

15th December, 1927.

PRESENT:—

HIS EXCELLENCY THE GOVERNOR (SIR CECIL CLEMENTI, K.C.M.G.).

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS (MAJOR-GENERAL C. C. LUARD, C.B., C.M.G.).

THE COLONIAL SECRETARY (HON. MR. E. R. HALLIFAX, C.M.G., C.B.E.).

THE ATTORNEY-GENERAL (HON. SIR JOSEPH HORSFORD KEMP, KT., K.C., C.B.E.).

THE COLONIAL TREASURER (HON. MR. C. MCI. MESSER, O.B.E.).

HON. MR. E. D. C. WOLFE (Captain Superintendent of Police).

HON. MR. H. T. JACKMAN (Director of Public Works).

HON. MR. R. A. C. NORTH (Secretary for Chinese Affairs).

HON. SIR SHOU-SON CHOW, KT.

HON. MR. R. H. KOTEWALL, C.M.G., LL.D.

HON. MR. D. G. M. BERNARD.

HON. MR. A. C. HYNES.

HON. MR. J. OWEN HUGHES.

HON. MR. W. E. L. SHENTON.

MR. E. W. HAMILTON (Deputy Clerk of Councils).

MINUTES.

The minutes of the previous meeting of the Council were confirmed.

HIS MAJESTY'S ACKNOWLEDGMENT OF COUNCIL'S SYMPATHY.

THE COLONIAL SECRETARY—By command of H.E. The Governor, I have to announce the receipt of the following dispatch from the Secretary of State:—

"Sir,—I have the honour to acknowledge the receipt of your telegram of the 28th October, transmitting an expression of sympathy with the King and Queen and the Royal Family from the members of the Legislative Council of Hong Kong on the death of the Marquess of Cambridge.

I am commanded by H.M. the King to ask you to convey to the members of the Legislative Council Their Majesties' grateful thanks for the kind message of sympathy.
—Signed: W. ORMSBY GORE.

PAPERS.

THE COLONIAL SECRETARY, by command of H.E. The Governor, laid upon the table the following papers:—

Regulation under section 3 of the Post Office Ordinance, 1926, on 26th November, 1927.

Declaration under the Merchant Shipping Ordinance, 1899, Table L, Quarantine Regulations, on 2nd December, 1927.

Regulation under section 8 of the Dentistry Ordinance, 1914, on 5th December, 1927.

Regulations under section 5 of the Ferries Ordinance, 1917, on 7th December, 1927.

Pension Minute Amendment.

FINANCE COMMITTEE REPORT.

THE COLONIAL SECRETARY laid upon the table the report of Finance Committee No. 15, dated 1st December, 1927, and moved that it be adopted.

THE COLONIAL TREASURER seconded, and this was agreed to.

NEWSPAPER ORDINANCE.

THE ATTORNEY-GENERAL moved the first reading of "An Ordinance to regulate the printing of newspapers and the keeping and use of printing presses." He said—The Press perform a very useful and important function in making themselves acquainted with the details of new legislation and in passing on that information to the public, and I have no doubt that they will make themselves acquainted with the details of this Bill which affects them and other printers in a peculiar degree and affects the general public only indirectly. It is, therefore, I think unnecessary to say much about the details of this Bill and I propose to confine myself to two general questions dealt with in it.

Clause 5 of the Bill, which deals with the licensing of printing presses, gives power for the first time to refuse a license to keep a printing press. It also gives power for the first time to cancel a printing press license already granted. If the Captain Superintendent of Police refuses a license to keep a printing press there is an appeal open to the applicant to the Governor-in-Council. The power to cancel a printing press license already issued lies with the Governor-in-Council. I think that in these days of lying and often mercenary propaganda by persons who are attacking our civilisation and are bent on producing disorder, it is just as well to have these exceptional powers.

The other general point to which I referred is the question of requiring a bond from the publisher of a newspaper. The law at present is that every publisher of a newspaper must give a bond in the sum of \$1,200 conditioned for two things, one that he will pay any fine that may be imposed on him upon any conviction for libel, and, secondly, that he will pay all damages awarded against him in any action for libel against the newspaper and the costs of such action. That is not being re-introduced in the present Bill for this reason. The amount of the bond is quite insufficient to cover the probable costs and damages in any libel action. It is quite conceivable that the costs alone would far exceed that amount. It would be difficult to fix a reasonable sum which would cover what might be the costs and damages in a serious libel action. As far as security for payment of a fine is concerned a bond seems unnecessary because if the fine is not paid the person upon whom it is imposed can be arrested and imprisoned, or a distress warrant can be issued and the goods of the offender seized. In the case of any substantial newspaper there is no doubt that the fine would be forthcoming. If the fine were not forthcoming the probable result would be that the obnoxious newspaper would close its doors and the persons concerned would disappear, which would be, perhaps, a very good result in the circumstances.

