

Saturday, 7th July, 1860

**PROCEEDINGS**

**OF THE**

**LEGISLATIVE COUNCIL OF  
INDIA**

**Vol. VI**

**(1860)**

Thursday Morning, July 5, 1860.

PRESENT :

H. B. Harington, Esq.

and

H. Forbes, Esq.

No other Member of the Council was this day present.

Saturday, July 7, 1860.

PRESENT :

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

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

KOONCH AND CALPEE.

THE VICE-PRESIDENT read a message, informing the Legislative Council that the Governor-General had assented to the Bill "to remove the Pergunnahs of Koonch and Calpee in Zillah Jaloun, from the operation of the General Regulations."

INDEMNITY.

MR. HARRINGTON presented the Report of the Select Committee 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."

DEBTORS AND CREDITORS. •

SIR MORDAUNT WELLS moved the first reading of a Bill "for facilitating arrangements between debtors and creditors."

He said, the principal object of the Bill was to enable debtors and creditors, under the sanction of the Insolvent Commissioner, to make arrangements without being driven through the Insolvent Court, which of necessity led to an exposure of their

affairs, and often deprived them of the means of assisting themselves, after having been relieved from their temporary difficulties. He had therefore prepared for the consideration of the Council a Bill for the purpose of enabling a debtor and his creditors to manage and settle the affairs of the former without his becoming amenable to the Insolvent Law. Before he explained the provisions contained in this Bill, he trusted the Council would permit him briefly to state the reasons which had induced him to bring in this Bill. He had watched closely the working of the Insolvent Law in this country, and he could say with great confidence that, in many cases that had come before him as Insolvent Commissioner, persons had been compelled to pass through the Court under circumstances which caused him to feel considerable regret that they should have been compelled to seek the only protection the law afforded. He believed the provisions of this Bill would be a great boon to the Native community. He had, on several occasions, been instrumental in bringing about an amicable arrangement between Native debtors and their creditors. In a recent case that came before him, in which the debts amounted to many thousands of Rupees, it was suggested to him that several members of the family of the debtor were prepared to assist him out of his difficulties. Obstacles at first existed, on account of the combined obstinacy and greediness of two or three of his creditors. He succeeded at last in bringing about a settlement. The Native community did not like to have their family affairs exposed, and to avoid this, would make great sacrifices in assisting their relations when involved in pecuniary difficulties. He believed the Bill would be highly beneficial and advantageous to the European Commercial Community. He had had two or three cases before him as Insolvent Commissioner, in which European gentlemen would certainly have availed themselves of the provisions of the present Bill to obtain an amicable adjustment of their affairs. He was satisfied the Bill he now asked

the Council to read a first time would materially strengthen the hands of the Insolvent Commissioner in facilitating arrangements between debtors and creditors.

He would now explain the provisions of the Bill. Any person, with the concurrence of two-thirds in number and value of his creditors, might present a petition to the Insolvent Court, which was to contain a full explanation of his affairs, and also a statement that he was unable to meet his engagements, and also such proposal as he was able to make for the future payment of his debts, and if two-thirds in number and value of his creditors assented to the proposal, the petitioner would be entitled to ask that it should be carried into effect under the control of the Court, and to be in the meantime protected from arrest. The Commissioner would be empowered, after the presentation of the petition, to examine privately into the matter, and if satisfied with the debtor's explanation of his affairs, he might call a meeting of the creditors. At the first meeting of the creditors, the consent of the major part in number and value, or nine-tenths in value, or nine-tenths in number, whose debts exceeded 200 Rupees, was required to the proposal of the petitioning debtor, and if obtained, a second meeting was to be appointed; and if at such meeting three-fifths in number and value of the creditors *present*, or nine-tenths in value, or nine-tenths in number, whose debts respectively exceeded 200 Rupees, accepted the arrangements previously assented to, the terms were to be reduced into writing and signed, and the written agreement was to be binding on all the creditors, who should have received notice of the different meetings. The agreement would require the confirmation of the Commissioner. He wished it to be distinctly understood that at any stage of the enquiry parties might be represented by Counsel. After the agreement was filed, the property of the debtor was to vest in his trustee or trustees (if appointed). The Commissioner would, as soon as convenient to all parties, call a special meeting of the creditors, and if satis-

fied with the whole proceedings, would be empowered to give the petitioner a certificate, which was to operate as fully as a final discharge under the Insolvent Act in releasing him from all debts.

He might remind the Council that the Bill now before them was similar in its provisions to the 7th and 8th Vic. c. 70, and which had worked well in England. The Attorney General, Sir Richard Bethell, had recently stated in the House of Commons, on the occasion of his introducing the new Bankruptcy and Insolvency Bill, that he wished to extend the provisions of the 7th and 8th Vic. c. 70 to all persons. He would read to the Council an extract from his speech, which clearly showed that the objects of the Bill now before the Council would be advantageous to the Indian Community. The Attorney General said:—

“There is another advantage which will attend the plan established by this Bill. An honest debtor might desire to make a disclosure of his affairs, with the view of making some arrangement and preventing the necessity of bankruptcy. But the very disclosure puts him in the power of some particular creditor or some individual who wishes to pursue perhaps a private end of his own, and who opposes an obstacle in the way of completing an effective arrangement, by prosecuting adjudication in bankruptcy. I hope to provide a mode of relieving persons in the situation from the embarrassment I have referred to.”

He would also call the attention of the Council to the following passage from the Attorney General's speech:—

“We are all aware that a great stigma attaches to the name of the bankrupt. Accordingly a most natural wish exists on the part of the honest man to avoid the reproach of bankruptcy. As I have already said, there is great difficulty in gratifying such a wish, because the moment he exposes his affairs he lays himself open to adverse proceedings.”

Before this Bill could be considered in detail, in all probability the new Bankruptcy and Insolvency Act would reach this country, and the Council would then have an opportunity of re-casting the Bill he had introduced. And he wished in conclusion to state that, although he should not

have the honor of a seat in this Council when this Bill would have to be considered in detail, he would have great pleasure in rendering to the Council such assistance as they might require from him as Insolvent Commissioner.

The Bill was read a first time.

#### ARMS AND AMMUNITION.

The Order of the Day being read for the adjourned Committee of the whole 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 read the Section which was under discussion when the consideration of this Bill was last adjourned, and which proposed to empower the Executive Government by proclamation to order any district to be disarmed.

MR. WILSON said, that, as on the whole, he preferred this Clause to the amendment which he had himself proposed, he was prepared to accept its general provisions. He thought it quite necessary that the Government of India should be armed with authority, not only to proclaim such a law in any district where it might be necessary, but also to extend, where necessary, the most stringent powers conferred by the Act of 1857. Unless the present Bill contained provisions to that effect, it would certainly fall short of the object for which it was intended, as the Clause would apply to an exceptional state of the country, and would be extended by proclamation. He apprehended there could be no difference of opinion that the law should be as stringent as possible, more especially as it would be put in force only in the last emergency. There were a few minor matters to which he wished to call the attention of his Honorable and learned friend in the chair. The power to issue such a proclamation should, he thought, be exercised by the Governor-General in Council alone. It

was a power that would not be suddenly exercised, and would only be required in cases of very great emergency. He therefore did not think it advisable to give so large a power to the local Governments, and that it should be exercised by nothing short of the authority of the Supreme Government which, for all practical purposes, was quite sufficient.

