

Saturday, 14th July, 1860

PROCEEDINGS

OF THE

**LEGISLATIVE COUNCIL OF
INDIA**

Vol. VI

(1860)

enable the Government, wherever they thought necessary, to appoint Military Officers and other Europeans, besides Deputy Collectors, to act as assessors.

Sections XCIV and XCV were transposed so as to stand after Section LXIII.

Mr. WILSON moved the omission of Rule 35 of Section XCVII as being already provided for by Rules 31 and 32 of the same Section.

Agreed to.

Section CCXVIII was passed after a verbal amendment.

Sections CCXIX and CCXX were passed after amendments, the effect of which was to increase the penalty for wilfully neglecting or refusing to deliver lists, returns, &c.

Section CXXI (which proposed to authorize the Collector or Commissioners to settle differences between parties respecting deductions to be made on account of Duties) was omitted on the Motion of Sir Barnes Peacock, who thought that parties should be left to settle such matters between themselves.

Mr. WILSON then moved that the Bill be reprinted as amended.

Agreed to.

The consideration of the Bill was adjourned 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.

Thursday, July 12, 1860.

No Member of the Council was this day present.

Saturday, July 14, 1860.

PRESENT:

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

Hon'ble Sir H. B. E.	H. Forbes, Esq.,
Frere,	A. Sconce, Esq.,
Right Hon'ble J. Wil-	and
son,	Hon'ble Sir M. L.
H. B. Harington, Esq.,	Wells.

PUBLIC CONVEYANCES.

THE CLERK presented a Petition from the Inhabitants of Calcutta

concerning the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

MR. S'CONCE moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

INCOME TAX.

THE CLERK also presented a Petition from Proprietors of permanently settled estates in Bengal, Behar and Orissa, against the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices."

PAPER CURRENCY.

THE CLERK reported to the Council that he had received, by transfer from the Financial Department, a copy of a Despatch from the Secretary of State, on the subject of the introduction of a Paper Currency for India.

Mr. WILSON moved that the above communication be printed.

Agreed to.

DEBTORS AND CREDITORS.

The Order of the Day being read for the second reading of the Bill "for facilitating arrangements between Debtors and Creditors"—

SIR MORDAUNT WELLS said, he had already so fully explained the objects of this Bill, that he would not trouble the Council with any further observations in respect to it. He would only mention that the Bill, as it now stood, applied only to Bengal; and as he thought it desirable that its provisions should be extended to the other Presidencies also, he proposed, before moving the second reading of the Bill, that the words "at Fort St. George or at Bombay" be inserted after the word "Bengal," in the 10th line of Section I.

THE VICE-PRESIDENT, in putting the question, said that he thought it very desirable that the other Presidencies should have the benefit of

this law, or that at least they should be allowed an opportunity of expressing their views on the subject. The addition of the words proposed, before the second reading, would obviate the necessity hereafter of a republication of the Bill.

The Motion was put and carried.

SIR MORDAUNT WELLS then moved that the Bill be read a second time.

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

ARMS AND AMMUNITION.

The Order of the Day being read for the third reading of the Bill "relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases"—

SIR BARTLE FRERE moved that the Bill be re-committed to a Committee of the whole Council, to enable him to propose the introduction of a Clause relative to the duration of the Act.

THE VICE-PRESIDENT supported the motion, by saying that he also had some amendments to propose in the Bill.

The Motion was carried, and the Council accordingly resolved itself into a Committee for the further consideration of the Bill.

Several trifling amendments were made in Sections VII, VIII, IX, X, and XVIII.

In Section XXI, the word "lead" was inserted after the words "Military Stores" (on the motion of the Chairman) in consequence of a doubt that had arisen on the part of the Government of Bombay as to whether they had the power, under Act XXVIII of 1857, of prohibiting the transport of that article.

THE CHAIRMAN moved the introduction of the following new Section after Section XXII, which prescribed the penalty for prohibited transport :—

"Nothing in the last two preceding Sections shall extend to arms, percussion-caps, gunpowder, and other ammunition transported by any person in reasonable quantities for his

own private use in any District or place not ordered or liable to be disarmed under Section XXXII of this Act."

Agreed to.

Section XXIX was passed after an amendment, (on the motion of the Chairman,) requiring a specification in the license of not only "the number of the followers" of a person licensed to carry arms, but also "the number and description of arms to be carried by each of such followers."

THE CHAIRMAN thought that it was of great importance that the Council should understand what was meant by the words "without danger to the public peace" in Section XXX. Was it meant that a person might be disarmed in consequence of some overt act which he might commit, or because he might be considered a dangerous subject on account of his belonging to a particular class? Now, a definition was given by Section XXIV, which authorized a Magistrate or other officer to disarm a person going armed or carrying arms, "if, in the judgment of such Magistrate or other officer as aforesaid, it is dangerous to the public peace to allow such person to go armed or to carry arms." But what he wished to know was whether the words "dangerous to the public peace" meant a drunken man going armed, or a man who committed some overt act, or whether they referred to a person belonging to a class which the Magistrate considered disloyal. If the Section applied to individuals only who might be guilty of some overt act, the question arose whether, under the exemptions contained in Section XXVI, Police and Revenue Officers were to be allowed to go armed, though they might be dangerous subjects. It appeared to him that the Bill was not intended for the purpose of disarming a drunken soldier or sailor, nor with reference to any overt act committed by individuals, but with reference to classes. Seeing therefore that an exemption had been made in favor of classes, he saw no reason why a similar exemption should not be made in favor of Europeans, Americans, and Eurasians. But, as his view of the case might not be

correct, he begged to know what was meant by the words in question.

