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MANUAL
OF
Indian Military Law

1937

Government of India, Ministry of Defence

(Corrected up to 1960)

Reprint, 1961

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NOTE

In a work covering so much ground there must inevitably be errors. Any corrections or suggestions will be gratefully received; they should be addressed to—

The Editor,

Manual of Indian Military Law,

c/o The Judge Advocate-General, Army H Q.,

New Delhi-11.

PREFACE TO THE FIRST EDITION

The want of an official manual of Indian military law has been much felt in the past, and the changes which will shortly be introduced into that law when the Indian Army Act, 1911, is brought into force furnish a suitable opportunity for the appearance of such a work. The present volume has, therefore, with the approval of the Government of India, been prepared in the Judge Advocate General's Department.

Part I contains a history of the law relating to His Majesty's Indian Forces with a general account of that law and its application under the Indian Army Act, 1911. A chapter on the law of evidence applicable to courts-martial under Indian military law is added; subsequent chapters deal with such offences against the ordinary criminal law of India as are likely to engage the attention of these courts, and with other legal matters a knowledge of which may be useful to officers and soldiers of the Indian Army.

Part II consists of a reprint of the Indian Army Act, 1911, and the Statutory Rules issued thereunder. To both Act and Rules are added copious notes which will materially help courts and individual officers concerned in the administration of Indian military law.

In Part III will be found the text of certain Acts, or portions of Acts, of the Indian legislature which are either referred to in the earlier parts of the manual, or which are not generally accessible to military officers in India.

Part IV contains all "notifications" issued by the Governor General in Council under the Indian Army Act, 1911, up to the date of publication of this manual; also the forms sanctioned for use in the preparation of court-martial warrants under that Act. An index, which has been made as full as possible, completes the volume.

The War Office "Manual of Military Law" has furnished the model on which the present work has been compiled, and the rulings contained in that manual have been largely drawn upon in its preparation. When the works of legal writers, other than the authors of the abovementioned manual, have been quoted, the source of the information in the text has been indicated in a footnote. If in any case this has been inadvertently omitted, the omission, on being brought to notice, will be rectified in future reprints.

M. H. S. GROVER, *Major-General,*
Secretary to the Government of India,
Army Department.

PREFACE TO THE THIRD EDITION

The Manual has been brought up-to-date and includes all amendments in the Indian Army Act and Rules introduced since the publication of the First Edition up to July 1936.

Owing to the amendment of the Act and the Rules in 1934 and 1935, important changes have been made in Parts I and II, and Chapters II—VI of Part I have been largely re-written.

G. R. F. TOTTENHAM,
Secretary to the Government of India,
Defence Department.

EXPLANATORY NOTE FOR THE 1961 REPRINT

This reprint of the Manual has been brought out to meet urgent demands of the Manual pending publication of the completely revised edition which will take some time.

Being an interim issue only, Part I and the Notes and Appendices in Part II of the Manual have been printed without making amendments. Words and expressions such as His Majesty, Crown, His Majesty's Indian Forces, King, Viceroy's Commissioned Officer, British India, transportation for life or transportation which have since been substituted due to constitutional changes and amendments of law should be read as so changed for which reference may be made to the relevant law in the Manual.

The Indian Army Act and the Indian Army Act Rules in Part II of the Manual have been printed as amended upto the date of their repeal or supersession. The Indian Army (Suspension of Sentences) Act has been printed in this Part and omitted from Part III.

Part III of the Manual now contains the Army Act, 1950, Army Rules 1954, Army and Air Force (Disposal of Private Property) Act, 1950 and Army and Air Force (Disposal of Private Property) Rules, 1953. Comparative tables of the provisions of these Acts and Rules and the corresponding provisions in the Indian Army Act, Indian Army Act Rules and Indian Army (Suspension of Sentences) Act have been inserted in this Part to facilitate comparative study. Tables of new provisions have also been given.

Part IV of the Manual has been brought up-to-date. The Indian Territorial Force Act and Rules have been replaced by the Territorial Army Act, 1948 and the Territorial Army Rules.

In Part V of the Manual, notifications and warrants issued under Indian Army Act have been omitted and those issued under Army Act, 1950 incorporated.