There were a few minor points in the Clause, on the principle of which we were all agreed, and in respect of which therefore there would be no difficulty. The only main difference which now existed was with regard to the question which they had been for some days discussing, and which formed the concluding sentence of the Section now under consideration. The question was, should we or should we not exempt Europeans, Americans, and Eurasians? Now he apprehended there was not a Member of this Council, nor a Member of the European community, who would maintain that it was wise, just, or politically necessary that Europeans should claim exemption under such circumstances as he would presently put before them. He would in the first place ask, if it were necessary to exempt Europeans, because they took no part in the late rebellion, was it not necessary that we should equally exempt all loyal subjects. The Honorable and learned Judge (Sir Mordaunt Wells) had drawn a picture, in which he (Mr. Wilson) entirely concurred, showing the disgrace to which Europeans would be subjected if they were indiscriminately to be mixed up with those who had notoriously broken the law. He (Mr. Wilson) thought that nothing would produce a worse effect. But he would ask, were there not many loyal Natives among the disloyal, and were there not many well affected Natives among the disaffected. If the effect described by the Honorable and learned Judge would be produced by making the law applicable to loyal Europeans, what would be its effect if applied to loyal natives, who had run far greater risk of danger than the Europeans in remaining loyal? He did not for a moment disagree with his

Honorable and learned friends, that Europeans, Americans, and Eurasians ought to be exempted, but the difficulty was in making the distinction. If we made any exemptions, we ought to extend them to all loyal subjects of the Queen, and not endeavor to discriminate between this class and that class, and between this race and that race, a discrimination which it would be impossible to carry out in practice.

The Honorable and learned Judge (Sir Mordaunt Wells) had said that he had found a rock to stand upon, and that was the reports of the Lieutenant-Governor and the Officers of the North-Western Provinces, in which they expressed their opinion that Europeans ought to be exempted. But if his Honorable and learned friend had that confidence in those Officers, he (Mr. Wilson) would ask if it would not be better to avoid the danger of making the Bill unpopular for the reasons he had given, and leave the power to the discretion of those Officers, who would be the most competent Judges to decide who were or who were not loyal subjects. He, therefore, proposed to move as an amendment the substitution of the following words for the last sentence of the Section proposed by the Honorable and learned Chairman:—

“The provisions of this Section shall not extend to any person or persons exempted by the authority of the Governor-General 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 in that behalf.”

So that every European Officer carrying out the provisions of that Section in every district, no matter how small, would then have an opportunity of judging whether certain persons were to be exempted or not. He (Mr. Wilson) believed that that would be a very necessary provision under a law of this kind. His Honorable and learned friend had said that he would not, on any account, ask for a discrimination of this kind, unless it was actually necessary. As a general rule, however, he thought that we should not make any

distinction in legislation. Instead of excluding one class and not another, would it not be better to include all classes, and leave it to the Government to exempt such of them, (without giving any general designation,) as they might consider fit to be trusted with the use of arms without danger to the public safety? He would ask the Honorable and learned Judge whether it would not be better to confide in those Officers whom he had called a rock. He quite agreed with the Honorable and learned Judge that it would be very unjust and cruel to deprive Europeans of their weapons of defence. He (Mr. Wilson) thought, that to disarm the loyal subjects of the Government would be to weaken the executive power, and no one felt more strongly than he did that, to disarm such subjects, would be an act of madness on the part of any Government, and was calculated to disable the executive power and to stop its action completely. In such an emergency the Government would avail itself of the assistance of any class, without distinction of color, creed, or caste. The Act of 1857 had been in operation for two years in the North-Western Provinces, and when proclaimed, there was no exemption made in favor of Europeans, as had been done in the other places to which it was extended. He knew of no single instance of a European having been molested in any way, or of any inconvenience having arisen by his not being exempted. He would therefore ask them to consider how much more safe it would be if every one of those Officers had the power to exempt every loyal subject. We had been asked whether, in making the Europeans subject to the provisions of the Bill, we intended to place a ban on them. Surely he need not ask if any European believed such a thing. If we had fellow-subjects, subjects of the same law, and subjects of the same Crown, should we place a ban on them by exempting classes which were no more entitled to exemption than we were? If it were proposed to place any special ban on Europeans, he (Mr. Wilson)

for one should have resisted to the last. But this was a different measure now before the Council. We were asked to pass a law for the good order and peace of the country, not applying particularly to disloyal natives, but to prevent the indiscreet man, whether he be a native or European, from making an improper use of arms. His (Mr. Wilson's) great desire was to see the Bill framed in accordance with the spirit of legislation; whereas, by the mode in which it was attempted to carry out the measure, it was proposed to declare that Europeans alone should be exempted, and not loyal Natives. He would not now enter into any argument as to where the Eurasian began, or the exact quantity of Native blood required to constitute it. These were minute questions which it was not easy to solve, and the solution of which would go far towards affecting a particular class of Europeans. But the real question was, whether we could exempt one class of the loyal subjects of Her Majesty without placing a ban on the others. He thought that we should make provision that all the loyal subjects of Her Majesty should have protection in cases of emergency; and it appeared to him that a Clause of the nature proposed by him would afford such protection to every one, be he European, Eurasian, American, or Native.

SIR MORDAUNT WELLS said, he would draw attention to what Mr. Mayne the Magistrate of Banda had said on this subject. He said:—

"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."

MR. WILSON said, we were not bound by Mr. Mayne's ideas of dignity. He (Mr. Wilson) thought it would be more dignified for the Legislature to exempt all loyal subjects. He

*Mr. Wilson*

had no doubt that, if the power were to be given to Mr. Mayne of exempting all whom he considered loyal, he would exercise it with great discrimination. He (Mr. Wilson) would be very glad if his Honorable and learned friend would propose the insertion of such words as might be necessary to make his amendment more effective.

SIR MORDAUNT WELLS said, he fully agreed that all loyal subjects should be exempted. But in dealing with any question, it was our duty to look at the ascertained facts. What was the first ascertained fact? All Europeans were loyal, and therefore had a right to be exempted as a class. The other was not an ascertained fact, for some Natives were loyal and others not so. There was great difficulty in exempting them as a class, a difficulty which did not exist with regard to Europeans. Should we exclude an ascertained loyal class on account of our inability to include an unascertained class? We knew that all Europeans were loyal, and let us have the boldness to exempt them, leaving it to the Commissioners to exempt such natives as they might consider loyal.

MR. HARINGTON suggested that the Section proposed by the Honorable and learned Chairman should be broken up into two or more Clauses, and that each Clause should be considered separately.

THE CHAIRMAN said, he had no objection, though he would not bind himself to vote for the third reading of the Bill, unless his Section was carried in its entirety.

The question was then proposed that the following Clause stand part of the Section:—

"It shall be lawful for the Governor-General in Council, or for the Executive Government of any Presidency, or for any Lieutenant-Governor, or with the sanction of the Governor-General in Council for the Chief Commissioner or Commissioner of any Province, district or place, subject to their administration respectively, whenever it shall appear necessary for the public safety, to order that any district or place shall be disarmed."

SIR BARTLE FRERE proposed the insertion of the words "with the

sanction of the Governor-General in Council" before the words "for the Executive Government, &c.," so as to make them apply to all Governments and administrations. The power of proclaiming a district was one which he regarded as so important, that he would not propose to allow its exercise by any Government without the express and direct sanction of the Government of India in each case.

THE CHAIRMAN said, it did not appear to him to be necessary that the sanction of the Governor-General in Council should be obtained. The Honorable Member of Government had stated that his great object in putting the amendment was that nothing should be done under the power proposed to be given without the greatest deliberation. He believed that the Governments of Madras and Bombay were competent to act in such a matter without applying for the sanction of the Governor-General in Council, and that they never would act hastily or without deliberation in such a matter. If they exercised the power improperly or without due deliberation, the Governor-General in Council could revoke their order. But the question was, whether we should restrain them in the exercise of such a power. He apprehended that such a restriction as this might produce much inconvenience. He remembered the time when the Supreme Government was prevented for some time, during the late rebellion, from having any communication with the Lieutenant-Governor of the North-Western Provinces or with the Chief Commissioner of the Punjab. This might occur again, in which case the local Governments would be compelled, by such a provision as this, either to refrain from disarming or to do so illegally. The Governors of Madras and Bombay had armies at their command. Might we not trust them with the power of ordering a district to be disarmed without first applying for the sanction of the Governor-General in Council? The Act of Parliament gave these Governments the whole Civil and Military administration of their several Presidencies.

