honorable gentleman read the opinions of the Officers contained in these papers? [Sir Mordaunt Wells here read extracts from several of these Reports.] It was quite clear from these communications, he observed, that the North-Western Provinces had not yet been disarmed. Now what was he (Sir Mordaunt Wells) to do as a legislator in the face of these reports. Suppose by any system of timid legislation we put arms into the hands of men

already stained with the blackest crimes; could we doubt as to what would be the effect of such legislation four or five years hence? Was this a matter on which we should act according to theory merely? The Lieutenant-Governor had said that you must not disarm Europeans—the natives must not know that you were placing a ban on loyal Europeans. He (Sir Mordaunt Wells) thought that this was a most important question. He repudiated strongly the notion of this being a matter of class legislation. As he had said before, he placed entire confidence in the Executive Government; but yet he must ask them in a matter of this importance not to run away with a theory by setting aside the opinions of the high authorities who had had a practical knowledge of the working of the Act of 1857, and who must be considered to be better judges, he must be allowed to say, without meaning any disrespect, than the Honorable Member of Council opposite (Sir Bartle Frere) and his Right Honorable friend. He would take the liberty of telling them that, if they attempted to legislate without a knowledge and without taking a comprehensive view of existing facts, their legislation could not but be considered crude, and prove abortive. Let us, however, by a bold measure, impress on the minds of the natives that we were really in earnest. Don't let them say of the Government, "Look, what they are doing; they are placing Europeans under the same ban with us." How great also would be the disappointment of the Lieutenant-Governor of the North-Western Provinces, and his Officers if this Bill were to go back to them in a form contrary to their advice, thus placing him under the necessity of telling the Europeans, "Gentlemen, I have done my best, and I was led to expect that the Honorable Member who represented these Provinces would have carried out a comprehensive measure in accordance with the facts I have set forth, and in accordance with the strong representations I have made on the subject, instead of carry-

Sir Mordaunt Wells

ing out a measure based on totally different principles."

Under these circumstances, he (Sir Mordaunt Wells) declared his determination to support the amendment of his Honorable and learned friend. After the disclosures which had been made, he considered himself released from the vote which he gave on the former occasion, and he rejoiced that he was released from it. He took his stand upon these official papers; he took his stand upon the perfect information which they disclosed; and, above all, he took his stand on the statement of the Honorable Member for the North-Western Provinces, that Europeans as a class could claim exemption, although the Honorable Member might hold a different opinion now. His Right Honorable friend had made allusion in the Queen's Proclamation. He (Sir Mordaunt Wells) would observe that, when Her Gracious Majesty spoke of equal legislation, surely it was not intended that it was unequal legislation to deal out justice to a body of loyal Europeans. The impartial administration of the law was what the Queen's Proclamation asserted—not the subjecting Europeans to a Disarming Act lest you would give offence to the prejudices of the natives if you disarmed them alone. He would not waste a moment in arguing about this being a Police Bill. He denied it *in toto*. He had been charged elsewhere with having dealt severely with Europeans in Criminal cases. He had no objection to provide most stringent laws against European murderers, thieves, and other offenders; but this was a different matter that we were considering. We now had a rock to stand upon in the papers to which he had referred. Was he, as a legislator, to take the advice of two or three Honorable gentlemen here, in preference to the opinions of those who had had the practical working of the Act. He cared nothing about private communications. It was due to the natives and to all classes of the community that we should legislate on well-defined principles. He asked the Council most earnestly to pass this Clause, and he concluded by thanking them for having allowed him

to express his opinion, as well as for the attention which they had paid to his observations. He could sincerely assure them that he entertained a strong conviction on the question. Whilst he had the honor of a seat in this Council, he felt that he was bound to support what he believed to be strict justice to all classes.

Mr. SCONCE said, he wished to make a few remarks, both with reference to what had fallen from the Honorable and learned Chairman and the Honorable and learned Judge on his left. He felt some doubt as to the mode in which he should open the observations he had to make. It appeared to him that his Honorable and learned friends had repeatedly mixed up two entirely distinct questions—one, the disarming of the population; and the other, the policy of exempting Europeans. And it appeared to be apprehended by the Honorable and learned Judge near him that the Council might not affirm or reject the first proposition on its own merits, but would accept the law only on the condition of including Europeans within its provisions. Now his opinion was strong against continuing Act XXVIII of 1857 as a general Disarming Act, but at the same time it might be in the collection of the Council that in the late debate he had distinctly stated that in his opinion the present Bill, as amended in the Committee of the whole Council, was by no means an adequate substitute for the expiring Act. The Select Committee, composed of his Honorable friend opposite (Mr. Hargraves) and himself went much farther. In lieu of adopting the system of a continual search for arms, as provided by Act XXVIII of 1857, the Select Committee proposed to license the carrying of arms. He thought however that this might not be enough; and that it might be necessary to register and license the possession of arms. It seemed to him that, as by this measure you would know at all times in what villages and to what extent arms were possessed by the people, you would have in your hands the means of providing against the

dangerous use of arms. The Honorable and learned Judge assured them that the districts in the North-Western Provinces were still full of arms, but he must doubt the facts to which reference had been made. If the Council would refer to the report of the Lieutenant-Governor of the North-Western Provinces, dated two months later than that from which the Honorable and learned Judge had quoted, he would find it stated as follows:—

“The work of disarming is hitherto incomplete. In some at least of the districts within the jurisdiction of this Government, the provisions of Act XXVIII have only very recently been put in force.”