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MANUAL
OF
INDIAN MILITARY LAW

PART I

CHAPTER I

INDIAN MILITARY LAW—ITS ORIGIN AND EXTENT

(i) INTRODUCTORY

1. Origin of the Indian Army.—The Indian Army sprang from very small beginnings. Guards were enrolled for the protection of the factories or trading posts which were established by the Honourable East India Company at Surat, Masulipatam, Armagon, Madras, Hooghly and Balasore in the first half of the seventeenth century. These guards were at first intended to add to the dignity of the chief officials as much as for a defensive purpose, and in some cases special restrictions were even placed by treaty on their strength, so as to prevent their acquiring any military importance. Gradually, however, the organisation of these guards was improved and from them sprang the Honourable East India Company's European and native troops. Both of these steadily increased in numbers, until in 1857, when the native army reached its maximum strength, it numbered (including local forces and contingents, and a body of 38,000 military police) no less than 311,038 officers and men.(a)

2. E. I. Company's Mutiny Act.—Statutory provision was first made for the discipline of the Honourable East India Company's troops by an Act(b) passed in 1754 for "punishing Mutiny and Desertion of officers and soldiers in the service of the United Company of Merchants of England trading to the East Indies, and for the punishment of offences committed in the East Indies, or at the Island of Saint Helena". Section 8 of this Act empowered the Crown to make Articles of War for the government of these troops, and such articles were accordingly made and published. The terms of the Act are wide enough to cover both European and native troops, but the language of the articles themselves shows that they were originally intended for Europeans only. In the absence of any other code, however, the Governments of Bengal, Madras, and Bombay seem to have applied these articles, with such modifications and omissions as appeared necessary, to the bodies of native troops maintained by them, of which the present Indian Army is the descendant. In 1813, owing to doubts having arisen as to the legal validity of the existing arrangements for the discipline of the native armies, provisions were inserted in the Act(c) which was passed in that year to extend the Company's privileges for a further term, which legalised the existing system and gave power to each of the Governments of Fort William, Fort Saint George and Bombay to make laws, regulations, and Articles of War for the government of all officers and soldiers in their respective services who were "natives of the East Indies or other places within the limits of the Company's Charter". It was further provided in 1824(d) that such legislation should apply to the native troops of each presidency, wherever serving, and whether within or beyond His Majesty's dominions.

(a) Imperial Gazetteer of India, 1907, Vol. IV, Ch. XI.
(b) 27 Geo. II, Cap. 9.
(c) 53 Geo. III, Cap. 155, ss. 96 and 97.
(d) 4 Geo. IV, Cap. 81, s. 63.

3. Each Presidency frames its own code.—Under the statutory sanction of these two enactments a military code was framed by the government of each presidency and put in force as regards its own troops. These codes still followed to a great extent the Articles of War then applicable to the Company's Europeans, but the only punishments awardable to native officers seem to have been death, dismissal, suspension, and reprimand and to native soldiers, death and corporal punishment. Transportation and imprisonment were not awardable.

(ii) THE ARTICLES OF WAR

4. Government of India Act, 1833, and the "Articles of War".—By section 73 of the Government of India Act, 1833, (e) the power to legislate for the whole native army was restricted to the Governor General in Council, and laws so made were given general application to all "native officers and soldiers" wherever serving. Obviously the native officers and soldiers here referred to are the "natives of the East Indies or other places within the limits of the Company's Charter" of the earlier legislation. This is confirmed by the fact that in later legislation(f) the existence in India of three military codes is recognised—*i.e.*, that of the Queen's troops, that of the Company's Europeans, and that of the Company's troops who are "natives of the East Indies or other places within the limits of the Company's Charter". Under the powers conferred upon it by the Act of 1833 the Indian Legislature for the first time provided a common code for the native armies of India in 1845, "Articles of War" for those armies being enacted by the Governor General in Council as Act XX of that year. This Act was shortly after repealed and replaced by Act XIX of 1847 which, having been frequently amended(g) in the intervening period, was in its turn repealed by Act XXIX of 1861 (an Act to consolidate and amend the Articles of War for the government of the Native Officers and soldiers in Her Majesty's Indian Army). This was repealed by Act V of 1869 ("the Indian Articles of War") which replaced it. In the preamble to this Act reference is for the first time made to "native officers, soldiers, and other persons in Her Majesty's Indian Army," thus recognising the existence of what are commonly known as "followers".