Should we curtail those powers? By passing the proposed amendment, it appeared to him (the Chairman) that we should be throwing an impediment in the way of their free action, and he saw nothing on the part of those Governments to induce the Council to distrust them.

SIR MORDAUNT WELLS said that, under the Act of 1857, the local Government had the power of proclaiming a district, and no reason had been given for the change. He did not know that anything had since happened to induce the Council to withdraw the power. He had full confidence in the Lieutenant-Governor and the Officers in the North-Western Provinces, and he was so fully impressed with the belief that they were quite competent to act if any emergency or danger arose, that, so far from diminishing their power, he would increase it. He would ask the Honorable Member for Madras whether he had confidence in the fitness of his own Government to be entrusted with this power, and what they would say to being obliged to wait until the sanction of the Governor-General in Council was received, before they could act in such a matter. By adopting the amendment we might cramp their powers in a case that might be of the greatest necessity.

MR. FORBES said that, as the Honorable and learned Judge had called upon him to state what his view of the matter was, he had no hesitation in saying that it was entirely the same with the view expressed by the Honorable and learned Judge and the Honorable and learned Chairman. The Right Honorable gentlemen opposite had stated to-day that this was not a power which a local Government would be called upon to exercise suddenly. But he (Mr. Forbes) thought that a sudden necessity might arise. There was no very long warning given of the mutiny of 1857, and it was impossible for any man to say that a similar and as sudden an emergency would never arise again. During the rainy season the dak from Madras to Calcutta took fourteen days to travel, and very great

mischief might be done if, during the whole interval between sending an application to Calcutta, and the receipt of a reply, the local Government were unable to take any step towards disarming a District on any crisis arising. It was true that the Electric Telegraph was open, but every body knew how easily the communication might be cut off or otherwise interrupted, and after all, although a few words might be conveniently and intelligibly sent by Telegraph, all the political reasons that might weigh with a local Government in inducing them to wish to disarm a District, could not be condensed in a Telegraphic message. If the sanction of the Government of India were to be given on a mere brief Telegraphic request for it without a full explanation of the grounds of the request, the real responsibility of the disarming would rest with the local Government, and if it was to rest with them in reality, he thought it best that it should rest with them by law.

MR. HARRINGTON said, it was scarcely necessary for him to remark that he concurred in the opinions expressed by the Honorable and learned Vice-President, the Honorable and learned Judge on his right (Sir Mordaunt Wells), and the Honorable Member for Madras on the question now under discussion. A Section similar to that which had been read from the chair, giving power to the Executive Government to order the disarmament of any district or place under such Government, had been framed and circulated by him (Mr. Harrington), and was in accordance with the opinions to which he had just referred.

SIR BARTLE FRERE said, no one went farther than he did in desiring to see the largest possible measure of independence accorded to each of the Governments under the Government of India. He (Sir Bartle Frere) heartily wished that the administrative powers of the local Governments could be enlarged—and that each of them possessed some portion of the legislative power which the law now entrusted solely to this Council; but as matters stood, it was requisite to look

to the extent of the power to be exercised and to the duty of the Legislative Council in determining in what hands that power should be vested.

The Council was continually informed that it was not competent to them to delegate their powers to local Governments with regard to the smallest municipal matters. He (Sir Bartle Frere) did not agree in this view, but he could not see how the Council could consistently commit to local administrations a power, the exercise of what was of much greater importance to the happiness of the people than the most important municipal regulations. He (Sir Bartle Frere) looked on this power of proclaiming a district and making a search, house by house, for arms, as one of the most important which could be exercised in this country. He did not in the least mistrust the local Governments. He believed they would generally exercise their power with the utmost justice and circumspection, but he wished that, in exercising it, they should always be reminded that it involved a responsibility for which they were bound to give a very strict account to the Government of India.

This power of proclaiming a district was not one which it could ever be necessary to exercise suddenly. The process of disarming must be a tedious one. The papers before the Council stated that two years had been insufficient to disarm the North-Western Provinces, and the necessity for resorting to disarming proclamations could never arise suddenly, like the necessity for proclaiming martial law, or for taking any other steps which might be requisite to quell a sudden outbreak. His Honorable and learned friend had referred to the isolation of the North-West and the Punjab during the outbreak in 1857; but he (Sir Bartle Frere) need not remind the Council that in such cases it matters very little what might be the legal powers of your distant Officers. The legal powers of the Chief Commissioner of the Punjab were comparatively limited, but that did not prevent his doing every thing that was necessary, when he found himself cut off from the Supreme



Government. Looking as he (Sir Bartle Frere) did on this power of proclaiming a district as greater and more important than almost any administrative power, except that of making peace and war, he did not think it was one that should be exercised at discretion by every local Government and administration without the sanction of the Government of India.

THE CHAIRMAN said that the Honorable Member of Council (Sir Bartle Frere) was under some misapprehension in saying that we had refused to give local Governments the power to legislate for Municipal purposes. The reason why we refused to give them that power was that we could not do so. The Act of Parliament did not allow this Council to delegate any of its powers to any Government. The local Governments already had the Civil and Military administration entirely in their hands. The Government of India had merely a controlling power over all. If the Governor-General in Council found that those powers were exercised improperly, he could restrain them. But the question now was, should we by this Act restrain them from acting without the previous sanction of the Governor-General in Council in a matter which might be necessary for the peace of the country when Parliament had trusted them with the Government? By doing so, we should be casting upon them a reproach which they had not deserved. The Government of Bombay in particular had acted with the greatest decision and energy during the mutinies.

MR. WILSON said, the only reason why he had proposed that the sanction of the Governor-General in Council should be applied for was that full security should be given to the public that no improper use should be made of the great powers which this Bill conferred. However, if the representatives of the public in the several Presidencies saw no objections to these powers being conferred on their Governments, he should not insist upon the safeguard being given to those who did not want it.

MR. HARRINGTON said, in reference to the last remark of the Right

Honorable gentleman, that he was not aware of any reason why the Lieutenant-Governor of the North-Western Provinces should not have the power proposed to be given to him, but the contrary. He felt certain that the public had full confidence in the present Lieutenant-Governor of those Provinces, and he could not doubt that the same confidence would be entertained in any future holder of the office.

MR. SCONCE said, the Governor-General in Council would lose all control over the subordinate Governments in such a matter as the disarming of districts, if a Clause were enacted without its providing for that control.

MR. FORBES said that the Governor-General in Council had that control by Act of Parliament, and that we could not take away that power from him without over-riding the Act of Parliament—a power which this Legislative Council did not possess. He therefore thought the words unnecessary.

THE CHAIRMAN said, the words were not only unnecessary but improper.

SIR BARTLE FRERE'S Motion being then put,

The Council divided as follows—

<i>Ayes</i> 3.	<i>Noes</i> 4.
Mr. Sconce,	Sir Mordaunt Wells
Mr. Wilson,	Mr. Forbes,
Sir Bartle Frere.	Mr. Harrington,
	The Chairman.

So the amendment was negatived, and the Clause was then put and agreed to.

The question was then put that the following Clause stand as Clause 2 of the Section:—

“In every such district or place, as well as in any district or place in which an order for a general search for arms has been issued and is still in operation under Act XXVIII of 1857, 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.”