THE COLONIAL SECRETARY seconded, and the Bill was read a first time.

OBJECTS AND REASONS.

The "Objects and Reasons" for the Bill state:—

1. This Ordinance repeals and re-enacts, with alterations, the Printers and Publishers Ordinance, 1886, Ordinance No. 4 of 1886.

2. There are several alterations in the interpretation section. The attempt to secure a full address, where one has to be given, by means of a definition in the interpretation section has been abandoned. Reliance is now placed on the requirement of a "full address" in sections 6 and 7 and in Form No. 1 in the Schedule, and on the fact that inquiries can always be made at the time by the Registrar in any case of doubt. Further, the old definition of "place of business" and "place of residence" would have failed in more than one instance, *e.g.*, in the case of a block of offices or flats. The new definition of "address" is confined to making it clear (1) that an individual may give his private or business address, and (2) that the address of a corporation is its head office within the Colony.

3. "Editor" is defined as meaning the chief editor if there are more editors than one, and as including an acting chief editor.

4. The definition of "newspaper" has been shortened. It is widened to include periodicals published at intervals of a month. The definition of "newspaper register" seems to be unnecessary: see section 4 (9) and (10).

5. The definition of "person" is new in the Ordinance but has been used in other Ordinances.

6. The definition of "printed document" is new. The term occurs in sections 6 and 7.

7. The definition of "printing press" is also new. Section 5 deals with printing presses.

8. The definition of "Registrar" has been altered because it is intended to appoint the Secretary for Chinese Affairs as Registrar and the Registrar of the Supreme Court as Deputy Registrar under this Ordinance. The Secretary for Chinese Affairs will take the registration of Chinese newspapers, and the Registrar of the Supreme Court will continue to be the Registrar for English newspapers.

9. The definition of "proprietor" seems to be unnecessary.

10. Section 3, which gives power to make regulations and prescribe fees, is new. No fees are in contemplation.

11. Registration of newspapers is dealt with in Ordinance No. 4 of 1886 in section 3 to 10. Criticisms of the provisions therein contained are:—

- (a) They secure the names of only (i.) the proprietor and (ii.) the printer *or* publisher. It seems desirable to have also the name of the editor, and to have the names of both the printer and the publisher if they are different persons.
- (b) They ignore the possibility of the printer and publisher being a firm or company.
- (c) Section 8 and 9 have not been found to be of any use.

Registration of newspapers is dealt with in section 4 of the new Ordinance. Points which may be noted are referred to below.

12. The names of the proprietor, printer, publisher and editor must all be given: see Form No. 1 in the Schedule.

13. Provision is made in sub-section (6) for registration by a company or firm.

14. Sub-section (7) makes it an offence to furnish incorrect particulars unless the informant can show (i.) that he believed the information to be correct and (ii.) that he could not with reasonable diligence have discovered its incorrectness. Under section 21 of Ordinance No. 4 of 1886 the furnishing of incorrect particulars is an offence only if it is done "knowingly and wilfully." It does not seem to be too much to ask the informant to make reasonable inquiries. Further, it does not appear why the maximum penalty under section 21 should be only \$500 while that under section 4 is \$1,000 or imprisonment without hard labour for six months.

15. Sub-section (9) provides for more than one register. This is explained in paragraph 8 above. Sub-section (10) corresponds to section 19 of Ordinance No. 4 of 1886.

16. Sub-section (12) enables the register to be used as *prima facie* evidence (*i.*) of the truth of the matters stated therein or (*ii.*) of the fact that the information was furnished by the person by whom it purports to have been furnished. The former use might be of service in prosecutions generally in an libel action. The latter could be taken advantage of in a prosecution for furnishing incorrect particulars. It is open to the complainant or prosecutor to put in the entry for the one purpose or the other. In view of the provisions of sub-section (12) it is laid down in sub-section (11) when particulars have been furnished the Registrar must send a copy to each person who might be affected.