5. Amendments of "Articles" in 1894.—The amalgamation of the three native armies into one in 1895 necessitated considerable amendments in the "Indian Articles of War". These amendments were effected by Act XII of 1894 and the Indian Articles of War, as altered by this Act, and by various minor amending Acts,(h) furnished the statutory basis of the Indian military code until 1911. As time went on, however, and the Indian Army began to take its share in the imperial responsibilities of the British Army, it was found that an Act originally framed for three separate local forces, each serving as a rule in its own Presidency, failed to provide adequately for the discipline and administration of that army under modern conditions. Owing also to the mass of amendments super-imposed on the original articles, these were often difficult to understand, and sometimes even self-contradictory.

6. The Indian Army Act, 1911.—The amendment of the Indian Articles of War was therefore again taken up in 1908, but the consideration then given to the subject showed that a new consolidating and amending Act would be necessary, any further amendment of the articles of 1869 being only likely to accentuate the

(e) 3 and 4 Will. IV, Cap. 85.

(f) 7 and 8 Vic., Cap. 18; 12 and 13 Vic., Cap. 43.

(g) Acts of Governor General in Council—VI of 1850, XXXVI of 1850, III of 1854, X of 1856, VIII of 1857, XXII of 1857, and VI of 1860.

(h) Acts of Governor General in Council, XII of 1891, I of 1900, I of 1901, IX of 1901, XIII of 1904, and V of 1905.

existing confusion. A Bill was accordingly drafted consolidating the existing law as to the Indian Army into one simple and comprehensive enactment and adding such provisions as experience had shown to be necessary. This was passed into law on the 16th March 1911 as the "Indian Army Act" and came into force on the 1st January 1912. All previous Acts dealing with the subject were repealed by section 127 of the Act. Amendments subsequently made by various minor amending Acts(i) have been incorporated in this edition.

7. The Indian Army (Suspension of Sentences) Act, 1920.—During the war 1914-18 temporary Acts(j) were passed to provide for the suspension of sentences. These measures were found to be beneficial, and on the 23rd March 1920 a permanent Act to provide for the suspension of sentences of imprisonment or transportation passed by courts-martial on persons subject to the Indian Army Act, which repealed the temporary Acts, came into force. This Act which is known as the "Indian Army (Suspension of Sentences) Act"(k) has to be read as one with the Indian Army Act. The Act is reprinted in full in Part III with notes. For further information see Chapter IV.

(iii) PRESENT CODE

8. Rules and other "subordinate legislation".—The present military code of the Indian Army is thus contained in the Indian Army Act, the Indian Army (Suspension of Sentences) Act and certain rules and other matters which latter, being made in pursuance of the Indian Army Act by authorities therein empowered to do so, have the force of law. Examples of this latter class of "subordinate legislation" are the Rules framed by the Central Government under section 113 of the Indian Army Act, and those as to "minor punishments" contained in Regulations for the Army in India, which derive their statutory force from orders issued by the Commander-in-Chief in pursuance of section 20 of the Indian Army Act.

9. Persons permanently subject to Indian Military law.—We have now to consider what persons are made subject to this code.

The Regular Forces include the Indian Army,(l) and all persons in the Regular Forces are *prima facie* subject to the Army Act,(m) *i.e.*, to the code of the British Army. Such of the Regular Forces, however, as are officers, soldiers or followers in His Majesty's Indian Forces are, if "natives of India", made subject to Indian military law(n) and are to be tried and punished in accordance with that law. "Natives of India" are, for the purposes of the Army Act, defined(o) as "persons triable and punishable under Indian military law,"—which is, in its turn, defined(p) as "the Articles of War or other matters made, enacted, or in force, or which may hereafter be made, enacted, or in force under the authority of the Government of India". The position therefore is that those persons in His Majesty's Indian Forces for whom the Indian legislature, acting within the extent of its legislative powers, has provided a military code, are subject to that code and are tried and punished in accordance with it instead of in accordance with the Army