SIR BARTLE FRERE explained that, under the general Regulations, ample powers were given to the executive authorities to disarm any person under such circumstances as those referred to by the Honorable and learned Chairman. The object of the exemption was merely to save the trouble and inconvenience which were likely to arise if any restrictions were placed on classes who were obliged to carry arms in discharge of their duties, by order of their superiors. If any such Officer were to be found making an improper use of his arms, the Magistrate had the power, without waiting for orders, to disarm him at once. He (Sir Bartle Frere) did not think that any sane Magistrate would stand by and look on quietly at a Police or Revenue Officer committing an assault on a person with either his sword or his gun.

SIR MORDAUNT WELLS said that he, as a lawyer and a judge, was quite satisfied that the general law of the land was sufficient to provide for the cases referred to, and that the Police had full power to disarm all persons dangerous to the public peace. That being the case, he liked to know what necessity there was for passing another law, when the present law was strong enough and fully answered the purpose for which it was intended, as the Honorable Member of Government (Sir Bartle Frere) had himself admitted. This appeared to him (Sir Mordaunt Wells) another strong objection to the proposed measure, namely, that it was interfering with the general law, and was therefore perfectly useless. It was therefore his intention to propose a clause, the effect of which would be to exempt Europeans as a body, and to impose on the Executive Government the necessity of singling out those Europeans whom they considered unfit to be trusted with arms.

THE CHAIRMAN said, he was not sure that the Honorable Members, who voted the other day against his motion for the exemption of Europeans, did not do so on the

ground that the exemption would include individuals who might be considered dangerous in consequence of some overt act. But as it appeared that the general law was sufficient to guard against acts committed by individuals, and in order to allow Honorable Members the opportunity of correcting a mistake into which they might have fallen, he would move again the introduction of the words "Europeans, Americans, and Eurasians" in the exempting Section XXVI. He saw no reason why these classes should not be exempted when Police and Revenue Officers, Soldiers and Sailors, members of Volunteer Corps, and others were to be exempted. Was it because the Government were afraid of giving offence to the Natives that objection was made to the exemption of Europeans?

SIR BARTLE FRERE said, he was not going to re-open this discussion, but he must protest against the inference of the Honorable and learned Chairman that the Government had been induced to oppose the exemption of Europeans, Americans, and Eurasians, because they were afraid to give offence to the Natives. The exemption of soldiers, sailors, &c., from the necessity of taking out a license was a pure matter of convenience. If there was any objection to the exemption, let it be omitted.

SIR MORDAUNT WELLS was astonished to hear that a Government, which intended to make every loyal man a special constable, would require him to take out a license before he was made one. He thought it most extraordinary that the Government should tell them that, when their services were required to assist the State in the event of an exigency, they would then be exempted; otherwise they would have to go to a Magistrate and ask him for a license. Government would entrust them during such an emergency, but not at other times. It was like telling them—"We have no doubt of your loyalty, and we are quite convinced that you would not make an improper use of your arms; but we cannot help it; we are obliged to do it, as it would be invidious to make a distinction between you and the

Natives; you ought therefore to submit to it patiently."

MR. HARRINGTON said, in rising to address the Council at this time it was not his purpose to go into the much vexed question, as to whether Europeans and some other classes should be exempted, by express words, from the operation of the Section to which the Committee had gone back. He considered that question to have been finally determined in the negative, and he was not prepared to re-open it, or to give a different vote to-day from that which he had formerly given. But he must observe that the classes specially mentioned in Section XXVI did not stand on the same footing as the classes now proposed to be exempted. They were public Officers, and were required to carry arms in the execution of their duty. As regarded the difficulties into which the Honorable and learned Judge (Sir Mordaunt Wells) thought they would be led if they did not grant the exemption advocated by him, he (Mr. Harrington) would content himself with opposing to what had been said on this subject the experience of the period during which the present law had been in force. In that interval, so far as he was aware, no such inconvenience or difficulty as that anticipated had been experienced.

MR. SCONCE said, it seemed to him that there was a material difference between Section XXIV and Section XXXI. Section XXXI was a general disarming Section, and was to be put in force in whatever place it might be proclaimed or where disarming was already in operation, and any person might be disarmed without reference to his being a dangerous person or not. Section XXIV, however, was altogether of a different character. According to that Section any person who had a license, whether he was a dangerous person or not, could not be disarmed. If he had no license, and it was considered that his possession of arms was dangerous to the public peace, he might be disarmed. He (Mr. Sconce) therefore thought that any Magistrate, before he disarmed a European who had not taken out a license, could not do so, unless he was able to say that

Sir Mordaunt Wells

the party was endangering the public safety. If the Magistrate disarmed a European without knowing or without being satisfied that he was a dangerous subject, he did so at his own peril. Section XXXI, however, as he had already stated, was a general disarming Section, and he was opposed to it altogether. The principle of this Section was wholly inapplicable to Europeans whose loyalty was not to be suspected. He thought it necessary to explain this distinction between the two Sections, to account for the difference between the vote which he gave on the last occasion with respect to Section XXXI, and the vote which he intended to give on the present occasion with respect to Section XXIV.