17. Section 5, which deals with the licensing of printing presses, replaces section 18 of Ordinance No. 4 of 1886. The new section is based on section 3 of the Straits Settlements Ordinance No. 1 (Printing Presses). Like the section in the Straits Settlements Ordinance, it gives power to refuse a licence, subject to a right of appeal to the Governor-in-Council. The Governor-in-Council is given power to cancel a licence after due notice. Powers of seizure and forfeiture are given in the section.

18. Section 6, which requires books, newspapers and documents printed in the Colony to bear the printer's name and address, replaces section 12 of Ordinance No. 4 of 1886. The principal differences in the new section are as follows:—

- (a) The class of document to which the section is to apply is defined differently. This point is dealt with in the following paragraph.
- (b) The offence is left to the general penalty under the Ordinance.
- (c) Possession is made an offence.
- (d) Presumptions are provided in sub-sections (10), (11) and (12). Sub-section (12) is made general with a view to libel actions.

19. Section 12 of Ordinance No. 4 of 1886 applies to every "newspaper, paper, or book intended to be distributed or made public." No doubt the phrase "intended to be distributed or made public" was meant to apply to newspapers and papers as well as to books, in spite of the punctuation. The objection to this phrase is the doubt as to the meaning of the word "distributed." Obviously, a document would not be printed at all unless the copies were intended to be distributed to some persons. That being so, the word might take its colour from the subsequent word "public." This might have the effect of excluding from the section a document issued by a society to its members. This, however, is one of the classes which it is most desirable to bring under the section. The new section, therefore, attacks the problem in a different way. It begins by a general application to every printed document, and in sub-section (6) it excepts documents "solely intended and solely used for a *bonâ fide* and ordinary commercial or professional or social purpose, provided that such document

as printed contains no seditious or political matter whatsoever." In order to meet the point that a document issued by a society to its members would be a document used for a social purpose, the section goes on to provide that "a document used for the purposes of a society, club or other organization shall not be deemed to be used for a social purpose." It will be noticed that in the case of proceedings before a magistrate at least the scheme of a general statement followed by an exception will have the effect, under section 28 of the Magistrates Ordinance, of throwing on the defendant the onus of proving the exception. The term "printed document" is defined in section 2.

20. As section 6 begins with a general reference to every printed document, a further exception of documents printed outside the Colony is necessary. This is provided by subsection (7). It is true that this exception provides a possible loophole, but the same remark applies to the old section, and in the new section the onus will be on the defendant. In the case of documents printed outside the Colony it is obvious that the absence of *political* matter could not be insisted upon.

21. Section 7 of the new Ordinance replaces section 11 of Ordinance No. 4 of 1886. The chief differences in the new section are as follows:—

- (a) A copy must be kept by the printer for one year instead of six months.
- (b) If the name of the printer is Chinese it must be given in Chinese characters.
- (c) The offence is left to the ordinary penalty under the Ordinance.

22. Section 8 of the new Ordinance provides for powers of search, seizure and forfeiture.

23. The provisions of sections 13 to 17 of Ordinance No. 4 of 1886 do not appear in the new Ordinance. They provide that the printer or publisher of a newspaper must give a bond in the sum of \$1,200 conditioned that he will pay any fine or penalty imposed on him, or any person acting for him in his absence, by reason of any conviction for libel, and also that he will pay all damages and costs recovered for libel published in the newspaper. So far as civil actions for libel are concerned the amount of the bond is quite inadequate, and in many cases it would be sufficient to pay only a portion of the costs. The provision seems unnecessary in the case of criminal proceedings because of the powers of arrest which exist in criminal cases. Another objection is that the provision refers only to libel, whereas a much more serious case is that of sedition. The bond provisions have therefore been abandoned. Section 9 of the new Ordinance simply provides that the proprietor, printer, publisher and editor of any newspaper shall be liable criminally for any illegal matter contained in any issue of the newspaper, and that the printer of any other document shall similarly

be liable for any illegal matter contained in such document. The accused will not be liable under this section if he proves that the matter in question was printed without his authority, consent or knowledge and that the printing thereof did not arise from want of due care or caution on his part.

24. Section 10 provides that any civil or criminal process addressed to the proprietor, printer, publisher or editor of any newspaper shall be deemed to be duly served if left with an adult at, or sent by post to, the registered address of the office of the newspaper.