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(i) Acts of Governor General in Council, XV of 1914, X of 1917, XI of 1918, XVIII of 1919, II of 1920, XXXVII of 1920, XXXIII of 1923, VIII of 1930, XXXIII of 1934 and VII of 1935.
(j) Acts of Governor General in Council, IV of 1917 and XVIII of 1918.
(k) Act of Governor General in Council, XX of 1920.
(l) A. A., s. 190 (*8*).
(m) A. A., ss. 175 (*1*), 176 (*1*).
(n) A. A., s. 180 (*2*) (*a*).
(o) A. A., s. 190 (*22*).
(p) A. A., s. 180 (*2*) (*b*).

Act. The Indian legislature had, by section 73 of the Government of India Act, 1833,(q) referred to above, power to make laws for all "native officers and soldiers"—that is for all persons permanently subject to military law and regularly commissioned, appointed, or enrolled into the military service of the Crown in India who are "natives of the East Indies or other places within the limits of the Company's Charter"—in fact for most Asiatics and some Africans.

Section 73 of the Government of India Act, 1833, has been repealed and by section 65 (1) (d) of the Government of India Act, 1915(r) which replaced it, the Indian legislature is empowered to make laws for the government of officers, soldiers and followers in His Majesty's Indian Forces in so far as they are not subject to the Army Act, which laws shall, as in the Act of 1833, apply to them at all times and wherever serving. It has, however, been held that the scope of the Indian Army Act, 1911, which was passed in exercise of the powers conferred by section 73 of the Government of India Act of 1833, has not been extended by the subsequent passing of the Government of India Act of 1915. Nevertheless, the Indian Army Act of 1911 permits the enrolment, for instance, of Anglo-Indians of Indian domicile, on the ground that such persons are "natives of India" for the purposes of the Government of India Act of 1833, under which the Indian Army Act of 1911 was enacted. The position is the same under the Government of India Act, 1935. The Indian Legislature has so far applied its military code to the following classes, wherever serving(s) :—

(1) Indian commissioned officers.(t)

(2) Viceroy's commissioned officers.(u)

(3) Warrant officers.(v)

(4) Persons enrolled under the Indian Army Act.

10. Persons temporarily subject to Indian military law.—The persons commonly known as "followers" are not ordinarily subject to Indian military law, unless they have been enrolled under the Indian Army Act, but it is obviously necessary that they and other civilians who accompany the army should be subject to military discipline on active service and in certain other circumstances. Accordingly we find that the Indian Army Act is also(w) applied to—

> "Persons not otherwise subject to military law, who, on active service, in camp, on the march, or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, His Majesty's Forces."

The above provision does not operate so as to subject Europeans, British or foreign to Indian military law when they accompany His Majesty's Forces under the circumstances mentioned. Such persons are however subject to the Army Act (British) when they accompany these forces on active service. Its operation as to non-Europeans who are not native Indian subjects of His Majesty is in some cases doubtful, and may depend on the employment of the person concerned and the

(q) 3 and 4 Will. IV, Cap. 855.

(r) 5 and 6 Geo. V, Ch. 61 as amended by 6 and 7 Geo. V, Ch. 37 and 9 and I Geo., V, Ch. 101.

(s) I. A. A., s. 2 (*1*) (*a*) (*b*).

(t) For definition, see I. A. A., s. 7 (*2*).

(u) For definition, see I. A. A., s. 7 (*2A*).

(v) For definition, see I. A. A., s. 7 (*3*).

(w) I. A. A., s. 2 (*1*) (*c*). See also Chapter VIII.

locality of the service. Any civilian, however, who is on active service with a British Indian force, and is not subject to the Indian Army Act, will be subject to the Army Act,(x) so that no one will escape entirely from military discipline. Further information regarding civilians temporarily subject to the Indian Army Act will be found in Chapter VIII.

11. **Other military bodies in India.**—The position of other military and semi-military bodies such as the Indian Territorial Force, the Indian State Forces, the Military Police, the Frontier Militia, and Levies, will be considered in another chapter.(y)

(x) A. A., ss. 175 (7) (8), 176 (9) (10).