SIR BARTLE FRERE said that, as to danger to the public peace, you must leave it to the discretion of the Magistrate to judge whether individuals or classes were dangerous or not. Every Magistrate must judge for himself. He was not prepared to say that, if a Magistrate founded his judgment on the class to which a man might belong, he would exercise an unwise or unconscientious discretion.

SIR MORDAUNT WELLS asked if it was intended by this Bill to entrust a Magistrate of seven and eight years' standing in an Indigo district with the power of deciding whether or not the planters residing there were dangerous men, and to leave them disarmed and helpless, a small scattered body, in the midst of hundreds and thousands of people hostile to them. If so, he thought that the consequences would be most fearful. A Magistrate might entertain strong prejudices against European planters, and might avail himself of the power conferred on him by this Act by disarming them, whether they were dangerous subjects or not. If, however, the power was not contemplated to be put in force against Europeans, why then arm the Magistrate with a discretion to do what you do not intend him to do? Was it not better therefore to leave him to the general law which empowered him to disarm any individual who, by his conduct, had shown himself dangerous to the public peace?

SIR BARTLE FRERE could only say that, in such a case as that supposed by the Honorable and learned Judge, the Government would in all probability immediately remove the Magistrate, and it would, he thought be a question whether such a man ought not immediately to be sent to the Lunatic Asylum.

MR. WILSON said, there appeared to be some misapprehension with regard to this matter. The difficulty, he thought, had arisen by the omission of Section XXIV of the Bill as amended by the Select Committee, and the substitution of quite a different Section. Now, what was Clause 24 which had been struck out? [Mr. Wilson here read the Section.] This Clause, he went on to say, made no distinction between a person who was dangerous to the public peace, and a person who was not. But it absolutely laid down that no person whatever should carry arms without a license. It then stated that, if any person carried arms without a license, he was liable to be punished with a fine not exceeding one hundred Rupees. And then it further went on to say that any person, whether dangerous or not, carrying arms without a license, might be disarmed. That being so, it became necessary to make an exemption in favor of those persons who must necessarily, in the performance of their duty, carry arms. But the instant you struck that Clause out, and adopted a Clause totally different in its character, providing that no person should be allowed to go armed if, in the judgment of the Magistrate, it was considered dangerous to the public peace, the exemption became unnecessary. As to whether the words "dangerous to the public peace" were applicable to classes or to individuals, he (Mr. Wilson) should say to both, according to the discretion of the disarming officer. A person would not be disarmed, unless he was considered dangerous to the public peace. He (Mr. Wilson) remembered a remark made by his Honorable and learned friend (Sir Mordaunt Wells) that this Clause was the kernel of the Act of 1857. The Clause was adopted

on the suggestion of his Honorable and learned friend, so that, after having adopted it, the retention of the exempting Clause became unnecessary, and he (Mr. Wilson) had no objection whatever to see it omitted.

SIR MORDAUNT WELLS begged to remind his Right Honorable friend that, after he had voted in favor of the Clause referred to, a new state of circumstances had arisen. He would repeat that, at the time he said that he was quite willing to accept the Act of 1857, he had not seen the opinions expressed by the Lieutenant-Governor of the North-Western Provinces and the several Officers there, who strongly urged the necessity of exempting Europeans. The moment he saw those papers, he felt it his duty to declare at once his determination of taking his stand on that recorded evidence.

MR. WILSON said, he did not wish, by anything he had said, to bind his Honorable and learned friend to any opinion previously expressed by him. What he (Mr. Wilson) had mentioned had all come from him only by way of explanation. He thought that every gentleman had a perfect right to change his mind as often as he pleased. He would only add, however, that Section XXIV had nothing whatever to do with the North-Western Provinces, as the districts in those Provinces were proclaimed districts, and he considered them altogether exceptional.

MR. HARRINGTON said, the Honorable and learned Judge (Sir Mordaunt Wells) had alluded to the reports on this Bill which had been received from the North-Western Provinces, and had stated that all the Magistrates whose signatures were attached to those reports had given it as their opinion that Europeans should be expressly exempted from the operation of the Bill. But this was scarcely a strictly accurate account of the reports in question, for, on looking over those reports, he (Mr. Harrington) found that of twenty-one officers whose opinions were expressed therein, fifteen had given no opinion of the nature mentioned. No doubt, amongst the officers who had the highest exempt Europeans was the highest

authority in the North-Western Provinces, whose opinion was unquestionably entitled to the greatest respect, and must always carry great weight; but he (Mr. Harington) could not overlook the fact that the Governments of Madras, Bombay, and Bengal had not recommended any exemption in favor of Europeans, and although the present Act contained no such exemption, he had never heard that that Act had been objected to on the ground of this omission either in this country or by the authorities at home; and he thought that what he had just mentioned was deserving of consideration. He might also observe, that amongst the officers who had given no opinion in favor of the exemption of Europeans were two of the very Commissioners whose reports the Honorable and learned Judge had specially alluded to on a former occasion, namely, the Commissioners of Meerut and Agra.

SIR MORDAUNT WELLS said, his Honorable friend appeared to forget that the officers in the North-Western Provinces had not been specially called upon for a report, as to whether Europeans should or should not be exempted from the operation of the Bill, or from any part of it. The opinions had been expressed spontaneously, and there was not one of those officers who said that Europeans ought to be included.