MR. HARRINGTON said, it seemed to him that, if they passed this Clause

of the Section, and declared absolutely that the mere possession of arms, without a license, in those districts to which Act XXVIII of 1857, or only the 24th Section of that Act had been extended, was a high penal offence, and that the severe penalties proposed by the Section might be inflicted on every man or woman or even child of a certain age within those districts, in whose possession, which would extend to the whole of the premises upon which they resided, a single gun, sword or spear might be found, though kept only for defence against robbers or wild beasts, they would be going counter to the intentions of the Council in the Sections which had already been settled and would be over-riding those Sections. There appeared no sufficient reason for passing a severer law now than was passed in 1857, when the circumstances of the country were so different from what they were at the present time. He would consider the proposed Clause in its bearing upon the Provinces which he had the honor to represent in that Council, for it would be those Provinces which would be chiefly affected by the Clause. And why, he would ask, were the North-Western Provinces particularly to be singled out at this time and made the subject of special penal legislation. Had particular portions of the North-Western Provinces been selected after the passing of Act XXVIII of 1857, and had the Act been extended to those parts only, because they had been conspicuous for rebellion, the case would be different, but the Act had been put in force in places where there had been no rebellion. The Honorable and learned Judge on his left (Sir Mordaunt Wells) had told them on a former occasion that, from the first, what had taken place in 1857 had been something more than a military mutiny. He (Mr. Harington) did not know what means of information the Honorable and learned Judge possessed, but he had no hesitation in saying that, had there been no mutiny in the Native Army of Bengal, there would have been no rebellion in any part of the North-

*Mr. Harington*

Western Provinces. Whatever of rebellion there was in those Provinces grew out of the mutiny. The agricultural classes, the merchants, and traders, and the respectable inhabitants of the towns and cities continued for the most part at their usual avocations, and, outwardly at least, remained loyal to the Government, so long as the Government was in a position to protect them or until the civil power was at an end and until it seemed doubtful whether British rule would ever be re-established; and they returned to their occupations immediately on the re-instatement of our authority, and had continued steady and firm in their allegiance to the Government ever since. Intermediately, no doubt, or while the civil power was suspended, acts of violence were committed, but in most cases they were directed against one another, rather than against the Government, and arose out of feuds which, under our rule, had lain dormant for many years. He was not pleading the cause of the sepoys—of those miscreants, who, by their cruel, treacherous, dastardly deeds and base ingratitude to the State, by which they had been so well treated, had rendered the very name of sepoy hateful in their ears. They had had their reward, and richly did they deserve all that had befallen them. He was not pleading the cause of the convicts who had escaped from jail during the outbreak. Let them be apprehended and punished with all the severity of which the law admitted. He was not pleading the cause of the *budmashes* or bad characters, by whom most of the excesses, during what might be called the civil rebellion, were committed. These men were no proper objects of mercy. Let them be dealt with according to law, and if the laws were not stringent enough for their punishment, let them be made more stringent. But he desired to appeal to the Council on behalf of the agricultural classes, of the mercantile and trading classes, and of the well-disposed classes generally, who were the chief sufferers by enactments of the nature of the law under consideration, and he would ask the

Council whether, without the commission of some new offence, or the occurrence of some new circumstances calling for greater severity, it would be just to bring all these classes under a special provision, which was intended to have prospective effect only in other places, and to be enforced there only when the Executive Government considered its enforcement necessary for the public safety. He merely asked that the North-Western Provinces should be placed on the same footing as the rest of India; that the provision contained in the Clause, which they were now considering, should not at once become law, as of course, in the North-Western Provinces, but that its introduction should be left in the discretion of the Honorable the Lieutenant-Governor, as was proposed to be done elsewhere. If hereafter the inhabitants of any district, by their conduct, brought upon themselves the provisions contained in the Clause of the Section which they had just passed, it would be their own fault. He considered it only fair that the opportunity of remaining exempt from its operation should at least be allowed them, and that they should not be treated differently from the rest of India, because circumstances had occurred which were beyond their control. This was all that he asked for. Admitting that the classes to which he was alluding did not do all for the Government during the eventful period of 1857 that they might have done, the very difficult position in which they were placed should not be overlooked. Unable to obtain any aid from the local authorities, they were at the mercy of the sepoys, and bad characters, by whom the country was overrun. The instances were very few, in which Englishmen, much less Englishwomen, met with violence at the hands of these classes, while the cases were numerous in which, but for them, many of our countrymen and countrywomen must have perished, and what had been their conduct since—had they not been quiet, peaceful, and orderly subjects?—had they not been obedient to the laws of the country?—

and had not those who were landholders continued to pay their revenues with the same punctuality with which they paid them before the mutiny? If this was the case, ought not this Council, in the spirit of Her Majesty's proclamation, to throw a veil over the past, and to let by-gones be by-gones. Ought they not to be satisfied with what had been done in the way of punishment, and, having regard to the Bill before them, to be satisfied also with what had been done in the way of disarming the country by means of searching for arms, and to look for the diminution of the number of arms still remaining in the hands of the people, and for the gradual abandonment of the practice of carrying arms, to those means, which they had been informed by the Honorable Member of Council on his left (Sir Bartle Frere),—as the result of his own experience—had been so successful in Sind, and in the Punjab also. The population of those places was just as warlike as the population of the North-Western Provinces, and even more so. And here he (Mr. Harington) must express his regret that they had struck out the Section which proposed to charge licenses for carrying arms with a fee of one Rupee. Had that charge been retained, he really believed that the effect would have been rapidly to reduce the quantity of arms in common use. Most Natives would have thought twice before they expended a rupee on a license, allowing them to carry arms, and they all knew that arms put away and disused soon became so rust eaten and otherwise injured as to be useless. This would very shortly be the case with the arms which were stated to have been buried in the earth, or hid in wells or concealed in the branches, or on the tops of trees. The Honorable and learned Vice-President had observed more than once that, if the Natives were allowed to take back their arms, all that had been done towards disarming the population of the North-Western Provinces would go for nothing; but there was no intention of returning the arms that had been taken. The greater part had probably been destroyed. Politically, he

must say, that he did not think any danger was to be apprehended to the Government from the possession by the Natives of any number of the ordinary matchlocks, swords, and spears of the country. As he had before observed, a few European Riflemen would disperse a whole district armed with such weapons. It was chiefly for police purposes that it was desirable to get these kinds of arms out of the hands of the people. The operation of the other Sections of the Bill must be looked to in order to prevent danger to the State from the possession of arms and ammunition.

It appeared to him (Mr. Harington) that, if it was intended to render the Clause of the Section under consideration really effectual, and not to allow it to become a dead letter, the constant search for arms must of necessity be continued, and they had the assurance of the Right Honorable gentleman opposite, based on information, which was obtained by him on the spot from Officers holding high appointments, that this search for arms had led to very great oppression. He would read to the Council what the Right Honorable gentleman had said on the subject, and he begged Honorable Members to bear in mind that it was the Right Honorable gentleman and not he (Mr. Harington) who was speaking. [Mr. Harington here read the extract from Mr. Wilson's speech, to which he had alluded.] He went on to say that when the Honorable Members for Bengal and Bombay complained of the manner in which the search for arms had been conducted under the present Act, he thought that they had been misinformed, or that the accounts which they had received were exaggerated, and it was not until these accounts were confirmed by what he heard from the Right Honorable gentleman and others, that he was led to propose the discontinuance of the search for arms, except in special cases, and the substitution of a different mode for carrying out the law. It had been suggested that the change which had taken place in his views since he introduced the present Bill, had arisen from the receipt of private communi-