(y) See Chapter VIII.

CHAPTER II

OUTLINE OF THE INDIAN ARMY ACT

(i) Application of the Act

1. Scheme of chapter.—This chapter is intended to give a general account of the Indian Army Act and to show its scope and purpose. Certain explanations of a general character, which would be out of place in the notes to particular sections, are also contained in it. For a detailed explanati on of the Act reference should however be made to these notes.

2. I. A. A., sections 2 and 3.—The first chapter of the Indian Army Act is concerned with the application of Indian military law, certain matters connected with that application, and the definition of terms used in the Act. The application of Indian military law has already been fully considered.(a) Persons subject to the Indian Army Act under clause (a) or (b) of section 2 (1) remain so subject till retired, discharged, cashiered, removed or dismissed from the service ; those subject under clause (c) only so long as the conditions contemplated therein continue. The effect of such a notification as is referred to in section 3 is that those who rank as Indian commissioned officers, Viceroy's commissioned officers, warrant officers and non-commissioned officers must, in their relations to military law, be treated in the same way as those who hold corresponding ranks in the Indian Army :—for instance, an Indian civil official who ranks as an Indian commissioned officer can be tried by no military tribunal inferior to a general or a summary general court-martial, while one who ranks as a warrant officer can be tried by a district court-martial but cannot be awarded imprisonment or field punishment by it.(b) The status conferred(c) is a personal one and does not give any command over others. Further information on this subject will be found in Chapter VIII.

3. I. A. A., section 5.—Section 5 enables the provisions of the Indian Army Act to be applied to any force (of military police, for instance) raised and maintained in India by the Government of that country, but which does not form part of the regular Indian army. It also enables Government to arrange for such application by providing suitable authorities and tribunals. Such a notification as is contemplated by this section might, for instance, provide that, as regards the force in respect of which it is issued, the functions of the Commander-in-Chief or the officer commanding a division should be exercised by some civil official, and those of a general court-martial by some civil court or official.(d) A force to which the Indian Army Act is thus applied does not thereby become part of the regular army, nor subject to its tribunals. It merely adopts, as its code, a similar code to the code in force in that army.

4. I. A. A., section 6.—Section 6 provides for the discipline and administration of Indian troops when serving in colonies and dependencies under the Imperial Government. The powers conferred by the Indian Army Act on the commanders of armies, army corps, divisions and brigades are, in the first instance, restricted to the officers holding such commands in India or subject to the Indian

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(a) See Chapter I.

(b) I. A. A., ss. 72, 73 and 45.

(c) For notifications under this section, see Part V.

(d) Certain provisions of the I. A. A. have been applied to the Malwa and Mewar Bhil Corps, and the Mina Corps. See notifications in Part V.

authorities or on active service,(e) and the Central Government is here authorised to make rules as to the officers who shall exercise these powers as regards Indian troops serving abroad, and also the limitations, if any, to be placed upon such exercise. The section also provides for the granting of power to officers commanding in India military organisations, other than armies, army corps, divisions and bridges. Cases can thus be provided for as they arise, and in accordance with local circumstances, without the necessity for fresh legislative action to meet every new development. The want of a similar provision caused grave inconvenience under the former "Indian Articles of War."

(ii) Definitions

5. Definitions.—All the definitions in section 7 must be understood as being subject to the reservation in the opening clause of that section, *i.e.*, they are not to be read into the Act if "there is something repugnant in the subject or context." An instance of such a repugnance will be found in section 92 of the Act. "Officer" in this section cannot be used in the restricted sense indicated in definition (5), as such a meaning would be repugnant to the context, and must therefore be taken in its wider meaning of "official". It will be noticed that in some cases, terms are defined in section 7 as "meaning" such and such, and in others as "including" some other person or thing. In the former case the term defined is used as a synonym for a longer or more cumbrous expression, but the legal effect of the enactment would not be altered if the longer expression were used throughout instead of the shorter. The effect of those definitions, or parts of definitions, which declare that a term "includes" something else is somewhat different. Here the result is that wherever the law, as it stands, applies to the class of persons, or things, indicated by the first term, it will also apply to the class or classes who are "included", though the natural meaning of the English language might not indicate that it did apply to the latter. For instance, the expression "non-commissioned officer" does not, as it stands, necessarily cover an acting non-commissioned officer, but the result of the concluding words of definition (4) is that, wherever the words "non-commissioned officer" occur in the Act, they are also to be taken as applying to acting non-commissioned officers, and an acting non-commissioned officer cannot therefore be subjected to imprisonment as a summary award under section 20. Similarly the words "Judge-Advocate General," do not as they stand, indicate a Deputy Judge-Advocate General, but the explanation to section 85 of the Indian Army Act shows that, wherever in that section a power or duty is conferred or imposed on the Judge-Advocate General in India a similar power or duty is conferred or imposed on each Deputy Judge-Advocate General.