MR. HARINGTON admitted that such was the case, but he went on to say that the officers who had given no opinion in favor of the exemption of Europeans had the same opportunity of expressing such opinion as the few officers who had expressly declared their opinion that Europeans should be exempted. He would remind the Honorable and learned Judge that his predecessor in this Council had distinctly raised the question of the exemption of Europeans in the debate on the motion for the second reading of the Bill. What was said by the Honorable and learned Judge on that occasion was known to all the country, and every officer who felt so disposed had every opportunity of expressing an opinion on the subject.

Mr. Harington

THE CHAIRMAN said, it appeared to him that considerable difficulty would arise if we were now to omit the exempting Clause, as it would be giving great powers to Magistrates. If a Magistrate had the power of disarming every person (no matter if he were a Civilian or a Military man) whom he considered dangerous to the public peace, he might disarm a whole Military Police Battalion of a district. During the mutiny in 1857, it was considered necessary to disarm every sepoy at Barrackpore, but surely such a power should not be vested in a Magistrate, which would be the case if the exemption Clause proposed to be struck out were omitted. The Magistrate might say that he would take away their arms, not because they had committed any overt act, but because he knew they belonged to a particular class against whom he entertained strong suspicions. It appeared to him (the Chairman) that larger powers were proposed to be invested in a Police Commissioner or a Magistrate than could be exercised by a Commissioner of a Province without the sanction of the Governor-General. If he (the Chairman) were a Magistrate in certain districts, he might consider it dangerous to the public peace to allow any Natives to be armed, whilst the Magistrate of the adjoining district might be of a very different opinion. What a scene would there not be if such a state of things were allowed to occur? One could hardly believe that a Magistrate could be invested with such a power as to give a license to whom he pleased, to exempt whom he pleased from the Act, and to disarm troops of the Military Police. Was the Council prepared to sanction such a power without an appeal to any one? If they were, they would be taking upon themselves a heavier responsibility than he was willing to do. Then, again, if it were to be said that it was necessary that Police and Revenue Officers should be exempted, he (the Chairman) would say that as great a necessity existed for the exemption of Europeans. It was said, however, that, although the

Magistrates were to be invested with such powers, they would not exercise them. But was it fair or proper to give Magistrates extraordinary powers, and at the same time to expect them not to exercise them—to tell a Magistrate to exercise his own judgment, and if he acted upon that judgment, to tell him that he had done wrong—to give a Magistrate the power to act according to his judgment and then to dismiss or remove him for the manner in which he might exercise it? If Section XXIV applied only to individuals who might be guilty of acts of violence, the Section was not necessary, for under the existing law the Magistrate might apprehend any person who was about to use arms in breach of the public peace. If it did apply to individuals not to a particular class, then, if a man were to run wild with a sword or pistol in his hand, or to run after his wife to shoot her, the Magistrate could not disarm him under this Act if he happened to be a soldier or a Police officer. He (the Chairman) had stated in an earlier stage of the debate that, as some Honourable Members might have voted against him on the last occasion under the misapprehension that the words “dangerous to the public peace” applied merely to individuals and not to classes, he would again move his original amendment that Europeans, Americans, and Eurasians be exempted. The Motion being put, the Council divided:—

Ayes 2.

Sir Mordaunt Wells.
The Chairman.

Noes 7.

Mr. Seonoe.
Mr. Forbes.
Mr. Harrington.
Mr. Wilson.
Sir Bartle Frere.

So the Motion was negatived.
Section XXX was then passed after some verbal amendments.

After some trifling amendments in Clauses 1 and 2 of Section XXXI—

Mr. HARRINGTON moved the introduction of the following after Clause 2:—

“Licenses to have in possession any arms of the description mentioned in Section VI, or

percussion caps, sulphur, gunpowder or other ammunition may be granted by any Magistrate or other Officer specially authorized by the Governor-General of India in Council or the local Government to grant such licenses, and may be revoked or suspended by any officer authorized to grant such licenses whenever he may think fit. The license shall be in the form prescribed by the Governor-General of India in Council, or by the local Government”

Agreed to.

THE CHAIRMAN then moved that Section XXV, relating to licenses to travellers to carry arms, be transposed so as to stand after the above Clause.

Agreed to.

THE CHAIRMAN said, he would now call the attention of the Council as to the effect of Section XXXI. As it now stood, any person travelling on the Grand Trunk Road through any of the districts of the North-Western Provinces which had been ordered to be disarmed, who might happen to carry a revolver in his carriage, was liable to be disarmed if he had no license, and sentenced to two years' imprisonment, with or without hard labor, and also to a fine of 1,000 Rupees. Unless some exemption was made, there would be no escaping the penalty.

SIR MORDAUNT WELLS said, he thought that his amendment would meet the case supposed by the Honourable and learned Chairman.

SIR MORDAUNT WELLS' amendment was then read as follows:—

“The provisions of this Section shall not extend to any European, American, or Eurasian, unless the same shall be specially extended to them by Proclamation to be issued by the Governor-General of India in Council, as far as relates to the territories under their respective administration, by the Executive Government of a Presidency, or by a Lieutenant-Governor, or by a Chief or other Commissioner of a Province with the sanction of the Governor-General in Council.”