And further on it is said:—

“From all these circumstances it may be reasonably assumed that the disarming of these Provinces cannot be affirmed to be either thorough or complete.”

And certainly it appeared to him that, though the disarming of the North-Western Provinces might be incomplete, the report of the Lieutenant-Governor did not support the statement of the Honorable and learned gentleman, that Act XXVIII of 1857 had little or no effect in disarming the people. He might remark that with the report was sent up a return of arms which had been taken. The return had not been printed; or if so, we should have known the quantity of arms actually taken.

As to the exact mode in which the Act was carried out, he found that the great powers which it conveyed were harshly and illegally exercised. If he mistook not, one of the Officers, on whose judgment his Honorable and learned friend relied so much, did tell us as to the mode in which he considered it proper to carry out the Act. He said:—

“I look upon Act XXVIII of 1857 as an utter abomination. Its machinery is enormous, very complicated, and completely beyond the comprehension of the people of the country. Some of its provisions may be good for Presidency Towns, but are singularly ill adapted for the Provinces. Many Districts have been disarmed; but I feel confident the Act has not been carried out in any ou

single district. Had indeed any Magistrate kept to the law, the amount of arms seized would have been very very small. What then is the use of retaining a law which is a mere sham?"

Thus we had Mr. Mayne's authority for saying that the law was a sham, and that he took every means in his power to seize arms without the authority of law. Be this, however, as it might, the chief question before the Council he (Mr. Sconce) apprehended to be this, whether we were to continue the provisions for totally disarming the several districts in the Upper Provinces? If the Lieutenant-Governor and the Officers subordinate to him recommended a continuance of that law, they expressed the grounds of their opinion in such a form, that he (Mr. Sconce) for one could not assent to the proposal. It was true that the residents of the Lower Provinces could not by any means appreciate the feelings which residents during the mutiny in the Upper Provinces might have been led to form. But whatever allowance one might make on such grounds, it seemed to him that it was inexpedient, by house to house visitation, and by rigid search, to attempt to remove the arms of all the people. Not only were we to consider the districts immediately under the Government of the Lieutenant-Governor of the North-Western Provinces, but also other adjoining districts, with reference to which he would ask the Council to consider whether it was expedient to have two different laws on the same subject. Take for example the Nagpore Province, which adjoined the North-Western Provinces. The Commissioner of Nagpore said:—

"I am of opinion that the enforcement of the provisions of any such Act would be both unwise and inexpedient. Its introduction moreover would be attended with considerable annoyance and dissatisfaction, and be productive of much alarm."

Then we had the Eastern districts of the North-Western Provinces, namely Ghazepore and Gorruekpore, which bordered on the Bengal district of Chuprah: and as the Council were

Mr. Sconce

probably not prepared to disarm Chuprah or any other neighbouring Bengal district, it seemed to him to be not desirable to attempt to enforce a more rigid law in districts separated from Chuprah by little more than an imaginary line. He did not wish to press too much upon the opinions expressed by the Officers of the North-Western Provinces, and he should not have done so had not the Honorable and learned Judge asked us to legislate according to facts which now existed. See what Mr. Williams, the Commissioner of Meerut, said—

"It may be argued that the punishment which was sufficient in Meerut should suffice everywhere. It will not now, where whole communities have concealed and withheld their arms; nothing but the knowledge that persistence in this course will involve utter ruin, will persuade them to give them up."

SIR MORDAUNT WELLS here remarked that what Mr Mayne meant to say was explained in a subsequent part of his letter, where he mentioned that "no portion of the community will benefit more by it (that is disarming) than the natives of the country."

MR. SCONCE continued. He would proceed to read Mr. Williams' idea of the punishment to be inflicted in such cases—

"This punishment must be no petty fine of one Rupee for one spear, three for other weapons, four for a sword, and eight for a gun, which the people will gladly pay; but where the whole village obstinately retains the arms, confiscation of all rights avoidable only by the surrender of a certain number of arms in a fixed time; and where individuals do, the award of a heavy fine on the head man and every offending individual, on payment of which the different kind of arms may be taken at fixed high rates, say in lieu of fifty Rupees a gun, thirty Rupees a sword, twenty Rupees a spear, and ten Rupees any other kind of weapon. In default of payment in cash or in weapons, imprisonment or corporal punishment to be inflicted at the discretion of the Magistrate."

SIR MORDAUNT WELLS said that the part of Mr. Mayne's letter which had just been read must be

taken in connection with the following paragraph of his letter :—

“The complete disarming of the population, now and for ever, is a most politic and expedient measure in every way. No portion of the community will benefit more by it than the natives of the country, who will, when the disarming is thoroughly carried out, be to a great extent saved from the sin and suffering which was formerly the consequence of arms being always ready at hand. But it must be universally enforced, and that it can be only by the law giving ample and full power to the Executive Officer.”

Mr. SCONCE resumed. He did not use his own words but the words of the Commissioner. If we were to take arms only by scoring men's backs at the discretion of the Magistrate, he thought that the Bill had better be given up altogether. The punishment proposed, however, was not only by excessive fines or corporal punishment, but a recommendation made by several of the District Officers and supported by the Lieutenant Governor was, that without knowing whether arms were possessed or not, a district should be assessed as containing such and such a quantity of arms, and be required to deliver them up. The Secretary to the Government of the North-Western Provinces writes as follows on this point :—

“His Honor would therefore give authority to the Magistrate, whenever he may have reasonable cause to suppose that arms, ammunition, &c., are concealed within the boundaries of any village, to call upon the proprietors to point out the places where they are concealed, or to deliver them up within a time to be given; and, on failure, to attach at once all proprietary rights and interests, with a view to confiscation, after the expiry of one month, if the arms, &c., according to the assessment which the Magistrate may think fit to declare, should not be surrendered within that period, calculated from the date of attachment. All such confiscations should be subject to confirmation by the Commissioner of the Division.”