(iii) Enrolment and Attestation

6. Enrolment and Attestation explained.—Everyone who is permanently subject to Indian military law (except officers and warrant officers) is subject to that law by virtue of his "Enrolment". This process, and the subsequent attestation of certain enrolled persons, is described in Chapter II of the Indian Army Act and in the Rules made by the Central Government under the powers therein conferred upon him. The principle underlying these provisions is that no person should be permanently subjected to an exceptional and severe code, like that contained in the Indian Army Act, without a definite act on his part, such act being susceptible of easy proof. "Enrolment" is therefore made a definite act recorded in a formal document, the enrolment paper, which is itself made legal

(e) I. A. A., section 7 (*8*).

evidence of the facts stated in it,(f) and which shows clearly all the conditions of the bargain which the enrolled person has made with the State. In these respects it resembles the British soldier's "attestation". The latter term is, in Indian military law, applied to the administration to the enrolled person of the oath or affirmation of military fidelity. It forms no part of the process of enrolment and this oath or affirmation is only administered to combatants and the higher classes of non-combatants. The ceremony takes place when the candidate is fit for duty, or has completed a prescribed period of probation, and confers on the person admitted to it a certain status and the privilege of not being ordinarily dischargeable without reference, at least, to his Brigade Commander.(g) Only attested person can rise to non-commissioned rank in the Indian Army.(h) Under the old law "enrolment" (the entry of a person's name with his consent on the list of a corps or department) did not involve any liability to "general service"—*i.e.*, there was no obligation upon the enrolled person to "go wherever he was ordered by land or sea," which latter obligation attestation carried with it. It was on this account that a practice set in of attesting everyone, menials included, who it was intended should accompany the army into the field. There is no such necessity under the present law as enrolment under the Indian Army Act is, as a rule, for general service though special conditions of enrolment can, if necessary, be "prescribed" to meet special cases. It has therefore been found possible to restrict attestation, which now includes the obligation to go wherever ordered by air, to combatants and those higher classes of non-combatants whom the Government of India considers deserving of being treated on the footing of combatants.(i) The enrolment paper referred to above contains an official record of the bargain made with the enrolled person on behalf of the State, and the conditions of that bargain cannot be altered except with the consent of the person concerned. An instance of such consent is when a man, on being trained in special duties, agrees to serve for longer than the term for which he was originally engaged. Such a variation of the conditions of service is therefore recorded on the man's enrolment paper and signed by him. No separate attestation document is required for the classes who are attested. The fact of attestation is in each case recorded on the enrolment paper and authenticated by the signature of the attesting officer.

(iv) Dismissal and Discharge, etc.

7. Dismissal and discharge explained.—No authority has been prescribed under I. A. A. 16 as a competent authority to authorise the discharge of Indian commissioned officers. These officers receive their commission from the Viceroy, who authorises their retirement from the service or resignation of commission (see R. A. I.). They may also be dismissed by order of the Central Government under I. A. A. 13 (1), the dismissal taking effect as provided in Rule 12, and they may be cashiered or dismissed by sentence of court-martial, the cashiering or dismissal taking effect as provided in Rule 154. They remain subject to the Indian Army Act until duly retired, cashiered, removed or dismissed from the service.