SIR BARTLE FRERE would only observe that the old objection still remained, namely, that the amendment did not go far enough. He saw no reason why it should stop at the exemption of loyal Europeans, and exclude mention altogether of loyal Natives.

MR. HARRINGTON pointed out that as the Bill would apply to all classes, any inconvenience which would be felt by Europeans and any injustice which would be done to them by the operation of the Clause which had been introduced on the Motion of the Honorable and learned Chairman would be shared in equally by the Natives, and if, by reason of the injustice noticed by the Honorable and learned Chairman as certain to result from the sudden introduction of a law which declared that to be penal and punishable with fine and imprisonment, which before was not so punishable, it was right to exempt Europeans, it must be equally right to exempt all other classes. That which was unjust in the case of Europeans would be equally unjust in the case of the Natives. What had fallen from the Honorable and learned Chairman seemed to furnish a strong argument in favor of omitting the Clause altogether. If, however, it was determined to retain the Clause, he (Mr. Harrington) considered that ample power was given to the local authorities in Clause 6 to exempt all persons who, on whatever ground, might be proper objects of exemption, and preferring the Clause as it stood, he should vote against the proposed amendment of it.

MR. SCONCE said, he would as before support the amendment. The whole of Section XXXI made him wince, and he was opposed to it altogether. As the Honorable Member for the North-Western Provinces had said, the hardship and inconvenience would be equally severe to Europeans and Natives. The penal provision of the Section was of extreme severity, and would enable the executive to scourge the people. He (Mr. Sconce) would rather not have the Section at all. But as that could not be, he accepted the amendment as concerned Europeans.

MR. WILSON said, he thought the inconvenience arose from our having continued the old law in operation and added a new principle to the continuance law. When the Honorable and learned Chairman proposed the amendment which had involved them

into this difficulty, he (Mr. Wilson) supported it, because he considered it was a Bill to meet a great public emergency. No doubt there would be some hardship and inconsistency if they were to apply a new punishment to an old offence. What he would propose therefore to add were words to the effect, that until the 1st of October the penalty Clause of this Section should not be in force. That would afford ample opportunity to people to take out licenses. They would then have all the advantage, and would not be put to any inconvenience. No doubt persons travelling on the Grand Trunk Road would be subject to great inconvenience, but the inconvenience would be as great to Native Princes and others who would also be searched. For instance, the Rajah of Koopertalla, the Rajah of Putteahla, and Scandia, who intended to pay a visit to Calcutta next autumn, would have to undergo the same ordeal—men to whose personal courage and loyalty we were indebted for the fall of Delhi. Supposing they were fined and imprisoned, would it not be just as hard? If we were to make an exemption, we ought to make it general; and if that could not be done, all we could do would be to postpone the operation of the Act for a few months.

THE CHAIRMAN said, he would have no objection at all to postpone the operation of the penalty Clause until persons had time to take out a license. He thought that those persons who in the disarmed districts had given notice of their arms, and who had been allowed to keep them under Act XXVIII of 1857, ought to have notice. Before the provisions of the new Section were extended to the North-Western Provinces, the Act should be published, in order that persons might have notice of it. It would be unfair to subject them to this Section without giving them such notice. If the Right Honorable Gentleman intended to make any motion, he would put it.

MR. WILSON then moved the substitution of "from the 1st day of October 1860" for "from the passing of this Act" in Clause 4.

Agreed to.

SIR MORDAUNT WELLS' amendment was then proposed from the Chair.

THE CHAIRMAN said, he would ask the Council whether, although time was granted for parties to take out licenses, Europeans would have the same facility in obtaining exemptions from the Act, as Native Princes or Rajahs or other Natives of high caste and family would have. There was a great distinction between having to comply with the Act and taking out a license, and obtaining an exemption from the Act. If John Smith or Brown were to go and ask the Government for exemption, he would probably be referred to the Commissioner of Police or the Magistrate. The Government might tell him—"We don't know you; you had better apply to the Commissioner of Police if you want a license;" whereas an exemption would probably be granted in favor of a wealthy Native, or to one of high caste, who might think it derogatory to apply to the Magistrate or Commissioner of Police for a license. It was well known that many natives considered it derogatory to appear even in a Court of Justice. If a respectable European gentleman or Merchant wanted to travel Up-country, he would think it derogatory to have to apply to a Magistrate or to the Commissioner of Police for a license to carry a revolver. It would cast a doubt upon his loyalty to require him to do so. Was it right that we should place him in that humiliating position, when the high caste Native would probably obtain an exemption from the Act.