To his mind such a recommendation was abhorrent. A purely ideal assessment of arms was to be made, and if this conjectural demand were not discharged by the people, all proprietary rights in the village were to be confiscated. He could not accede to

recommendations like these. He (Mr. Sconce) was of opinion that it was not necessary to continue the disarming operations; it was, he thought, an unnecessary and a bad law; and if unhappily the Council were to adopt the proposal submitted to them, he was not prepared to object to the amendment of the Honorable and learned Chairman, which would exclude Europeans from its provisions. He would suggest, however, that the Section, as proposed, might be made into three Clauses, and each of them be considered separately.

THE CHAIRMAN said, he had no objection to the Clauses being considered separately, though if the exemption-proviso were not carried, he reserved to himself the right of voting against the third reading of the Bill.

Mr. FORBES was happy to say that it had not been found necessary to introduce the general provisions of Act XXVIII of 1857 in any part of the Madras Presidency, excepting in the northern part of Canara, which, bordering on the Southern Mahrattan country, had been subject to some disturbance. Throughout the rest of the Presidency only those parts of the Act, which referred to the registration and sale of arms and ammunition had been introduced, but there had been no general search for arms. He should not have thought it necessary to occupy any of the time of the Council to-day, but for the call which the Honorable and learned Judge had made upon the Council to adopt the recommendation of the Lieutenant Governor of the North-Western Provinces and several of the Officers acting under him, that Europeans should be exempted from the Arms Act. The Honorable and learned Judge made this call upon the Council, not upon the ground that the recommendation was good in itself, though he (Mr. Forbes) was quite sure that the learned gentleman thought it was good, but solely upon the ground that the recommendation came from such high authority as the Lieutenant-Governor, and from gentlemen of such extensive experience as the Officers whose opinions the Lieutenant-Governor

nor had adopted, and the Honorable and learned Judge had said that, had the papers which contained this recommendation been before him on Saturday last, he should have voted with, and not against, the motion of the Honorable and learned Chairman, that Europeans should be exempted from the operation of the Arms Act. The Honorable and learned Judge had said that, if the Council should go against the Lieutenant-Governor and his officers, it would go against what was advised on public grounds; he had asked the Council whether it was, or was not, to act on the opinion of those gentlemen whose reports were forwarded by the Lieutenant-Governor, and had said that in those opinions the Council had a rock on which to stand. Although he was sure that the papers he had referred to had been carefully considered by the Honorable and learned Judge, he could not help thinking that his argument, that we should adopt the Lieutenant-Governor's recommendation, *because* it was made by the Lieutenant-Governor, would lead the Honorable and learned Judge much farther than he contemplated. If the high position of the Lieutenant-Governor of the North-Western Provinces, and the experience of the Officers whose opinions he adopted were sufficient *in themselves* to lead this Council to accept their recommendations regarding the exemption of Europeans, they must, he (Mr. Forbes) conceived, be equally binding on the Council in respect to the other matters on which opinion was no less strongly given and legislation no less forcibly recommended. But to what would this lead us? The Honorable Member for Bengal had anticipated much that he had intended to say, but he would ask the Council to let him read some extracts from the correspondence sent up to them by the Lieutenant-Governor. Mr. Hume, the Magistrate of Etawah,

"proposes that the same population, test, which is applied for ascertaining approximately the number of arms in any given portion of a district, should be held to be sufficient to establish inferentially the concealment to a greater or less extent of their arms by the

Mr. Forbes

inhabitants of the said tract. Mr. Hume therefore proposes that each District should be divided into convenient circles, that the inhabitants of each such circle should be called upon to surrender the quota of arms they have been estimated to possess, and that failure to make up their quota should be deemed sufficient proof of wilful concealment."

Now what was the plain meaning of that? Why, that if in village A, with a population of 100 persons, 50 arms were found, the Magistrate was to assume that the same proportion of arms was possessed by the inhabitants of villages B, C, and D, and so on, to the end of the alphabet, and was to punish the inhabitants of those villages if they did not produce the number of arms which, under the merest suspicion, he chose to say that they possessed. And how was he to punish them? Why on that point we were not left in doubt, for the Lieutenant-Governor in the letter of his Secretary said that he

"would give authority to the Magistrate whenever he may have reasonable cause"—

and we had just seen what reasonable cause was, namely, the possession of arms by *other* people—

"to suppose that arms, ammunition, &c., are concealed within the boundaries of any village, to call upon the proprietors to point out the places where they are concealed, or to deliver them up within a time to be given, and, after failure, to attach at once all proprietary rights and interests, with a view to confiscation after the expiry of one month, if the arms, &c., according to the assessment which the Magistrate may think fit to declare, should not be surrendered within that period."

But this was not all, for

"the Magistrate should also, in His Honor's view, be empowered to punish all persons who may refuse to produce their arms and ammunition on requisition, with corporal punishment, to the extent of one hundred stripes with the ratan in addition to imprisonment."