Having provided for the formal entry into the military service of the Crown of those persons who are enrolled under the Indian Army Act, that Act goes on to legislate for their dismissal and discharge, as well as for the dismissal and discharge of Viceroy's commissioned officers and warrant officers. A person once

(f) I. A. A., s. 91.

(g) Rule 13.

(h) I. A. A., s. 7 (4).

(i) For a list of these classes, see Rule 8.

subject to Indian military law as a Viceroy's commissioned officer, warrant officer or person enrolled under the Act remains so subject until he dies or is formally dismissed or discharged.

Discharge is legislated for in section 16 of the Act and in Rules 10, 12, and 13. The principal points to notice are that (1) the discharge must in every case be authorised as provided in Rule 13, (2) the discharge will take effect as provided in Rule 12, and (3) the discharge of a person entitled under the conditions of his enrolment to be discharged must be carried out with all convenient speed, *i.e.*, without unreasonable delay.

Dismissal, *i.e.*, penal discharge, is legislated for in sections 13 and 14 of the Act and in Rule 12 and also (as a court-martial punishment) in section 43 and in Rule 154. It involves, under existing regulations, the loss of any pension or gratuity which the dismissed person may have earned. Summary dismissal takes effect as stated above for discharge, and dismissal by sentence of court-martial takes effect as provided in Rule 154.

The provisions of the Indian Army (Suspension of Sentences) Act, 1920, require, however, to be considered where a sentence of transportation or imprisonment which is combined with the punishment of dismissal is suspended or remitted under that Act or where a sentence of imprisonment for less than three months which is combined with dismissal is put into execution and there is a former sentence under suspension. They must also be considered when an offender is dismissed or discharged otherwise than by sentence of court-martial, if there is a suspended sentence on which he has not been committed.

Every enrolled person who is dismissed or discharged must, under I. A. A. 17, be furnished by his commanding officer with a discharge certificate, on the date, if possible, from which the dismissal or discharge takes effect. In the case of Viceroy's commissioned officers and warrant officers the discharge certificate is furnished under Rule 11 and not under I. A. A. 17, and in the case of a Viceroy's commissioned officer summary dismissal can only be ordered, under I. A. A. 13, by the Central Government or by the Commander-in-Chief in India.

(v) Summary Reduction, etc.

8. Summary reduction and minor punishments.—Chapter IV of the Act deals with the summary reduction of warrant officers and non-commissioned officers, including acting non-commissioned officers, and with punishments which are of a summary nature.

Section 19 permits of the reduction of a warrant officer or a non-commissioned officer, including an acting non-commissioned officer,(j) to lower grade or to the ranks by a brigade commander or any higher authority. A warrant officer reduced to the ranks cannot, however, be required to serve in the ranks as a sepoy. An acting non-commissioned officer may also be ordered by his commanding officer(k) to revert from his acting or lance rank to his permanent grade. Such reduction may, in each case, be ordered either as a punishment or simply because the warrant officer, non-commissioned officer or acting non-commissioned officer has been found unsuited to the position in which he was placed.

"Minor" punishments and the officers who can award them have been legislated for in orders issued by the Commander-in-Chief under the authority conferred upon him by section 20. These punishments are set out in R. A. I. For further information, see Chapter III.

(j) I. A. A., s. 7 (*4*).

(k) I. A. A., s. 19 (*2*).

9. Collective fines.—Section 21 permits of the imposition of collective fines for the purpose of enforcing collective responsibility for losses of arms. Experience has shown that such responsibility is the best safeguard for the security of the arms of a company or similar unit. The amount and incidence of fines levied,(l) and the procedure to be observed in such cases, are regulated by Rules 156 and 157. Except as provided in this section, penal deductions can be imposed only on individuals and not collectively. Where, therefore, the loss of arms is occasioned by some wilful act or negligence which can be brought home to an individual or individuals, the case should be dealt with summarily or by court-martial and stoppages awarded under section 50 (2) (c) or (f).

10. Punishment of followers on active service.—Section 22 provides for the summary punishment of civilian followers who, on active service, etc., are subject to the Indian Army Act under section 2(1) (c). Such followers are also liable to be tried and punished by court-martial and to be dealt with summarily under section 20. For further information on the subject see Chapter II, paragraph 2, and Chapter VIII.