MR WILSON said, in voting against this amendment, he wished it to be understood that he was not voting for a different issue from that which had already been decided by the Council. The words were only transposed, but they were still the same words. His Honorable and learned friend had spoken of the inconvenience of taking out a license. If it was to be a matter of convenience, he hoped he would not remain in the Council to hear of a distinction being established between loyal Europeans and loyal Natives on such a ground. They

should consider that Natives to a large extent were equally loyal as Europeans. If we were to measure inconvenience by comparative numbers of the two classes, what was the result? The total number of Europeans was much less than the total number of loyal Natives. He could not give his vote to a measure which would once and for ever stamp that Bill with inequality and one-sided legislation. Where were we to draw the line? Should not the Natives lay claim to the same exemptions? Great numbers of them were fully entitled to the same privilege, particularly those who remained loyal under very trying circumstances, and who had proved their loyalty. Were we not to look to the convenience of those people? On whatever side he looked at the question, it seemed to him it would be quite impolitic to make any distinction. He did not for a moment venture to say that Europeans should be deprived of their privileges or their liberty. He claimed to hold as high an opinion of that class as any person could hold; but in passing laws for so many millions, it was impossible we could take into consideration the superiority of any class. He thought it was the duty of the Government to do its best to encourage and promote the advancement in India of European and Anglo-Saxon civilization, and that was his policy. He knew that without Englishmen India would be a wilderness, and were it not for them the country would not be what it was. He would give every encouragement to English settlers and capitalists, as on them depended the prosperity of the country. But at the same time we could not be expected to sacrifice the interests of the Natives for the convenience of Europeans; in providing for the one we should take care that we do not neglect the other.

SIR MORDAUNT WELLS said, he entirely differed from the Right Honorable Member who had now opened the whole question. We could not close our eyes to the fact that, by passing this Act, we were subjecting Europeans to a highly penal Clause. He did not think it was just to subject them to such a Clause as

the one we were now discussing. If a European was proceeding up country from Calcutta, and happened to go through a proclaimed district, was he to be subject to the same laws as the disaffected people in that district? Englishmen ought to be allowed to go to any part of India without being put to the humiliating position of being forced to go and tell the Magistrate of each district that they were loyal subjects, and should be licensed. If it was admitted that Englishmen with their energy and capital had developed the resources of the country, why should we throw any impediment in their way? But the grand argument appeared to be that, as it was impossible to say with certainty, among the mass of Natives, who were loyal and who were not, and although we knew that the Europeans were all loyal, still they were not to be exempted, because forsooth it would be class legislation. We must bear in mind that the Native population of a province had been in arms against Europeans. There was no use of disguising the fact that the struggle was to overthrow the British rule in that Province. He knew that there were many loyal Natives who did not sympathise with that rebellion. He had no objection to the insertion of a Clause exempting loyal Natives. But he had no means of ascertaining all the loyal Natives, though he had it in his power of ascertaining and telling the Council that all Europeans, Americans, and Eurasians were loyal. And was it just or right for the Council to include the Europeans in this enactment? The Executive Government of this country, he thought, could not be in better hands than at present constituted; and he had, as he had already more than once stated, every confidence in that Government. In fact nothing would give him greater pleasure than to see the Executive Government of this country allowed to mature and carry into effect the important measures that were now under their consideration, without that perpetual interference on the part of certain individuals in England, who pretend to so much wisdom on Indian affairs.

Sir Mordaunt Well

The premature discussion in both Houses of Parliament on measures brought forward on the responsibility of the Government of India had had a most pernicious effect both here and in England, and had impeded the action of the Indian Government in carrying out their measures. He humbly thought that the Executive Government was pursuing an impolitic course in seeking to subject Europeans to the provisions of the Bill now under our consideration, and entertaining a strong conviction on the subject, he must persist in his opposition to the Arms Bill in its present form. He passed by a majority of this Council he believed it would subject thousands of loyal Europeans to restrictions and inconveniences from which they were justly entitled to be exempted, considering the position they occupied in this country.

SIR BARTLE FRERE would only ask the Honorable and learned Judge whether, during the two years the Act had been in force, there was a single instance in which Europeans had been put to any practical inconvenience. Under the old Act there was no exemption. What the difficulty really was he (Sir Bartle Frere) did not know. Did the Honorable and learned Judge believe that during a revolt an Englishman would ever be deprived of his arms? If he did, he (Sir Bartle Frere) would at once vote in favor of the motion. The hardship appeared to him to be no more than that in the case of a European, who would be ordered to send his wife and children away in case of a disturbance.

THE CHAIRMAN said, he should certainly have admired the eloquent language of the Right Honorable Member, had he only been consistent, and refused to allow an exemption to any one. But the Right Honorable Member was not satisfied with allowing a Magistrate to grant a license to carry arms, but he had introduced a Section to allow the Magistrate to exempt any one from the Act. If there was no fear that Europeans would in the least be subject to the law, he would ask where was the necessity of extending it to them?

Why not exempt them at once and not subject them to the whim or caprice of a Magistrate. Was it because they were afraid of giving offence to the Natives? If there was to be no inequality, he saw no reason at all why one person should be bound to get a license and another should have the privilege of being exempted by the local Government. If it was impolitic to exclude Europeans, let all classes be dealt with equally; no Native, however high in rank, should be excluded. He ought to be equally bound to take out a license. Clause 4 made a person liable to hard labor for two years. Was it intended that the law should be carried out, or to leave it to the option of the Magistrate to enforce it or not as he pleased? He (the Chairman) would support the motion of his Honorable and learned friend, and if that motion should not be carried, he would propose the omission of Clause 6.

The question being put, the Council divided:—

Ayes 3.
Sir Mordaunt Wells.
Mr. Seance.
The Chairman.

Noes 4.
Mr. Forbes.
Mr. Harrington.
Mr. Wilson.
Sir Bartle Frere.

So the Motion was negatived.

THE CHAIRMAN then moved the omission of Clause 6, which was as follows:—

"The provisions of this Section shall not extend to any person or persons exempted by the authority of the Governor-General of India in Council, or of the local Government of the proclaimed District, or by any European Officer serving in such District duly authorized by the local Government on that behalf."