*Mr. Harington*

cations, and though he did not recollect the Honorable and learned Judge to have used the word Native, he found it reported that these communications were supposed to have been received from Natives. But this was not the fact. He had not had a line from any Native on the subject of the Bill. In all he did not remember to have received more than four private letters, in which any mention was made of the Bill. Three of these letters were from Mr. Gubbins, a Judge of the Sudder Court, and were confined to pointing out ambiguities in the wording of the present Act, which he suggested it would be as well to clear up in any new law that might be passed. The fourth letter was from a Military Officer, who had never written to him before on public matters. He referred to the sullen look of the people, and seemed to think that they had some ground to complain of the manner in which the search for arms was being conducted by the native police. He mentioned two instances, one of a retired Subadar, who, after surrendering his sword to his Commanding Officer in 1857, had been compelled to pay two Rupees to the police in default of giving up his sword to them, and two Rupees more because he could not give up his son's sword, the son never having possessed such a weapon. The second instance was that of several ryots who had been made to pay a sum of money each under similar circumstances. This letter, which was dated 21st June, was received after the report of the Select Committee on the Bill before the Committee was presented and it could not therefore have influenced that report. [Mr. Harington here read an extract from the letter.] He went on to say, that he had now put the Committee in possession of the whole of the written communications which had been addressed to him privately on the subject of the Bill. But he had heard the Bill discussed over and over again by Officers, many of whom were from the North-Western Provinces, and the result had been the conviction upon his mind that, if the search for arms could be dispensed with, it would be

a great relief to the country, and would remove much of the discontent which they were informed had arisen from the operation of that part of the present law, which authorized a general search for arms. But as he had already said, if they passed the Clause of the Section now under consideration, they must keep up the system of search, otherwise the Clause would be inoperative, and it being impossible throughout the North-Western Provinces to employ European agency for the purpose, Native agency must still be resorted to from necessity, and by employing agency of that description, they ran the risk of a repetition of the scenes which were described in the letter from the Magistrate of Furruckabad, whose communication had been specially referred to by the Honorable and learned Judge on his left (Sir Mordaunt Wells), in these words:—

“ Now the lash, confinement, constant inquisition, worm out the hidden treasure, as the screw draws forth the tight cork. I know full well,” the Magistrate goes on to say, “ that this district and the city of Furruckabad are but half disarmed, and until I pass through every village, and use very harsh measures, not a weapon will be given up.” He (Mr. Harington) would save the country from these measures, which were not authorized by law, and which he thought could only produce a feeling very different from that contemplated by Her Majesty in that part of Her gracious proclamation, in which Her Majesty justly declared that, in the contentment of her subjects was her security. For these reasons he should be glad to see the Clause in question omitted. The Honorable the Lieutenant-Governor would still be at liberty to act under the Clause which had just been passed, whenever the public safety appeared to him to render recourse to the provision contained in that Section necessary.

STR MORDAUNT WELLS said, when he came to the Council this morning, he expected that the adjourned debate on his Honorable and learned friend's amendment would have closed after the Council had heard the ob-

servations of his Right Honorable friend, and of the Honorable Member for Bengal, together with the reply of his Honorable and learned friend. But to his astonishment the Honorable Member for the North-Western Provinces had re-opened the whole question by reading a letter relating to a conversation between a Subadar and a Sahib about a sword, calculated to cast ridicule on the whole of our proceedings. Suppose he (Sir Mordaunt Wells) was to say he did not believe one word of it, could the Honorable Member substantiate the truth of his story? Then the Honorable Member had raised the question as to the origin of the mutiny, and had challenged him (Sir Mordaunt Wells) to show on what authority he had stated that what had occurred was nothing more than a mere Military mutiny. He would reply that his authority was every important work which had, from time to time, been published upon the subject by those who knew what they were writing about. He had read the observations of every writer on the Indian Rebellion of 1857-58, and he was convinced that it was nothing but a downright rebellion of the people in the North-Western Provinces. But to tell him that it was a mere Military mutiny, to tell him that the people did not sympathize and take part in the whole-sale murders and atrocities which had been committed in the North-West, to tell him that there was no communication carried on from one end of India to the other on the subject of a simultaneous revolt, was to tell him what he did not believe, and what every Military man and every official in India know to be not true. There was a microscopic manner about the Honorable Member for the North-West, which he considered most objectionable. The Honorable Member referred to certain observations of his Right Honorable friend at an earlier stage of the debate. He (Sir Mordaunt Wells) must say that it was not usual in the House of Commons to fasten upon Members expressions which might have escaped them in debate. Speeches thus delivered on the spur

of the moment were not so free from criticism as an opinion deliberately committed by pen to paper. The Honorable Member had pleaded for districts whose inhabitants had risen in rebellion against us. Having obtained the interesting communications which were contained in the papers to which reference had so often been made, what value, he would ask, were we to place upon them, were we to act upon such letters or parole communications as that with which the Honorable Member for the North-Western Provinces had treated us, in preference to the reports of the officials of the North West? What he (Sir Mordaunt Wells) wished to say was, let us legislate on known settled data. He was sorry that this discussion had again been raised. But as that had been done, he must say that in the face of those fearful outrages, which must remain on the imperishable page of history, it was nonsense, worse than nonsense, to assert that there was not a sympathy with the rebels on the part of the population of the North-West.

MR. HARRINGTON said, he should confine himself to a very few observations in reply to what had fallen from the Honorable and learned Judge on his left (Sir Mordaunt Wells.) The Honorable and learned Judge had tried to be witty at his (Mr. Harrington's) expense. But he would tell the Honorable and learned Judge that no amount of ridicule from him would have the effect of deterring him (Mr. Harrington) from doing his duty. That duty, in the present instance, appeared to be that he should bring before the Council the grounds on which it seemed to him that it would not be right, and that it was not necessary, while passing a general disarming law for the whole of India, to introduce into it special provisions which would really affect the North-Western Provinces alone, and not only cast a stigma upon those Provinces, but subject them to a very severe regulation as regarded the possession of arms, even though required only for defence against robbers and wild beasts, which was not to extend to the other parts of the country, unless under very special cir-

*Sir Mordaunt Wells*

cumstances. All that he asked was that the same rule should be applied to the North-Western Provinces which was deemed sufficient for the rest of India. It was the Honorable and learned Judge and not he (Mr. Harrington) who had raised the question as to the character of the revolt which had occurred in 1857. On this subject, notwithstanding what had fallen from the Honorable and learned Judge, he must repeat that it was the mutiny in the Bengal army alone and nothing else which led to the disturbances in the North-Western Provinces. That whatever of rebellion there was in those Provinces arose out of the mutiny, and that had there been no mutiny, there would assuredly have been no rebellion. Looking to the state of the country at the time, to the absence of all Civil power, and to the doubts that existed as to the restoration of our rule, the wonder was, not that there was so much, but that there was so little of real rebellion against the Government. Under these circumstances, and considering how immediately the people had returned to their allegiance on the restoration of our authority, and how well they had behaved ever since, he certainly thought that it was a little hard upon the North-Western Provinces, and that it was not very politic to single them out now, and to make them at this time the subject of special penal legislation. What the country appeared to him to stand most in need of was rest and relief from a law such as that contained in the Clause of the Section under consideration, which must keep up the necessity of a constant search for arms, however obnoxious to the people it might be, otherwise the law would be a dead letter, and if that was to be its character, it would be better not to pass it. He must repeat that it was particularly necessary at the present time, when the important financial measures of the Right Honorable gentleman opposite were about to be introduced, not to enact or continue laws which, from their character, must of necessity produce considerable irritation, and the Clause before the Committee seemed to him to fall

within this category. He had nothing more to say.

Mr. WILSON said, he did not rise to complain of his having been quoted by the Honorable Member for the North-Western Provinces, on whom the Honorable and learned Judge had been rather too hard. But he thought the Honorable Member for the North-Western Provinces had misapprehended the present position of the Bill as it now stood. The local Government could withdraw the proclamation if they conceived that a further disarming of the population was unnecessary. What he had stated formerly was that nothing would induce him to consent to any provision for a search for arms, unless the power was guarded by the strictest limitation, so as to ensure that it should be properly exercised under European supervision.