25. Section 11 is taken practically verbatim from section 6 of Ordinance No. 5 of 1839 of the Ordinances of Ceylon. It requires a copy of every edition of every newspaper, signed by the printer or publisher, to be delivered to the Registrar of Newspapers. The copy so delivered is to be evidence in any legal proceedings against the printer, publisher, proprietor and editor of the newspaper. The copies so delivered are to be paid for by the Government. The only substantial difference between the section in the bill and the section in the Ceylon Ordinance is that in the bill the delivered copy of the newspaper is to be evidence against the editor as well as against the printer, publisher, and proprietor. The Ceylon Ordinance does not refer to editors.

26. Section 12 of the new Ordinance provides a general maximum penalty of \$1,000 or six months' imprisonment. This is the penalty under sections 4 and 18 of Ordinance No. 4 of 1886, except that in those two cases the imprisonment must be without hard labour while here it may be with or without hard labour.

27. Section 13 of the new Ordinance repeals Ordinance No. 4 of 1886.

28. Section 14 suspends the commencement of the Ordinance. This is inserted in order to give time for preparation of the registers and to give time for newspapers to register and for the keepers of printing presses to apply for licences.

PRISONS ORDINANCE.

THE ATTORNEY-GENERAL moved the first reading of "An Ordinance to amend the Prisons Ordinance, 1899." He said—This Bill will not make, I think, any substantial change in the law. It is rather a Bill to remove doubts. It makes it clear, for example, that there is power to set apart a ward in the Government Civil Hospital as a prison for prisoners who cannot properly be treated in the prison hospital; it makes it clear that there is full power to move prisoners from one prison to another and from a prison to hospital and back again; it also makes clear the provisions of the principal Ordinance relating to the introduction and use in prisons of prohibited articles such as liquor, opium and tobacco.

THE COLONIAL SECRETARY seconded, and the Bill was read a first time.

OBJECTS AND REASONS.

The Objects and Reasons for the Bill state:—

1. It has been the practice for many years to transfer to the Government Civil Hospital prisoners who, in the opinion of the medical officer of the prison in which such prisoners are confined, cannot properly be treated in the prison hospital. There is now a special ward, Ward Thirteen, in the Government Civil Hospital, which is self-contained and is arranged as a prison. This ward has, however, not been set apart as a prison under the Prisons Ordinance, 1899. Recently, therefore, it was proposed to make an order setting this ward apart as a prison, but doubts were raised as to whether the power conferred on the Governor by section 2 of the Prisons Ordinance, 1899, included a power to set apart a portion of a building, because the wording of paragraph (1) of that section is, "to set apart any available sites and buildings." Accordingly, paragraph (a) of section 2 of this Ordinance repeals the words "any available sites and buildings" and substitutes the words "any place or building or portion of a building."

2. Under the practice referred to above it has been usual to obtain the sanction of the Governor for each removal of a prisoner to the Government Civil Hospital. This is unsatisfactory in two respects. In the first place, a doubt may be expressed as to whether the Governor has power to order a prisoner to be removed from a prison to a place which is not a prison. That particular point will be met when Ward Thirteen is set apart as a prison under the present Ordinance. In the second place, it seems unnecessary that the Governor should have to make a special order in each case in a matter which may quite properly be placed in the discretion of the Superintendent of Prisons. Again, it has hitherto been the practice for prisoners to be transferred from Victoria Gaol to Lai Chi Kok Prison, and *vice versa*, under the authority of the Superintendent of Prisons. here again a doubt may be expressed as to the power of the Superintendent to order such transfers. Accordingly, a new section 4 which is inserted in the principal Ordinance by section 3 of this Ordinance will give the Superintendent of Prisons clear power to order transfers of both the above classes. That amendment will make paragraph (3) of section 2 of the principal Ordinance unnecessary. The paragraph in question gives the Governor power to make orders to remove prisoners from one prison to another. That paragraph is therefore now repealed by paragraph (b) of section 2 of this Ordinance.