He wished to know on what ground or for what purposes such an exemption was necessary. He thought that whatever exemptions were granted above or beyond the law should be made on the responsibility of the Government alone.

Mr. WILSON said that, as part of the Section to which the Clause now under discussion belonged was prepared by himself, he would explain the reason why he proposed it, although

he thought that the object of it must be pretty obvious to every one. The Section in question provided for an emergency. A district might happen to be in a state of insurrection, and the necessity of proclaiming it might arise very suddenly. It was very necessary therefore that local Officers should be invested with the power of exemption. He (Mr. Wilson) could not conceive a better authority in whose hands could be reposed the power of determining what persons in each district should be exempted or not, than the Magistrate of the district. It was quite clear that, if a district were to be in a state of insurrection, the first thing that ought to be done was to weaken the hands of the disloyal and to strengthen the hands of the loyal subjects; and no one was better competent to exercise such a discretion than the local Magistrate, who knew the loyal from the disloyal. He (Mr. Wilson) did not know that this was any new principle at all. If he mistook not, he heard from his Honorable and learned friend in the Chair which he so ably filled, that, when the Act of 1857 was extended to several places, an exemption was made in favor of Europeans and other classes. A similar Act was passed for Ireland, which, so far as he recollected, gave power to any two Magistrates to exempt the houses of such persons as they thought fit from being searched.

THE CHAIRMAN said, he had no objection to the local Governments being allowed to authorize Magistrates to grant licenses to loyal men, but he would not leave it to a Magistrate to say whether a man was to be exempted from the law or not. That was a power which, if vested in any one, should be entrusted only to the Government. He knew of no case in which Parliament had ever passed an Act authorizing Her Majesty or Her Majesty's Ministers to exempt any one from its provisions. But here it was proposed to allow a Magistrate to do so. Why was it necessary to allow any one to grant exemptions, except to enable them to yield to the prejudices of individuals. If the power was necessary to enable

the Government to exempt Natives of high rank, who might think it derogatory to apply for a license, he (the Chairman) claimed the same privilege for all Europeans, and would exempt them by the Act. Did he believe that every loyal European who went to the Government would get an exemption? No, the answer that he would get would be—"Go to the Commissioner of Police or the Magistrate and take out a license." Whereas, if a high caste Native were to go and ask for an exemption, that privilege would probably be granted to him when it would not be granted to every European.

MR. WILSON remarked that the same provision was made for all. The fair mode of comparison would be by taking the case of a high European and a high Native, or a low European and a low Native.

THE CHAIRMAN said, the question was, whether the power of exemption would be acted upon in favor of all alike—a man ought not to be exempted on account of his wealth or of his noble birth but on account of his loyalty. The high caste Native was not one whit more loyal than the low caste Native. He (the Chairman) did not speak of them as individuals, but as a class. But it was because they knew that a particular class was loyal that they ought to exempt them. He did not believe that there was a single European against whose loyalty there had been any suspicion. If therefore we were to yield to the prejudices of the Natives, we ought in like manner, and with equal justice, to yield to the prejudices of Europeans. But if it were determined not to exempt them, let every man be bound to take out a license. To exempt a man from the law because he was of noble birth or a man of wealth was what he called inequality and injustice.

SIR BARTLE FRERE said, he felt considerable difficulty in seeing his way clearly through the objections taken by the Honorable and learned Chairman, who in one part of the debate contended in favor of exemption, and now objected to it.

The Chairman

THE CHAIRMAN explained, that what he meant to say was, simply, exempt Europeans or no one.

SIR BARTLE FRERE resumed. This was a Clause for exempting all alike at the discretion of Government. The reason why it was considered necessary to give the Government and the local Officers the power of exempting as well as of licensing was to save time, because if licenses were to be granted it would take a very long time to grant them throughout a proclaimed district, and the process of exempting would be gone through more rapidly. A great deal had been said as to the Government having some hidden reason for requiring the power of exempting certain classes, and that it arose from a fear of giving offence to the Natives. To this he must give the most unqualified and emphatic denial. No doubt, as was surmised, high caste Natives might and he hoped would obtain exemptions. He was equally certain that a European merchant or any gentleman would in the same way be exempted if he wished it. He begged to assure the Honorable and learned Chairman that John Smith or Brown would get his exemption as well as any Native Prince if he were equally well known to the Magistrate. Of course if the Magistrate knew nothing about him he would be treated as any native of whom nothing was known. With regard to the question of allowing the Government the power to grant exemptions, he had no hesitation in saying that it was not through any fear of giving offence to the Natives, but for the benefit of all classes, that the Government desired to retain that power. Speaking of giving offence to the Natives, why the whole Bill was a most unpalatable measure. There was no wish to please or displease any class. The principle upon which they were legislating, he must say on behalf of himself and his colleagues, was the same as that which had guided all English statesmen in legislating for India from the time of Pitt and Fox, of Burke and Sheridan, down to Sir Edward Ryan and Lawrence Peel, Macaulay and Metcalfe.

The question being put, the Council divided :—

Ayes 2.
Sir Mordaunt Wells.
The Chairman.

Noes 5.
Mr. Seance.
Mr. Forbes.
Mr. Harrington.
Mr. Wilson.
Sir Bartle Frere.