So that they were called upon by the Honorable and learned Judge to exempt Europeans from the Arms Bill, *because* the exemption was recommended by the Lieutenant-Governor of the North-Western Provinces, and the Officers acting under him, when

precisely the same argument would lead them to enact that, if the same proportion of arms to population which might be found in one village were not produced from another, the whole proprietary right in the village should be confiscated, and, on this mere suspicion, every one of the male inhabitants should be punished with one hundred stripes in addition to imprisonment.

He (Mr. Forbes), for one, was not willing to adopt this course, nor, with the highest respect for the position and character of the Lieutenant-Governor, was he willing to follow his recommendations in this matter, on the sole ground that they were made by him, and without considering the nature of the recommendations themselves.

SIR BARTLE FRERE said that at that late hour he would make but a very few remarks. And first, as to a matter rather personal to himself, as regarded the papers from the Government of the North-Western Provinces, which had been this morning so much referred to, he stood in precisely the same position and for the same reasons as his Honorable and learned friend the Chairman. He was quite unaware of the existence and consequently of the contents of those papers, until his attention was drawn to them by the Honorable Member for Bengal late on Saturday evening, and he had not read them when he spoke on that day on the subject of this Bill. He mentioned this, not to justify any alteration in his opinion which remained the same as before, still less to impute any blame to any one. The omission to draw the notice of the Council to those papers, which did not reach the Council through the Executive Government of India, was a pure accident, such as must occasionally occur, and he was only surprised that, under such a pressure of business, so few mistakes of the kind ever occurred. He mentioned his position with regard to these papers, simply to show that his silence regarding them arose from his being unaware of their existence.

He (Sir Bartle Frere) had said, that he did not at all concur in the opinions

generally expressed in those papers, and that they made no change in the view taken by the Executive Government regarding the Bill now before the Council. In explaining the reason of this, he would briefly advert to the two distinct points raised by the Clause which his Honorable and learned friend had proposed to insert.

He would take first the proposal to exempt "Europeans, Americans, and Eurasians" from the operation of the Clause. And without going further into this question, which had been so fully discussed already, he begged to remind his Honorable and learned friend, that, as regards the Act of 1857, this exemption stood on a very different footing from the body of the Clause which granted the power to search for arms. No such exemptions were provided for in the Bill of 1857, and if his Honorable and learned friends, as the learned Judge opposite had repeatedly intimated, were willing to stand by and re-enact the Act of 1857, no such exemption would be included by re-enacting the provisions of that Act. The Honorable and learned Chairman had laid great stress on the fresh argument in favor of this exemption, which he stated was contained in the papers before them, and which was derived from the authority due to the opinions of the Lieutenant-Governor and high public Officers in the North-Western Provinces, and to the precedent of the Punjab proclamation. But he (Sir Bartle Frere) need not remind his Honorable and learned friend, that the weight of a precedent or authority in making a law was very different from that which belonged to it in the administration of law. In the latter case, the authority or precedent must be more or less attended to, whatever we might think of its intrinsic reasonableness. In making a law, however, no precedent or authority was, he submitted, of the slightest value, unless it could be shown to be *per se* reasonable.

He would again beg the candid attention of his Right Honorable friend to the fact that the present was a Bill to regulate the possession of arms, to allow all persons against whom no

ground of suspicion existed, be they Europeans or Natives, to carry arms for their necessary uses, and to prevent all other persons from carrying them. It was a Bill, as the Title stated, "for regulating the right to keep and use arms;" so was the Act of 1857. It was not intended as a "ban," as it had been described, or as a penal measure; and unless a European was a bad or suspicious character, the disarming or penal Clauses of the Act could not apply to him. The question was not, were Europeans to be disarmed? but simply were Europeans to enjoy an exemption above the law which regulated the right of all British subjects in India to keep and use arms, which secured those arms to the peaceable and well disposed, and removed them from the hands of the evil disposed and disloyal? His Honorable and learned friend had repeatedly asked, were we to refuse to exempt Europeans, because we were afraid that the exemption would give offence to certain classes of the natives? Once for all, he (Sir Bartle Frere) begged to assure his Honorable and learned friend, that no such fear of giving offence actuated the Government of India in the view it had taken of this matter. He could say for himself, and he felt certain for his colleagues, that no such consideration weighed with them. They considered it their duty to propose to the Council such laws as were just and right in themselves, and not to be deterred from so doing, even if they might unfortunately for a while give offence to any class of Her Majesty's subjects. His Honorable and learned friend had laid great stress on the exemption of Europeans, which was found in the rules for disarming the Punjab, but he (Sir Bartle Frere) would remind him, that these Punjab rules were enacted in 1849, long before the mutiny, and at a time when the present unhappy discussions were not dreamt of. Nothing, he felt certain, was farther from the intention of Sir Henry Lawrence, who drew up those rules, than to stigmatise the natives of India as a body untrustworthy, disloyal, and unfit to be trusted with arms. The rules were drawn up immediately after the conquest of a martial and well-armed

Sir Bartle Frere

nation, at a time when there were not a dozen Europeans in the Province, except the Soldiers and Officers of the conquering Government, and the exemption was nothing more than a direction to prevent the Police interfering with those who carried arms as a matter of duty. Such a provision was quite a different thing from inserting in a general law an exemption avowedly founded on the principle that the natives, as a body, were disloyal and not fit to be trusted with arms.

So much for this exemption of Europeans. He (Sir Bartle Frere) would now address himself to the provisions of the proposed Clause for disarming particular districts or places.