3. Section 3 of this Ordinance inserts a new section 4 in the principal Ordinance. The main effect of the new section is to give the Superintendent of Prisons power to make the transfers referred to in paragraphs 1 and 2 above. This subject is dealt with in sub-sections

(2) and (3). Sub-section (4) provides that prisoners of unsound mind shall be dealt with in the manner prescribed by the Asylums Ordinance, 1906. Strictly speaking this sub-section is unnecessary, but it was considered that it would be convenient to direct attention by means of it of the relevant provisions of the Asylums Ordinance. Sub-section (1) of the new section 4 introduces a provision taken from section 17 of the Criminal Administration Act, 1914, to the effect that a prisoner may be lawfully confined in any prison to which the Ordinance applies. It may be added that sub-sections (2) and (3) of the new section 4 are also based on section 17 of the same Act. The powers there given are in England vested in the Secretary of State for the Home Department, but it is considered that they may be properly given to the Superintendent of Prisons in Hong Kong.

4. Sections 12 and 13 of the principal Ordinance overlap, and for no apparent reason the maximum penalties under the two sections are not the same. The discrepancy is made more serious by an unusual provision that section 13 shall not apply in any case where the offender is liable to a more severe punishment under any other provision of the Ordinance. The maximum penalty under section 12 is more severe than that under section 13. A conviction under section 13 might therefore be quashed on this ground, and yet it might not be clear in any particular case which of the two sections should apply. Accordingly these two sections are repealed by this Ordinance. Section 4 of this Ordinance repeals section 12 of the principal Ordinance and substitutes a new section dealing with the whole subject of the introduction of prohibited articles into prisons. Section 5 of this Ordinance repeals section 13 of the principal Ordinance and substitutes a new section which deals with improper supply or use of prohibited articles within any prison.

VOLUNTEER ORDINANCE.

THE ATTORNEY-GENERAL moved the first reading of "An Ordinance to amend further the Volunteer Ordinance, 1920." He said—This Bill makes a number of amendments in the principal Ordinance, but some of them are questions of detail rather than of principle. The chief thing which led to the drafting of this Bill was the decision to form a number of auxiliary units to be attached to the Hong Kong Volunteer Defence Corps. The proposed units are, a Supplementary Reserve Company to consist of men who have attained the age of 50 years, an Army Service Corps Cadre, a Lights Sections Cadre, and a Reserve of Officers. The members of these four auxiliary units will not be required to undergo any training, but will be available for service in case of emergency when they are called out.

The Bill also provides that when the three years' service for which a volunteer joins in the first instance comes to an end he is still under an obligation, if he wishes to quit the corps, to give the same notice of 14 days which he would have had to give during his three years' period. There is some doubt on that point at present, but now it is

made clear that even after the expiration of the three years period a volunteer must give notice of his intention to quit the corps. The Bill also provides that the sum of \$25 which a person has to pay if he fails to make himself efficient in any year will not be payable in three classes of cases. In the first place no one will be liable to forfeit this sum after reaching the age of 40 years. In the second place no one will be liable who has become efficient in three years whether these three years are consecutive or not. In the third place, if a volunteer, as may often happen, has to leave the corps for a perfectly reasonable cause power is given to the Commandant to exempt such a person from any liability to pay the fine of \$25, providing that the person has a good reason for quitting the corps and has used reasonable diligence in undergoing the annual training up to the time of his leaving.

The Bill also provides the necessary power to order any officer or volunteer to attend at volunteer headquarters or elsewhere for any court martial or court of enquiry or for any other special purpose which may appear proper to the Commandant. Anyone who fails, without reasonable cause, to comply with that order is liable to a fine recoverable before a magistrate. It seems obvious that if a court martial or court of enquiry is to be held there must be power to require attendance of witnesses and others. Any civil court would have that power and these courts martial should have it too. There may be also other special cases in which the power will be necessary.

Perhaps I might refer here to the regulations which it is proposed to make when this Bill is passed. The draft of the regulations has been published in the *Gazette*. They contain provisions relating to the members of the auxiliary units, and they also comprise two things which I think may be of some interest. In the first place volunteers who have been declared efficient in three years have to undergo only a modified training. In the second place men who have served in His Majesty's regular forces or in any volunteer or defence force in His Majesty's Dominions or in certain other forces mentioned in the regulations will not, on joining the Hong Kong Volunteer Defence Corps, be treated as recruits.

H.E. THE GENERAL OFFICER COMMANDING THE TROOPS seconded, and the Bill was read a first time.

OBJECTS AND REASONS.

The Objects and Reasons for the Bill state:—

1. The Ordinance makes a number of not very important amendments in the Volunteer Ordinance, 1920.

2. Section 2 of the Ordinance substitutes the term "Commandant" for the term "administrative commandant" throughout the principal Ordinance and the regulations made thereunder. The term "Commandant" is considered by the military authorities to be the correct term.