The CHAIRMAN said, he would explain the object of the provision. It was intended to obviate the inconvenience of issuing a new proclamation in the partially disarmed district of the North-Western Provinces. It would be very inexpedient to issue a fresh proclamation; it might be misunderstood by the people. If there was to be no penalty for the possession of arms and no provisions for a search for weapons, the disarming Sections of the Bill would be rendered a nullity, and could not be enforced. But there were severer penalties in Act XXVIII of 1857, which had not been adverted to by the Honorable Member for the North-Western Provinces. The Honorable Member must be aware that the present Bill guarded against the possibility of oppression being practised by providing that no search shall take place unless in the presence of an European officer. All that this part of the Section meant was that the power must be given to Government to disarm the people wherever it was considered necessary to do so. Then as to the private communications which the Honorable Member had referred to, if he were a short time a Member of the Supreme Court he would be better able to appreciate the value of such testimony. The Honorable

Member for the North-Western Provinces had referred to the opinion of the Honorable Member of Council (Sir Bartle Frere) as to the effect produced in Sind by a simple prohibition against the carrying of weapons. He (the Chairman) had not the same experience of that country as the Honorable Member (Sir Bartle Frere) had. But he (the Chairman) did not believe that, if you prevented persons from carrying arms, you would take away from them the desire to possess arms; he believed that the prohibition would rather have a contrary effect. He thought that the reports from the North-Western Provinces showed that the people were anxious to get back their arms, and it was the duty of the Council to prevent them from accomplishing that object. He had no objection to giving power to the local Government to withdraw disarming proclamations, but he conceived that it was not sound policy to require local Governments, who considered that it was necessary to continue disarming operations, to issue fresh proclamations.

SIR BARTLE FRERE begged to correct the Honorable and learned Chairman as to what he (Sir Bartle Frere) had stated relative to the effect of a prohibition to carry arms. He had never said any thing so absurd as that by prohibiting people from carrying arms, you took from them the desire to have arms. What he did say was that by prohibiting people from carrying arms, you get them out of a habit of keeping arms which are not absolutely necessary for their own defence or for their lawful pursuits—and that the result was that in a few years you will find arms in the possession of none but those who use them for lawful purposes, such as killing wild beasts—or who are from their rank and wealth not dangerous to the peace of the country. This was the result of a law of human nature. Arms are always of considerable value to a poor man and easily turned into money, and if you prevent a poor man from ever taking them out of his house, he will soon part with them and turn them into money, and as for the same

reason, none of his poor neighbours will buy them, they generally disappear altogether and go out of the country. This was what he (Sir Bartle Frere) had said, and what he begged still to maintain.

After some further discussion the Clause was put and agreed to.

Clauses 3, 4, and 5, which were as follows, were severally carried :—

3. "In every such district or place which shall be ordered to be disarmed, 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.

4. Every person who, after the expiration of the time mentioned in such order in any district or place to which this Section shall be extended, or who, after the passing of this Act in any district or place in which an order for a general search for arms has been issued, and is still in operation as aforesaid, 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 1,000 Rupees, and it shall be lawful for the Magistrate or other officer mentioned in the order to search or cause a search to be made of the premises occupied by such person, or on which the Magistrate may have reason to believe that any such arms, percussion caps, sulphur, gunpowder, or other ammunition are concealed.

5. The search shall be conducted by the Magistrate in person, or by a Joint or Deputy Magistrate, or European Assistant, or by some Officer, Civil or Military, appointed by Government, with power to conduct such searches, and all such arms, percussion caps, sulphur, and ammunition found on any such search shall be confiscated."

Clause 6 was proposed as follows :—

"The provisions of this Section shall not extend to any person exempted by the authority issuing the order for disarming the district or place, or who may be exempted by the authority of the local Government, nor to Europeans, Americans, or Eurasians."

MR. WILSON moved as an amendment the omission of the above Clause and the substitution of the following :—

"The provisions of this Section shall not extend to any person or persons exempted by

*Sir Bartle Frere*

the authority of the Governor-General 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 in that behalf."

THE CHAIRMAN said, he must certainly contend in favor of the original motion. No sufficient reason had been given for not exempting Europeans. There was no doubt of the loyalty of Europeans, and as the Council was in as good a position to judge of this as the Executive Governments and the local Officers, he thought that the exemption ought now to be made at once. When he spoke of Europeans, he meant of course the other classes mentioned in the original motion. He would first ask, was it intended to disarm Europeans or not? If they were to be exempted, he thought that we ought to take upon ourselves to exempt them. Then, was it intended to compel Europeans to take out a license in a proclaimed district? The arguments previously used did not now apply, as the Act where this Section was to be in force would be obviously more than a Police Act, it was to be left to the discretion of the local Officers to say whether Europeans ought to be exempted or not. He did not think that such a discretion ought to be left to the Magistrates, but that it was our bounden duty to make the exemption in the Act once for all. How were the local Officers to say, whether Europeans ought to be exempted or not. The exemption must be made some time or other. If we left a discretion to the authorities to grant the exemption, and expect them to do so, it was as much class legislation as if we exempted them at once in the Act. It was not necessary to legislate for all alike; but the circumstance of each district and each class should be considered, if we really desired equality of legislation. The Honorable Member for the North-Western Provinces had said that, if Europeans had been exempted in the former Act, they might be exempted now; but that, as they were not then exempted, there would be a difficulty in exempting them now. The present Act however was very



different from the former one. Assuming that a difficulty had arisen, it surely was not an insuperable one. If there was any difficulty, were we to throw it off our shoulders, and impose it on the Governor-General in Council? If the Governor-General in Council should feel a difficulty in exempting Europeans in the North-Western Provinces, who were not exempted when the former Act was extended to them, the Lieutenant-Governor would feel still greater difficulty, as neither the Legislature nor the Governor-General in Council had thought it proper to make the exemption. If the Lieutenant-Governor should not exempt, the local Officers would feel the greatest difficulty with the precedent before them of two Acts of the Legislative Council, the proclamation of the Governor-General in Council and the order of the Lieutenant-Governor. The question was one on which a great difference of opinion prevailed. Some persons might entertain an opinion that Europeans ought to be disarmed. He believed that some Honorable Members of this Council entertained such an opinion. At any rate, he understood some Honorable Members to contend for one thing and others for another, why, therefore, should we leave so doubtful a matter to the discretion of the local Officers? In one district, the Magistrate might say that it would be a partial administration of the law to exempt Europeans, and he would not therefore do it. In another district, the Magistrate might say that he cared little about that and that he would exempt them. Thus we should have one rule in one district and a different rule in another. He would ask Honorable Members, who said that Europeans were not to be exempted from this Bill, whether Europeans were in reality to be exempted or not. If so, why should we not do it now—was it that they were afraid of class legislation? The Right Honorable gentleman made allusion to Her Majesty's proclamation in support of not exempting Europeans. He (the Chairman) thought, however, that Her Majesty's

proclamation in no way prevented our making one law for one class and another law for another; but if that was the intent, the Right Honorable gentleman had himself violated that proclamation by introducing a Clause in the Income Tax Bill, which rendered a person guilty of forgery "liable, if a European or American, to be sentenced to penal servitude for any period not exceeding ten years, or to imprisonment with or without hard labor for any term not exceeding two years, and if not a European or American, to be sentenced to transportation for any period not exceeding fourteen years, or to imprisonment with or without hard labor for any term not exceeding seven years."