On a former occasion, he (Sir Bartle Frere) had stated that the Executive Government were content with the provisions of the Bill as it now stood. Since then the opinions of the Officers in the North-Western Provinces on this point also, which, as he stated, he had not seen when he last addressed the Council, had been attentively considered by the Executive Government, who were not disposed to alter the opinion he had before expressed. He (Sir Bartle Frere) had been and still continued of opinion, that the best means of disarming a population was to check the habit of walking about armed, and his experience proved was the most effectual means of weaning a population from the habit of keeping arms. If police rules for this purpose were effectually carried out, arms would shortly cease to be generally found in the possession of any but those who required them for lawful purposes—or who, from their position and stake in the country, could not be considered as classes dangerous to the public peace. From the papers before them, no doubt high authorities could be quoted for a different view. He would only quote one in support of his own opinion, the weight of which would, he felt certain, be generally admitted. Sir Charles Napier, when he wished to disarm the population of Sind, contented himself with prohibiting the carrying of arms in public, and strictly forbade any general domiciliary

search for arms. The Punjab disarming rules were borrowed from the rules laid down by Sir Charles Napier in Sind; and in the Punjab also he believed no domiciliary visits and general searching of houses for arms were ever permitted, in the manner advocated by so many Officers in the North-Western Provinces. Both in Sind and in the Punjab the work of disarming had been most effectually done without exciting the general opposition and ill-will admitted by the Officers of the North-West, as having been produced by the measures they advocated. He (Sir Bartle Frere) did not deny that occasions might arise in particular districts, among particular populations, when it might be necessary to search for arms, house by house, and he had considered and still considered that the provisions of Section XXXI of the Act before them were sufficient for this purpose; but as the Council seemed generally of opinion that they were not, he had no objection to the course suggested by his Right Honorable friend opposite, for giving the right of search which was provided in the Clause before them. The Government of India regarded this power of search as a power not to be lightly given, nor exercised on all occasions as an ordinary measure of police. It was a power which, in all countries, was liable to great and serious abuses, and dangerous to all, but in great emergencies. He (Sir Bartle Frere) doubted whether you could disarm, you certainly could not rule, India, by granting indiscriminately power to make domiciliary visits in search of arms. His Honorable and learned friend opposite had asked, had the Government any defined policy? He (Sir Bartle Frere) could assure him, that the Government had on this head a policy both fixed and defined; it was their policy to endeavor to rule by impressing on the natives of this country the conviction that the British Government was stronger, wiser, more merciful, and more just, than any other possible Government, and he (Sir Bartle Frere) believed that, if, in all our arrangements, whether police or otherwise, we

endeavored so to act as to impress the people with this conviction, we should maintain our hold on the country far more effectually than by the most stringent powers to search for arms, and all those other measures which were advocated by those who would reduce our rule to a mere question of physical force.

Mr. HARRINGTON said, the new Section which the Honorable and learned Vice-President proposed to add to the Bill, as noticed by the Honorable Member for Bengal, raised two quite distinct questions, namely, *first*, whether, looking to the character of the Section, it should be introduced at all; and, *secondly*, whether, in the event of its being determined to introduce the Section into the Bill, it should be of general application, extending alike to all classes, or if some, then what classes should be expressly exempted from the operation of the Section. He proposed to consider the latter question first, and as the subject had already been so fully discussed at the last Meeting of the Committee, in dealing with this part of the Section, he should confine himself to a very few remarks. The Honorable and learned Judge on his right (Sir Mordeant Wells) had quoted the testimony which he (Mr. Harrington) had borne in that room more than once in favor of Europeans, and he was quite ready to repeat all that he had stated on the occasions alluded to. He said now, as he said then, that, if the Council had to consider the European population alone, no such Section as that under consideration could have been proposed for their adoption, because a Disarming Act for India would not have been necessary. He freely admitted that Europeans as a class might safely be entrusted with the possession and use of arms of all kinds, and to any extent, without any regulation, though there were not a few individuals belonging to that section of the community who must be regarded as exceptions, and the number of such men was no doubt increasing rapidly and largely. It seemed to be thought that he (Mr. Harrington) was opposed to

the settlement of Europeans in the interior of the country, and that he was actuated by a feeling of hostility towards them as a class. In his speeches in that Chamber he was not in the habit of interlarding what he said with remarks about the advantages to the country of European skill, European science, European residence, and European capital. It was, he thought, a self-evident proposition, and it must be patent to every one that the utmost benefit in every way could not but result both to the Government and to the country, to India and to England, from a large settlement of respectable Europeans in the country, whether as Indigo Planters, Merchants, traders, or landholders. They could not have too many. No one could be more sensible of this than he was. He always rejoiced when he heard of a European buying an estate in the interior of the country, because he felt that, in the management of the property, he would exercise a powerful influence for good on all around him, and would set an example to his native neighbors, which they would do well to follow. He felt that he could safely appeal to a long official career in the interior of the country in confirmation of the assertion that he had always given to the European settlers in his district all the support in his power, consistently with his duty to the district at large as an Officer of Government. But what were they now asked to do? A law of a general nature was required—a law intended for the whole country—and they were called upon to exempt Europeans by express words from the operation of an important Section, not because the particular Section would expose Europeans to any real or practical inconvenience, or because it would interfere with their possession or use of such arms as they might require for self-defence, or for any other purpose,—for nobody supposed that this would be the effect of the Section—but simply because the persons in whose favor the exemption was claimed were Europeans. He could not bring himself to consent to so invidious an exemption, and he