3. It is proposed to form a number of auxiliary units in the Hong Kong Volunteer Defence Corps. The units will be as follows:—

- (a) A Supplementary Reserve Company, to consist of men who have attained the age of fifty years.
- (b) An Army Service Corps Cadre.
- (c) A Lights Section Cadre.
- (d) A Reserve of Officers.

The members of these auxiliary units will not be required to undergo any training, but they will be liable to be called up for actual military service. The Army Service Corps Cadre and the Lights Section Cadre will consist of specially selected individuals whose previous training has rendered them fit to perform such duties as they may be required to perform if the Cadre are called out for actual military service. Broadly speaking, the members of the auxiliary units will be persons who are prepared to be called out for actual military service in case of necessity but who will have no duties unless they are so called up. As they will have no duties, it is proposed that service in the auxiliary units will not count towards the Colonial Auxiliary Forces Officers' Decoration or Long Service Medal, but that membership will so count in any period during which the units are called out for actual military service. This particular provision will have to be made by an amendment of the regulations under the Royal Warrant relating to the Decoration and Medal, and this amendment will have to be submitted for His Majesty's approval. It may be added that there is a Reserve of Officers at present, though it is not classed as an auxiliary unit. A draft of the proposed new regulations under the principal Ordinance is published at the same time as this Bill. The question of auxiliary units will be found to be referred to in those regulations.

4. Section 5 of the principal Ordinance provides that any volunteer may quit his corps on giving fourteen days' notice in writing, delivering up his equipment, and paying any money due by him. It also provides that every volunteer shall be deemed to have engaged to serve for a period of three years. It is not obvious, though it may on examination be clear, that the obligation to give notice continues even after the expiration of the original period of three years. Paragraphs (b) and (c) of section of this Ordinance are intended to make the point obvious and quite clear. Section 4 also provides that the three year period shall not apply to the members of the auxiliary units, who will accordingly be at liberty to resign at any time upon giving fourteen days' notice in writing.

5. Section 16 (1) (4) of the principal Ordinance gives a certain power to arrest any officer or volunteer who disobeys any lawful order, or is guilty of misconduct, on any parade. The obvious intention is to provide a remedy for the possible though unlikely case of the flouting of authority on a parade. The paragraph in question, however, is

defective in that it gives the power of arrest only to "the officer then in command of the *corps* or any superior officer in whose command the *corps* then is." The officer in command of the *corps* is the *Cammandant* and he may not be present on the parade. Accordingly paragraph (b) of section 5 of this Ordinance gives the power of arrest to the officer in command of the *parade*, or any superior officer under whose command the *parade* then is. Any officer or volunteer so arrested must be released at the end of the march or duty or exercise during which he was placed under arrest. Paragraph (c) of section 5 therefore, by way of extra caution, provides that such release from arrest shall be without prejudice to any subsequent proceedings for the discharge of the individual in question from the *corps*. Paragraph (a) of section 5 endeavours to effect a slight improvement in the numbering of the paragraphs of section 16 (1) of the principal Ordinance.

6. Section 6 of this Ordinance repeals section 16A of the principal Ordinance and substitutes a new section. The principal changes are as follows:—

- (a) The sum of \$25 which a non-efficient is liable to pay will in future be paid into the general revenue of the Colony and not into the general fund of the *corps*.
- (b) No member of a volunteer *corps* is to be liable to forfeit this sum in respect of the year in which he attains the age of forty years or in respect of any subsequent year.
- (c) No member of a volunteer *corps* who has been efficient in three years, whether consecutive years or not, is to be liable to forfeit the said sum.
- (d) A member of a volunteer *corps* may for various reasons have to quit the *corps* before making himself efficient in any given year. Accordingly the *Commandant* is given power to exempt such a person from liability to pay the \$25 if he is of opinion (i.) That the person in question quitted the *corps* for a reasonable and *bonâ fide* cause and (ii.) that such person used reasonable diligence in undergoing the annual training up to the time of his quitting the *corps*.

7. Section 17 of the principal Ordinance provides that when a volunteer *corps* is on actual military service, or is doing duty with His Majesty's regular forces, the provisions of the *Army Act* with regard to discipline are applied with certain modifications. In order to avoid any possible question, section 7 of this Ordinance adds to that section a sub-section which provides that any disciplinary measures necessary may be carried out after the period of actual military service, or such duty, has come to an end.