He thought, however, that legislation should be adapted to circumstances, and if we found it necessary to make one law for Natives and one law for Europeans, we should not hesitate to do so. A good illustration of this had been given in the *Englishman* newspaper the other day in reference to the case of purdah women. A Native lady of rank was privileged from appearance in a Court of Justice, but no such exemption extended to European ladies. If we were justified in class legislation for the Natives, were we not also justified in class legislation for Europeans, wherever it might be considered necessary? It was for the sake of Government that it was found necessary to pass a Disarming Act, and in doing so, were we not justified in saying that the Natives should be disarmed and the Europeans should not be disarmed? He had instanced the case of the Punjab, where Europeans were exempted, and the Honorable Member (Sir Bartle Frere) had remarked that this was scarcely a case in point, for in the Punjab there were no Europeans, except Civil or Military Officers. But he (the Chairman) would ask, whether a man in the service of Government was more loyal or fit to be trusted with arms than one not in the service of Government. He (the Chairman) said that this Bill was not intended as a Police measure, but to prevent persons from collecting arms and using them against

Government, and it appeared to him that the reason for disarming Natives entirely failed with regard to Europeans. He had pressed his arguments so fully on this point that he would not longer detain the Council with any further observations. He thanked the Council for the attention with which they had listened to him, and he feared that he had wearied them by the discussion of the subject. But he felt strongly that, in passing an Act for disarming Natives, there was not the slightest justification for including Europeans.

SIR BARTLE FRERE said, he would not attempt to recapitulate the arguments against this proposed exemption, which he thought had been fully stated in their previous debates on the subject, but he begged his Honorable and learned friend to recollect that his (Sir Bartle Frere's) objections to the exemption were mainly founded on the consideration that all such exemptions voluntarily adopted were blot on the Statute Book, and a disgrace to our legislation. He did not deny that in carrying out any such principle, practical difficulties might arise, though none had been shown to exist in the present instance; but, if they had existed, it seemed to him (Sir Bartle Frere) our duty rather to face and overcome them than to attempt to evade them by a course which in itself was wrong. His Right Honorable and learned friend (Mr. Wilson) had clearly shown that the exemption to be desired was one that should include all loyal and well disposed subjects; but it was manifestly impossible to attempt such definition in a legal enactment. His Honorable and learned friend admitted this impossibility, but added, as we can't exempt all loyal and well disposed subjects, let us at least exempt some. Let us, said he, exempt our own class, whom we know to be universally loyal and well disposed. He (Sir Bartle Frere) could not assent to such selfish and partial legislation. He need hardly say that he sincerely believed that our own class, the European, was to a man loyal throughout India, but there were other classes of whom the same

*The Chairman*

might be said, and he (Sir Bartle Frere) for one would never consent to an exemption of our own class, while we left other equally loyal classes among our native fellow subjects unexempted. He would not say to the tens of thousands of Native Christians, for instance, who had to a man been loyal throughout India; he would not say to the Parsees, or to those Native Chiefs, who, following the example of Scindia the Nizam and the Rajah of Mysore, had thrown in their lot with us and risked all they possessed; he would not say to them—"You have the same title to exemptions we have, but you may take your chance with the disloyal and suspected." His Honorable and learned friend had urged that we had already a great deal of class legislation, and were still legislating in the same spirit. This, if it were the case, would be no excuse for perseverance in a wrong course, but he (Sir Bartle Frere) begged to deny that any of the instances adduced by the Honorable and learned Chairman were at all in point. He had instanced the difference in the imprisonment which we awarded to Natives or to Europeans, but he (Sir Bartle Frere) need surely not remind his Honorable and learned friend that this difference was made with a view of securing substantial equality. It was notorious that the same term of imprisonment in the same place would form a very unequal punishment to a European and to a Native. Imprisonment in a particular jail and for a particular period, which would be a light punishment to a Native, might be death to a European, and the difference was made so that, as far as possible, the punishment might be physically equalised to both. This apparent inequality was, therefore, in truth, an argument for equal legislation. So with regard to what His Honorable and learned friend called "the exemption of Native Ladies of Rank" from appearing in public in Courts of Justice. Did His Honorable and learned friend really consider this a privilege? No doubt it was a most trying posi-

tion for a sensitive English lady to appear as a witness in a public Court of Justice, but did his Honorable and learned friend believe that Englishwomen, as a class, would accept exemption on the grounds on which it was granted to Native females? He (Sir Bartle Frere) believed that all sensible Englishwomen regarded this obligation to appear in Court for the furtherance of justice in the light in which the mothers and daughters and sisters of Englishmen ought to regard it—as a great privilege, of which, however disagreeable or painful, and whatever its inconveniences, they would not be deprived by any exemption like that of Native females, which was, he submitted, nothing more than a concession to their weakness, and a badge of the position of inferiority in which they are placed by their own customs. His Honorable and learned friend had dwelt much on the argument that the exemption he now proposed was one of being disarmed, and that, consequently, the arguments urged against exemption from the necessity of being licensed to carry arms could not apply to it. He (Sir Bartle Frere) trusted that the Council would agree with him that this was not the case. The very fact of proclamation presupposed an abnormal state, like a state of siege, or a proclamation of martial law, in which the operation of the ordinary laws was more or less suspended. It was a state of things which he trusted would seldom be permitted to last more than a few months; never, he hoped, longer than the imperative necessity for it existed. Such being the case, any arguments which would apply against exemption of any class, in ordinary times, would apply with still greater force when the ordinary laws of the land were for a time superseded, in any particular district. They had had more than two years' experience of the working of the Act which does not exempt Europeans. He (Sir Bartle Frere) had repeatedly asked if any case had occurred

of the kind anticipated by the advocates of this exemption, but no case of the kind had been brought forward, nor did he (Sir Bartle Frere) believe any such case was possible.

To the other arguments of his Honorable and learned friend he could not reply better than by reading a letter from the Supreme Government, in reply to a request for exemption preferred by the Christian inhabitants of Bengal shortly after the Act of 1857 was passed. It was printed in the papers of the time, and would be found, he believed, in the *Englishman* of about the 20th October 1857.

The letter was as follows:—

No. 2094.

FROM  
CECIL BEADON, ESQ.,  
*Secy. to the Govt. of India,*

TO  
H. BERNERS, ESQ.,  
*Attorney-at-Law.*

*Dated Fort William, the 15th Oct. 1857.*

SIR,—I am directed by the Right Honorable the Governor-General in Council to acknowledge the receipt of your letter, dated the 6th instant, forwarding a petition from certain Christian Inhabitants of Calcutta, praying on behalf of themselves and of all other Christian Inhabitants of the Bengal Presidency, that the Government of India will make a declaration for exempting them from the application of Act No. XXVIII of 1857.

2<sup>d</sup>.—The Governor-General in Council is unable to comply with the prayer of this petition. At the same time His Lordship in Council directs me to state that all exemptions which may be just and reasonable will be made by the local Government, whenever the Act or any part of it shall be put in execution.

3<sup>d</sup>.—The Governor-General in Council cordially appreciates the loyal feelings of the petitioners, and of those in whose name they speak, as also the support which they have given to the Government, but he cannot admit that the fact of the Arms Act being general in its terms, is any reflection upon their body.

4<sup>th</sup>.—The Governor-General in Council does not share the apprehension of the petitioners, that any powers which, under the Act, may be entrusted to Magistrates or Commissioners of Police, will be abused in the manner suggested by them.

5th.—Neither does His Lordship in Council agree in viewing the case of the Punjab as parallel to that of Bengal. The Punjab, when the disarming took place, was a newly conquered country, peopled with a hostile race, and it was reasonable to draw a broad line of demarcation between its whole native population and all Europeans who might become resident there. In Bengal, on the contrary, a large portion of the population is loyal and well-affected to the British Government, and many have given proofs of this by exercising influence and risking property and life in support of the Government.

6th.—If then the law should undertake to lay down a line of distinction, and should class these men with those who are not to be trusted, it would be a great injustice. If, on the contrary, it draws no distinction, but leaves all exemptions to be made according to circumstances by the Government which administers the law, no such injustice is committed, and it appears to the Governor-General in Council scarcely possible that any Englishman or any Christian, viewing the case dispassionately, should find offence to himself in such a law. Most assuredly no such offence is intended, and the Governor-General in Council has directed me to furnish this explanation to the petitioners in proof that such is the case.

I have, &c.,

(Signed) C. BEADON,

Secy. to the Govt. of India.