Mr. Harrington

did not think that it should have been asked for. On this point he agreed in much that had been said on a former occasion by the Right Honorable gentleman opposite, and in what had just fallen from the Honorable Member of Council on his left (Sir Bartle Frere.) The subject now under consideration naturally took them back to the legislation of 1857. No such exemption as that now claimed was then asked for when special reasons might possibly have existed, looking to the then state of the country, for granting it; but as he had already remarked, the Legislature of that day, after, no doubt, very full consideration, did not feel themselves justified in introducing words into the law which would have had the effect of absolutely exempting a particular class from its operation. Those who now advocated such exemption had made no attempt to show that the circumstances of the country had altered since 1857, so as to render that justifiable and proper now which was not considered justifiable and proper then, and unless some good and sufficient reason could be shown for legislating in the year 1861 in a different spirit and on a different principle from what was followed in the legislation of 1857, he for one must regard the principle observed in that legislation as still binding upon the Council. But let them look at the difficulties into which they would be drawn if they adopted that part of the proposed Section which he was now considering. The exemption asked for was to be in favor not only of Europeans and Americans, but also of Eurasians. Now he willingly admitted that the Eurasians, as a class, were a highly respectable body of men. Some of the best servants of Government were persons of that class. But what was the case when they went low down in the scale. Did they not find men there of mixed blood who could have no more claim to any exemption under this Bill than the same class of natives? Many Eurasians were Mahomedans; and why was a Mahomedan-Eurasian to enjoy an exemption by express words from a general

law which they refused to give to a Mahomedan or Hindoo gentleman of pure Asiatic extraction? He did not think that they could consistently do so.

The only other remark which he would make on the part of the Section which he was now discussing was that he rejoiced to find that the classes who were chiefly interested in that part of the Section, had really suffered no injury in consequence of the Honorable and learned Judge on his left (Sir Mordaunt Wells) not having seen, at the time he addressed them on Saturday last, the reports of the Honorable the Lieutenant-Governor of the North-Western Provinces and of the Officers subordinate to him on Act XXVIII of 1857, to which he had so frequently referred in the course of the speech which they had to-day heard from the Honorable and learned Judge. When he (Mr. Harington) discovered that the Honorable and learned Vice-President and the Honorable and learned Judge on his left (Sir Mordaunt Wells) had not read those reports and were not indeed aware of their existence, he really feared that the cause which had been so warmly and heartily espoused and eloquently advocated by the Honorable and learned Judge, might have suffered from the omission of any mention of the Reports in question in the Report of the Select Committee on the Bill, which he regretted as much as any body could; but all who had heard the Honorable and learned Judge's speech that day must feel that the omission alluded to, so far from having been productive of injury to the European cause, had given the Honorable and learned Judge an opportunity of reiterating in even stronger language than he had first used the claims of that class to the exemption to which he considered them entitled, of which he had fully availed himself, and which he might not otherwise have enjoyed. Though the omission complained of could not be defended on that ground, it had really proved beneficial rather than injurious to the European community in the opportunity that had grown out of it of further discussing

their title to exemption from a part of the present Bill.

Passing on to the first question, he observed that the Honorable and learned Judge on his left (Sir Mordaunt Wells) had distinctly told them at the commencement of the speech, which they had just heard from him, that he had read the whole of the papers connected with the Arms Bill which were sent to his house, including the statement of objects and reasons which he (Mr. Harington) circulated with the Bill after the first reading. That statement was lying before him, and he found in it the following remark:—

“The grounds upon which it is deemed desirable that the Act (meaning Act XXVIII of 1857) should be made perpetual are, that it is calculated materially to repress crimes attended with violence, and to contribute generally to the maintenance of the public peace.”

The crimes alluded to were obviously social, not political crimes, and the public peace intended was clearly the peace of the district quoad such crimes, and not political offences; and yet within a few hours, after reading the statement containing the remarks which he had just quoted, the Honorable and learned Judge mentioned more than once, and the same observation had fallen from the Chair, that this Council had never been told that the present Bill was really a Police as well as a State Bill, and that it had always been treated as a Political Bill only. He (Mr. Harington) made this remark merely to show how little attention was paid to reports or statements prepared and circulated in accordance with the Standing Orders of the Council, and he believed that it was owing very much to this circumstance that those reports and statements had become so brief, and that, comparatively, so little trouble was taken in their preparation.

The Honorable and learned Judge had laid much stress upon the fact, that in the statement of objects and reasons circulated with the present Bill, he (Mr. Harington) had declared that, so far as he was aware, Act XXVIII of 1857 had worked well, that no modifications

had been proposed, and that none seemed to him to be called for, and he had contrasted this declaration with the important alterations in the Act which were now proposed by the Select Committee, of which he (Mr. Harington) was a Member. No doubt he (Mr. Harington) had made the declaration to which the Honorable and learned Judge had so pointedly alluded. At the time he expressed himself to the effect therein mentioned, he firmly believed that Act XXVIII of 1857 had worked well, and it was a fact that at that time no modifications of the law had been proposed to him from any quarter, nor had any alterations, which might be regarded as improvements, occurred to him; consequently all that he asked the Council to do, was to make Act XXVIII of 1857 perpetual. It was in the debate on the motion for the second reading of the Bill that objections were for the first time taken, so far as he (Mr. Harington) knew, to the manner in which Act XXVIII of 1857 had been carried out in some parts of the country. The first attack made upon the working of the Bill proceeded from the Honorable Member for Bengal. The Honorable Member read to them an extract from a newspaper published at Allahabad, in which it was stated "that the Act was made a pretext for the grossest cruelty and extortion, and that deeds were daily committed in the name of the British Government, which would be sufficient to render any Government detested—that it was scarcely necessary to add that these deeds were committed by native subordinates, and in violation, not in aid, of their duty—that it was one thing to take arms wherever they could be found, by the fair exercise of authority, but it was quite another thing to extort them by the most brutal means from the poor and inoffensive, and to allow the rich to retain them for the next opportunity that might arise for their use." The Honorable Member for Bengal added that he had heard from other sources that the general seizure of arms was attempted to be enforced by violence, which the law, as he understood, did not countenance. The late