8. Section 8 of this Ordinance adds a new section 17A to the principal Ordinance. The new section gives the *Commandant* power to order any officer or volunteer to attend, at
v o l u n t e e r h e a d q u a r t e r s o r

elsewhere, for the purposes of any court martial or court of inquiry or for any other special purpose which may appear proper to the Commandant. Any officer or volunteer who without reasonable excuse fails to comply with any such order will be liable upon conviction before a magistrate to a fine not exceeding \$250. It is obviously necessary to have such a power in reserve in order to insure the attendance of witnesses and others at courts martial and courts of inquiry, and there may be other special cases also in which the power may be required.

9. Section 20 of the principal Ordinance provides that every person who fails to deliver up any equipment which he is liable under the Ordinance or rules to deliver up shall be liable to pay to the Commandant the value of the equipment. This appears to be defective in two points. In the first place, it is arguable that the section refers only to the final delivery up by a member who is quitting the corps. In the second place, it may be important, as in the case of a rifle or revolver, that the article should be returned to store and that the member should not be allowed to keep it upon paying the value. Accordingly, section 9 of this Ordinance substitutes another section which requires actual delivery up of the article, and it makes it clear that the obligation applies to every case where a member of a corps is under an obligation to return any equipment, either permanently or temporarily. The sanction is a fine not exceeding \$250, to be imposed by a magistrate.

10. Section 26 of the principal Ordinance requires every officer and volunteer to take the oath, or make the declaration, of allegiance. It is not intended to require members of the auxiliary units to do this, except when they are called up for actual military service. This will be provided in the regulations. Section 10 of this Ordinance, accordingly, makes the general obligation to take the oath, or make the declaration, subject to any regulations relating to members of auxiliary units. It also enables the oath or declaration of allegiance to be taken or made before the Adjutant, or before any officer of His Majesty's regular forces attached to the corps. This is desirable because, speaking generally, the term "officer" in the principal Ordinance means an officer holding a volunteer commission.

RAILWAYS ORDINANCE.

THE ATTORNEY-GENERAL moved the first reading of "An Ordinance to amend the Railways Ordinance, 1919." He said—This again is a Bill which deals almost entirely, or very largely, at least, with questions of detail. The drafting of some new railway regulations showed the desirability of this Bill. When those new regulations came to be drafted it was found that the powers in the principal Ordinance were in a rather peculiar condition. One section gives the Governor-in-Council power to make regulations and one section only. That power is confined entirely to make regulations relating to the procedure to

be followed in the case of accident. For all the other regulations the power is taken away from the Governor-in-Council in the principal Ordinance and given elsewhere. For example, Section 34, which is a special section all to itself, gives the Manager power, subject to the approval of the Governor-in-Council, to fix the maximum number of passengers that may be carried in any carriage in any particular compartment. That seems scarcely a matter requiring a section to itself. Section 35 gives the Manager power to make by-laws to regulate the conduct of servants of the railway. Section 32 gives him certain powers for making rules, subject to the approval of the Governor-in-Council. Many of these powers are set out in detail, but many other necessary powers are not mentioned at all. Another objection is that in certain cases it would appear that the Manager, before exercising the necessary power, would have to make a rule to be approved by the Governor-in-Council. He might have to do that before he could suspend any service or alter the speed to be observed by the rolling stock on the railway. Accordingly the present Bill collects the regulation making powers into one section and gives the power to the Manager subject to the approval of the Governor-in-Council. It also expressly gives the Manager power to do certain acts which do not seem to require any rule to be made before that power is exercised. It specifies exactly what he can do without making any rules and what his powers are to make rules.

The Bill also increases the penalties for various offences under the Ordinance. I think a very cursory glance at the principal Ordinance will show in many cases that the fines are much too low. For example \$20 seems far too low a maximum for an attempt to defraud the railway administration. The maximum fines are raised generally to that level of those applied in similar cases in our Ordinances.

THE COLONIAL SECRETARY seconded, and the Bill was read a first time.

OBJECTS AND REASONS.

The Objects and Reasons for the Bill state:—

1. The drafting of certain new Railway rules has shown the desirability of making certain alterations in Railway Ordinance, 1909, Ordinance No. 21 of 1909. This Ordinance proposes to make those alterations, and some others, but it is not a general revision of the principal Ordinance.