So the Motion was negatived.
Section XLIII was passed after an amendment

Mr. HARRINGTON moved the introduction of the following new Section after Section LI :—

“ All licenses which may by this Act be granted by a Magistrate may, in the Presidency Towns, be granted by a Commissioner of Police.”

Agreed to.

SIR BARTLE FRERE moved the introduction of the following Section before Section I :—

“ Act XXVIII of 1857 shall continue in force until the 1st day of October 1860.”

Agreed to.

SIR BARTLE FRERE moved the addition of the following Section to the Bill :—

“ The first Section of this Act shall take effect from the passing thereof, and all the rest of this Act shall take effect from and after the 1st day of October 1860. This Act shall continue in force for five years from the said 1st day of October.”

Agreed to.

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

Mr. HARRINGTON then moved that the Bill be now read a third time and passed.

The VICE-PRESIDENT said, it was unnecessary for him to repeat the objections which he entertained to this Bill. He would state them briefly as follows :—1st, that the Bill included Europeans, Americans, and Eurasians ; and, 2ndly, that the 31st Section gave power to any European Officer of Government to exempt persons from the operation of the Act.

With regard to the first, he thought that Europeans ought to be exempted,

because they were known to be loyal ; and with regard to the second, it appeared to him that exemptions ought only to be granted by the Government. He had no doubt that the Bill would be carried by a majority of this Council. He desired it to be on record that he was not a party to the passing of it.

SIR MORDAUNT WELLS said, he had from time to time stated his objections to the Bill, and he would not now trouble the Council with a repetition of them. He would therefore also shortly state that he entertained strong convictions against this Bill, which would be passed by a majority of this Council, and would soon become the law of the land. And he desired to record his entire concurrence in all that had fallen from his Honorable and learned friend, the Vice-President.

MR. HARRINGTON said, the questions upon which the Honorable and learned Vice-President had again touched in the few remarks which had just fallen from him had already been so fully considered that he did not perceive that the further discussion of them could lead to any useful result, or be attended with any public benefit. But he felt that he should be failing in his duty if he did not take this opportunity of acknowledging the obligations under which he considered that the Honorable and learned Vice-President had placed himself, and he believed he might say every other Member of this Council, as well as the Supreme and Executive Governments, by his laborious, and he would add, well-directed exertions to perfect this Bill, and to render it a really useful law. Taking the Bill as a whole, he thought that every body would allow it was a very good Bill, and he felt satisfied that it would prove a most valuable addition to the Criminal Statutes of the country. There was one Clause in the Section which had been introduced on the motion of the Honorable and learned Vice-President, which he (Mr. Harrington) certainly wished had not been there, as he did not like the idea of the North-Western Provinces being singled out and made the subject of special legislation, owing

to circumstances which had passed away; but he did not think it necessary to press his objections, and he was well content to allow the Section, in which this Clause was contained, to remain as settled by the Committee. There could be no doubt that the Section itself would greatly strengthen the hands of the Executive Government, and that it was a great improvement to the Bill. He regretted the angry feelings to which the discussions upon the Bill had given rise. He hoped that time would produce its usual effect upon them, and he entertained a confident expectation that, when it was found that the practical working of the Bill really afforded no reasonable ground of complaint to respectable people, to whatever section of the community they might belong, the conviction would spread rapidly and soon become general that, in settling the Bill, as it now finally stood, the Council had acted wisely, judiciously, and justly.

THE VICE-PRESIDENT said, he felt much obliged to the Honorable Member for his remarks as regarded himself. He (the Vice-President) considered it his duty to assist this Council, as far as lay in his power, in preparing and passing laws, and although he might be out-voted on particular Clauses, and was thereby prevented from voting for the third reading of the Bill, he still considered it his duty to assist the Council in making it as complete as possible in other respects.

The question being put, the Council divided:—

<i>Ayes</i> 5.	<i>Noes</i> 2.
Mr. Sconce	Sir Mordaunt Wells
Mr. Forbes.	The Vice-President.
Mr. Harrington.	
Mr. Wilson.	
Sir Bartle Frere.	

So the Motion was carried, and the Bill read a third time.

MR. HARRINGTON then moved that Sir Bartle Frere be requested to take the Bill to the Governor-General for his assent.

Agreed to.

Mr. Harrington

POSTPONED ORDERS.

The following Orders of the Day were postponed:—

The Committee of the whole Council on the Bill "relating to the transportation of Convicts."

The Committee of the whole Council on the Bill "to indemnify officers of Government and other persons in respect of fines and contributions levied, and acts done by them during the late disturbances."

The Council adjourned at 4 o'clock on the Motion of Sir Bartle Frere.

Saturday, July 21, 1860.

PRESENT:

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

His Excellency the Commander-in-Chief, Hon'ble Sir H. B. E. Frere,	H. B. Harrington, Esq., H. Forbes, Esq., and A. Sconce, Esq.
Rt Hon'ble J. Wilson,	

ARMS AND AMMUNITION.

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "relating to the manufacture, importation, and sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases."

INCOME TAX.

THE CLERK presented to the Council a petition from proprietors of permanently settled estates in Bengal, Behar, and Orissa, against the Bill "for imposing Duties on Profits arising from Property, Professions, Trades and Offices," and stated that it was similar to those already printed.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

THE CLERK reported that he had received a communication from the