Mr. Harington

Honorable Member for Bombay, of whose death they must all have heard with regret, followed on the same side. He declared that

"he had heard, and from authority he could not question, that the powers created by the 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 stringent provisions to restrain such abuses."

At the time this discussion took place, he (Mr. Harington) had the honor of being a Member of the Executive Government, and he was able in that capacity to assure the Council, in reference to what had fallen from the Honorable Members for Bengal and Bombay, 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 he mentioned that it was only a short time before 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 had been administered to all concerned. Subsequent enquiries, and particularly what he (Mr. Harington) heard from the Right Honorable gentleman opposite on his return from the Upper Provinces, led him to think that it was not desirable to continue in the new Bill the general power of searching for arms contained in Act XXVIII of 1857, and the Honorable Member for Bengal concurring with him, they proposed the omission of the Sections relating to the search of houses, but as they considered that some compensating Section would be necessary to render the Bill effectual, they prepared the Section requiring that no person should carry arms without a license, unless he was specially exempted, and proposing a penalty for any violation of this provision. He had now explained the circumstances under which his opinion as to Act XXVIII of 1857, as declared in the statement of objects and reasons which had been referred to by the Honorable and

learned Judge, had undergone a change since that statement was drawn up, and he hoped he had said enough to satisfy the Committee that there were some grounds for the modification of the views originally entertained by him. The Honorable and learned Judge complained of his (Mr. Harington's) acting upon private communications respecting legislative matters, which he thought no Member of this Council ought to receive, or at least that, when they did receive them, they ought not to be influenced by them; and he informed them what was his practice when any letters were addressed to him as a Judge of the Supreme Court regarding any matter pending judicially before the Court. The Honorable and learned Judge told them that he at once tore up such letters and threw them away. He (Mr. Harington) thought the Honorable and learned Judge was quite right in thus treating communications of the nature of those to which he had just referred. In fact, he (Mr. Harington) must express great surprise that any person should dare privately to address the Honorable and learned Judge in respect to any matter pending in the Supreme Court. But surely there was all the difference in the world between letters addressed to the Honorable and learned Judge, as a Judge of the Supreme Court, trying to some influence him in respect to some matter within his judicial cognizance, and letters addressed to Members of this Council, informing them how particular laws were working, suggesting alterations in the law, or proposing new laws, or giving information perfectly lawful and unobjectionable in its nature, and calculated materially to assist the Members of this Council in discharging their important duties. He could see no objection to any Honorable Member receiving communications of this kind. He did not deny that he carried on a very large correspondence with gentlemen in the North-Western Provinces on subjects connected with his office. He wrote freely to the Honorable the Lieutenant-Governor, both privately and officially, on such subjects, and he often had com-

munications, both verbal and written, with native gentlemen, and he could truly say that he had derived most useful information in this way, which he hoped he had been able to turn to good account in his capacity of a Member of this Council. But, strange to say, while the Honorable and learned Judge complained of his (Mr. Harington's) receiving and acting upon private communications, he told them almost in the same breath that he had heard things outside of that Chamber which had satisfied him that the reports which had reached him (Mr. Harington) as to the working of Act XXVIII of 1857, were exaggerated or unfounded—was this, he would ask, altogether consistent?

The Honorable and learned Judge had made allusion in his speech to his (Mr. Harington's) limited powers or limited action in that Council. He would feel obliged if the Honorable and learned Judge would explain what he meant by that allusion, which he (Mr. Harington) found it difficult to understand.

SIR MORDAUNT WELLS said, his Honorable friend himself had propounded a theory regarding the powers of Legislative Councillors. What he (Sir Mordaunt Wells) had meant to say was that we were not here as journeymen conveyancers, or Bengallee clerks, ready to do any particular work requiring to be carried out.

MR. HARINGTON resumed. He begged to thank the Honorable and learned Judge for the explanation which he had been good enough to give of the remark which he had quoted from his speech, and to express his satisfaction that the Honorable and learned Judge did not intend to charge him with acting in this matter at variance with the views which he entertained at heart. The words used by the Honorable and learned Judge certainly seemed to imply that he (Mr. Harington) was acting under some external influence, under the pressure of some force from without, and not in accordance with his own convictions, and he was glad to be assured by the Honorable and learned Judge that this was not what