2. "Administration" is defined in the principal Ordinance as "the manager or such other person as the Governor may appoint to conduct the affairs of any railway." As this is a person it is considered that the word "administrator" is more suitable, especially as the word "administration" is also used in the principal Ordinance as an abstract noun. This amendment is made by paragraph (a) of section 2, and by section 3, of this Ordinance.

3. By paragraph (b) of section 2 of this Ordinance the definition of the term railway is extended to cover railways in process of construction and works connected with railways authorized to be constructed.

4. The powers of the administrator are defined, collected and extended in the new section 32 of the principal Ordinance which is to be substituted by section 5 of this Ordinance. These powers will include a power to make rules subject to the approval of the Governor-in-Council. This will enable sections 29 and 34 of the principal Ordinance to be repealed. Section 29 is repealed by section 4 of this Ordinance, and section 34 is repealed by section 6 of this Ordinance. As the rules will be very detailed and voluminous, and will deal solely with railway administration, it is not considered necessary that they should be gazetted. This is provided for by sub-section (3) of the new section 32. Sub-section (4) of that section provides that the administrator shall keep at each station a copy of the rules in English and Chinese and shall allow any such copy to be inspected at all reasonable hours.

5. Section 8 of the Ordinance recasts sub-section (2), (3) and (4) of section 35 of the principal Ordinance. It omits the reference to by-laws for the conduct of railway employees as that matter will now fall under the new section 32 (2). It provides for the procedure upon an appeal to the Governor against the imposition of a penalty by the manager. Sub-section (3) of section 35 of the principal Ordinance provides that the manager may not impose any penalty on any railway employee which would exceed the amount of seven days' pay in any one month. This might be insufficient. The new form of the section will not contain this limitation, but it will provide that, for the purpose of recovery of the penalty, not more than seven days pay may be deducted in any one month, except upon the termination of the person's employment. This old sub-section (5) becomes sub-section (6).

6. With one slight exception in section 12, the remaining sections of this Ordinance provide for increases of the penalties provided in the principal Ordinance. This seems to be too low in many cases. To take two examples at random, \$100 seems too low a maximum for the offence of wilfully limiting a railway signal, and \$20 seems too low a maximum for attempts to defraud the railway.

ORDINANCE TO AMEND THE MAGISTRATES ORDINANCE, 1890.

THE ATTORNEY-GENERAL moved the second reading of the Bill intituled "An Ordinance to amend the Magistrates Ordinance, 1890.

THE COLONIAL SECRETARY seconded, and the Bill was read a second time.

Council then went into Committee to consider the Bill clause by clause.

THE ATTORNEY-GENERAL moved the insertion of the following clause immediately after clause 5 of the above bill, and the renumbering of the succeeding clauses of the bill.

Amendment of
Ordinance No. 3
of 1890, s. 32.

6. Section 32 of the Magistrates Ordinance, 1890, is amended by the substitution of the word "twenty-five" for the word "five" in the first line thereof.

In explanation of the amendment the ATTORNEY-GENERAL said:—Section 32 of the Magistrates Ordinance, 1890, provides that if a defendant is fined a sum not exceeding \$5, and if he has on him money equal to the amount of the fine, any money found on him may be appropriated to the payment of his fine. It is now proposed to amend the section by reading \$25 for \$5. This amendment is put forward in view of a contemplated increase of the maximum fine for mendicancy from \$5 to \$25. Beggars sometimes have comparatively large sums in their possession. The provision may be useful in other cases also.

The amendment was approved and upon Council resuming,

THE ATTORNEY-GENERAL moved the third reading of the Bill.

THE COLONIAL SECRETARY seconded, and the Bill was read a third time and passed.

THE HONG KONG POLICE RESERVE.

THE ATTORNEY-GENERAL moved the second reading of the Bill intituled "An Ordinance to provide for the formation, establishment and regulation of the Hong Kong Police Reserve."

THE COLONIAL SECRETARY seconded, and the Bill was read a second time.

Council then went into Committee to consider the Bill clause by clause. No amendment was made in Committee.

Upon Council resuming,

THE ATTORNEY-GENERAL moved the third reading of the Bill.

THE COLONIAL SECRETARY seconded, and the Bill was read a third time and passed.

Council adjourned until Thursday, 22nd December.

FINANCE COMMITTEE.

A meeting of the Finance Committee followed, the COLONIAL SECRETARY presiding.

The votes, totalling \$10,491, in H.E. The Governor's message, No. 16, were approved.