These were the sentiments of the Government of India of that time, and he (Sir Bartle Frere) submitted that nothing had since occurred to invalidate the arguments, or to show that the anticipations then entertained were otherwise than just.

THE CHAIRMAN asked, whether the Honorable Member meant to say that he (the Chairman) had concurred in those arguments.

MR. WILSON said, that the Honorable and learned Chairman had misunderstood his Honorable friend (Sir Bartle Frere), who read the letter simply to show the opinions of the Government of the time.

SIR BARTLE FRERE said, that he did not wish to individualize any Member of the Government, he simply read the letter, as he had referred to the Act of 1857, to show the opinions which the Government of India then held—to show what were its anticipations of the working of the Bill,

 Bartle Frere

and how completely those anticipations had been fulfilled.

After some further discussion the Council divided—

*Ayes 4.*  
Mr. Forbes.  
Mr. Harington.  
Mr. Wilson.  
Sir Bartle Frere.

*Noes 3.*  
Sir Mordaunt Wells.  
Mr. Sconce.  
The Chairman.

So Mr. Wilson's amendment was carried.

Section XXXII was passed after amendments.

Section XXXIII was passed as it stood.

Section XXXIV related to the cognizance of offences under this Act, and Section XXXV provided for imprisonment in case of non-payment of fine.

THE CHAIRMAN moved the omission of the above Sections and the substitution of the following, which prescribed the mode of enforcing penalties:—

“Except as otherwise provided, all offences under this Act may be tried by any Magistrate, Joint Magistrate, or person lawfully exercising the powers of a Magistrate, unless the period of imprisonment to which the offender may be liable exceed that which the Magistrate, Joint Magistrate, or other Officer as aforesaid is competent to award under the laws for the time being in force in the Presidency or place in which such Magistrate, Joint Magistrate, or other Officer as aforesaid is employed. When the period of imprisonment provided by this Act exceeds the period that may be awarded by such Magistrate, Joint Magistrate, or other Officer as aforesaid, the offender shall be committed for trial before the Sessions Judge, if the evidence given before such Magistrate, Joint Magistrate, or other Officer as aforesaid shall appear to such Magistrate, Joint Magistrate, or other Officer sufficient for the conviction of the accused.

“Except as aforesaid, all offences declared to be punishable under this Act with fine, or fine and imprisonment, may be tried in the District or place in which the offence was committed, or in which the person charged with the same is apprehended.

“A Magistrate may refer for trial and decision any charge of an offence hereby made punishable by fine only, to any of his Assistants, and in such case every such Assistant may exercise all the powers vested in a Magistrate by any law for the time being in force, subject to all the rules applicable to

criminal cases deputed to such Assistant acting judicially.

"The local Government may give general authority to any such Assistant to exercise, without reference by a Magistrate, any of the powers which they are hereby rendered competent to exercise upon reference by a Magistrate, subject to appeal to the Magistrate from any conviction by such Assistant within one month from the date of conviction.

"A Magistrate may at any time call from any of his Assistants any case pending before such Assistants.

"If any offence which by this Act is declared to be punishable with fine and imprisonment, or imprisonment only, shall be committed by a European British subject beyond the local limits of the jurisdiction of Her Majesty's Supreme Courts of Judicature, the offender shall be liable, upon conviction before one of the said Supreme Courts of Judicature, to the punishment to which by this Act the offender is declared to be liable upon conviction.

"If any offence which by this Act is declared to be punishable with fine, or with fine and imprisonment not exceeding six months, shall be committed by any person within the local limits of the jurisdiction of any Court of Judicature established by Royal Charter, such offence shall be punishable upon summary conviction by any Magistrate of Police of the Presidency Town or Station in which such Court is held.

"No conviction, order, or judgment under the last preceding Section shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment the evidence on which it proceeds, but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment in obedience to any writ of *certiorari*, and if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect; the conviction, order, or judgment shall be aided by what so appears in such depositions.

"All other offences punishable under this Act, which shall be committed within the local limits of any Court of Judicature established by Royal Charter, shall be punishable by such Court.

"All forfeitures or penalties imposed under the authority of this Act for offences punishable by any Magistrate, or person lawfully exercising the powers of a Magistrate, or Assistant Magistrate, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender by warrant under the hand of any of the above-named Officers.

"In case any such forfeitures or penalties shall not be forthwith paid, any such Officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such Officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

"If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such Officer, by the confession of the offender or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied if a warrant of distress were issued, any such Officer may, by warrant under his hand, commit the offender, provided he is not a European British subject, to prison, there to be imprisoned, according to the discretion of such Officer, for any term not exceeding two calendar months when the amount of fine shall not exceed fifty Rupees, and for any term not exceeding four calendar months, when the amount shall not exceed one hundred Rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

"If the offender shall be a European British subject, the Magistrate shall record the facts and transmit such record to the District Court of the District wherein the offender is convicted, and the amount of the fine and the costs (if any) shall be levied in the manner provided for the execution of decrees of the Civil Court."

The Sections were severally agreed to.

Section XXXVI was passed as it stood.

Sections XXXVII and XXXVIII were omitted.

Section XXXIX was passed as it stood.

Section XL was passed after an amendment.

Section XLI was passed as it stood.

THE CHAIRMAN moved the introduction of the following new Section after Section XLI:—

"Whenever an award of hard labor is made under this Act, the Court shall not commute such labor to the payment of a fine under Regulation II. 1834 of the Bengal Code."

Agreed to.

Section XLII and the preamble and title were severally passed as they stood.

The Council having resumed its sitting the Bill was reported.

PUBLIC CONVEYANCES (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. SCONCE moved that Sir Mordaunt Wells be added to the Select Committee on 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."

Agreed to.

#### POSTPONED ORDERS.

The following Orders of the Day were postponed:—

The adjourned Committee of the whole Council on the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices."

The adjourned Committee of the whole Council on the Bill "for the licensing of Arts, Trades, and Professions."

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

The Committee of the whole Council on the Bill "relating to Emigration to the British Colony of Natal."

The Council adjourned at 6 o'clock on the Motion of Sir Bartle Frere, till Monday morning, at 7 o'clock.

*Monday Morning, July 9, 1860.*

#### PRESENT :

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

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

#### FINANCES OF INDIA.

MR. SCONCE begged, before proceeding with the discussion on the Income Tax Bill, to ask the Right Honorable gentleman whether there was any ground for the apprehension entertained by some persons, that India was to be made to contribute towards the expenses of the present war in China.

MR. WILSON thought it quite natural that, at a time when we were about levying a new tax on the

resources of this country, he should be asked if the Indian Finances were to be burdened with the heavy expenses of the war England was carrying on with China. The finances of India labored at present under the same disadvantages as they had been doing of late, and no diversion of the resources of this country could be made to any other quarter. When he first read the observations which fell from Mr. Sidney Herbert in Parliament, and saw the small sum put down in the estimates for this expedition, his apprehension was excited. The remarks he alluded to also struck the Governor-General. They protested against India being made to bear any portion of these expenses, and the reply sent by the Home Government was a most satisfactory one. Not a shilling was to be paid by India towards the expenses of the war with China.

The rumour of Commissariat drafts being drawn upon this treasury was, however, not without foundation. It had been arranged by way of Exchange to allow the Commissariat to draw about £50,000 monthly. The sums so drawn were to be replaced in the East India House and credited to the account of Military and other stores sent out to this country. The treasury was certainly not quite full, otherwise our presence this morning would not be needed to discuss the way and means of replenishing it; but certainly we could spare the sum he stated, without there being any inconvenient pressure on the finances of India.

He (Mr. Wilson) believed, that even the expenses incurred here and in Bombay, in forwarding troops to China, had either been paid or would be paid immediately.

#### INCOME TAX. \*

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices," the Council resolved itself into a Committee for the further consideration of the Bill.