he meant. He (Mr. Harington) did not wish now to discuss the question as to the powers of the Members of this Council as regarded either originating laws or any other matter. He entertained no doubt whatever, and he expressed himself to that effect on a former occasion, that it was open to every Member of this Council to bring in any law he pleased, whether the law originated with himself, or whether it emanated from some other quarter. It was also beyond doubt that every Member was at liberty to vote just as he thought proper, and that it mattered not whether the measure on which he was called upon to give his vote was a Government measure, that was a measure introduced at the instance of the Executive Government, or not. In either case perfect freedom of action was left to every Member. But at the same time he must say there were some Bills which he thought ought not to be introduced into this Council by any Member without previous communication with the Executive Government who, after all, were responsible for the Government of the country. He regarded the Bill before the Council as in point. Had that Bill been sent to him by the Government which he had the honor to represent, for the purpose of being introduced into the Council, looking to its character, as he had formerly stated, he should certainly have considered it his duty to communicate with the Members of the Executive Government either in this Chamber or elsewhere, before moving the first reading of the Bill. This was of course a matter of opinion, and he might also say of discretion. Certainly he found nothing in the Act of Parliament which constituted this Legislature, repugnant to the views which he had just expressed. He might add that the Standing Orders made no provision for Bills being transmitted by the local Governments, which desired that they should be introduced, to the representative Members of such Governments. Those Orders required that the Bills should be sent to the Clerk of the Council, by whom they were reported to the Council at

Mr. Harington

large, before any action could be taken upon them, and he was not sure that this was not also what was intended as regarded all communications from the local Governments to the Council, though there was undoubtedly a great convenience in direct communications between the local Governments and their representative Members, which he should be extremely sorry to see interfered with, or put a stop to. The Honorable and learned Judge seemed to be surprised that he (Mr. Harington), being the representative Member in this Council of the Government of the North-Western Provinces, should be expressing views in the Council on the Bill now under consideration, in opposition to the views of the Government which he represented, and other Officers of that Government; but though he must always respect every thing that emanated from the Honorable the Lieutenant-Governor of the North-Western Provinces, and he hoped he should always be found to show the utmost deference and respect, and to give the greatest consideration and attention to all suggestions and instructions that he might receive from the Lieutenant-Governor, he did not understand that he was in that Council to represent the individual views of the Lieutenant-Governor of the North-Western Provinces, or to advocate those views when they were opposed to his own. No doubt he received his appointment from the Government of the North-Western Provinces, but from the time that appointment was made, he became a Member of the Council of the Governor-General of India for the purpose of making laws, not for the North-Western Provinces alone, but for all India; and his duty was to consider the interests of all India, not of any particular part of it, though the quarter which he represented must be considered to have special claims upon him, which he hoped he should always be found ready to acknowledge. He believed he had rightly described the position of a representative Member of this Council. This brought him to the reports received from the Honorable

the Lieutenant-Governor of the North-Western Provinces in the Bill before the Council. Those reports had been remarked upon by the Honorable Members for Madras and Bengal. It was not his intention to go into them in detail. But he must say that two things in those reports had caused him considerable surprise. The first was the opinion which had been expressed as to the inadequacy of Act XXVIII of 1857 to effect the object which the Legislature had in view when it passed that Act. The second was the opinion expressed by some Officers, that the North-Western Provinces had not as yet been half disarmed. He would ask Honorable Members carefully to study Act XXVIII of 1857, to consider that, at the time that Act was passed, there was certainly no disposition to pass a mild law, or a law that would be found powerless to accomplish the object aimed at, but just the contrary; to recollect that, in passing Act XXVIII of 1857, the Council had the aid of the Honorable and learned Chairman; and then to say whether a more stringent law could properly be passed by the Council. No doubt it might appear a bold thing for him, sitting in that room, to express a doubt as to the accuracy of the belief entertained by Officers on the spot in respect to the extent to which the disarming of the population in the North-Western Provinces had been carried out under Act XXVIII of 1857. Had the opinions to which he had referred been based upon facts, he did not think that he should have ventured to question their correctness. But this was not the case. It was assumed that, wherever there was a certain amount of male adults, there must be a certain number of lethal weapons, and if that number was not produced, it was held, without further proof, that the place had not been disarmed. It certainly appeared to him (Mr. Harington) that this might prove a very unsafe test, and that it was not a criterion which this Council could accept as the basis of more stringent legislation. Looking to the vigorous man-

ner in which the search for arms had been carried on under the orders of the Honorable the Lieutenant-Governor of the North-Western Provinces, who had taken a deep interest in the matter, feeling the importance of the work and the advantages which might be expected to result socially and politically from its successful prosecution, and looking, moreover, to the fact, that not only had all the stringent provisions of Act XXVIII of 1857 been called into operation for the purpose of carrying out effectually the provisions of that Act, but that, as seemed to be admitted by one Magistrate at least, Mr. Mayne, much more had been done than was warranted by law, he (Mr. Harington) could not help thinking that the Officers of the North-Western Provinces had not done themselves justice in reporting that comparatively so little had been done and that so much yet remained to be effected in the way of disarming the population of the country to which their remarks applied.

SIR MORDAUNT WELLS said that, as the Honorable Member for the North-Western Provinces had stated that those Provinces had been disarmed, he (Sir Mordaunt Wells) would read as follows what Mr. Ross, the Officiating Commissioner of Agra, had said on the subject :—

"It has been found most difficult in all parts of the North-Western Provinces, even with the severe penalties attached to the proved concealment of arms; and in many parts of every district it may be inferred with certainty, from the small number of arms surrendered, that the inhabitants have successfully concealed a large portion of their arms, and yet until such concealed arms are discovered, no punishment can be awarded."

The consideration of the Section was then postponed till to-morrow; the consideration of the remainder of the Bill being resumed after the consideration of the Income Tax Bill.

The Council then resumed its sitting.

The Council adjourned at 10 o'clock, on the Motion of Sir Bartle Frere, till to-morrow morning, at 7 o'clock.