Sections 23 and 24 deal with the powers and duties of provost marshals.

(vi) Offences

11. Military and civil offences.—Chapter V of the Indian Army Act classifies under various heads and defines the military and civil offences contained in the late Indian Articles of War.(m) These offences have been defined in the same, or nearly the same, langauge as that of the Articles. This language has been generally adhered to, though not always the best possible, as it was considered inadvisable to change the forms of expression with which the army had become familiar. In only a few cases, therefore, where the language of the articles was obscure or misleading, has any material alteration been made. The principle of classification adopted in the British Army Act has been followed in the arrangement of the present Act. Offences of a similar character are grouped together and the groups have, as regards military offences, been arranged in such an order as to emphasise their relative military importance. It must be remembered that Chapter IV of the Indian Penal Code ("General Exceptions")(n) applies to offences under special laws, such as the Indian Army Act.(o) The definitions of all these offences must therefore be read as subject to the above "general exceptions". Thus, if a non-commissioned officer is charged under section 39 (b) with striking a sepoy and proves that he only did so in the exercise of his right of private defence, he will be entitled to an acquittal (I. P. C., s. 96). Similarly, if a person charged with any offence under the Indian Army Act is proved to have committed the offence while incapable, by reason of insanity or involuntary intoxication, of knowing the nature of his act or that it was either wrong or contrary to law, he is entitled to the benefit of section 84 or 85 of the Indian Penal Code, as the case may be, and cannot be punished for what he has done.

(vii) Punishments

12. Scale of punishments.—Having laid down the offences, the Act provides(p) a scale of punishments which can be awarded by courts-martial to persons subject to the Act. For each offence with the exception of civil offences under

(l) I. A. A., s. 113 (*2*) (*b*).
(m) Act V of 1869.
(n) See Part IV.
(o) I. P. C., s. 40.
(p) I. A. A., ss. 43 and 46.

section 41 (1) (a) for which an obligatory punishment is provided (*e.g.*, death or transportation for life for murder), the Act provides that the court, subject, of course, to the limits imposed by the Act upon its powers,(q) may award a specified (maximum) punishment "or such less punishment as in this Act mentioned", *i.e.*, as in accordance with the scale laid down. If, for example, the maximum punishment assigned to the offence is transportation, either imprisonment or any other punishment lower in the scale and appropriate to the rank of the offender can be awarded in its place. A maximum punishment is only intended to be imposed when the offence committed is the worst of its class, or is committed by a habitual offender, or is committed in circumstances which require an example to be made. An important distinction is made by the Act in that certain offences are punishable more severely when committed in time of war or on active service than at other times. Instances of this distinction will be found in sections 25, 26, 30(h), and 35(b). A sentry, for example, found asleep on his post or who quits his post without being regularly relieved in time of war, would, if the character and circumstances of the offence were sufficiently grave, be liable to suffer death, while in time of peace he could at the utmost be sentenced to imprisonment.

13. Combined punishments.—Under section 47, two or more punishments included in the scale of punishments applicable to the rank of the offender may be awarded in combination; the section is not, however, applicable to warrant officers tried by a district court-martial.(r) Thus, an officer, warrant officer or non-commissioned officer sentenced to forfeiture of seniority of rank may also be sentenced to serve reprimand or reprimand and to stoppages; or a person sentenced to transportation or imprisonment may also be sentenced to be dismissed from the service, to forfeit all arrears of pay, etc., due to him and to stoppages. An Indian commissioned officer sentenced to transportation or imprisonment must also be sentenced to be cashiered.(s) A warrant officer or non-commissioned officer sentenced to transportation, imprisonment, dismissal or field punishment is deemed to be reduced to the ranks even if a sentence of reduction is not specifically awarded by the court.(t) Under section 48, a court when passing a sentence of rigorous imprisonment may order that a portion of the sentence, not exceeding three months, shall be undergone in solitary confinement.

14. Field punishment.—The Indian Army Act does not allow, except in the case of menial followers on active service under section 22, the infliction of corporal punishment. As a substitute for the ancient power of inflicting corporal punishment, a court-martial may award for any offence committed by a person under the rank of warrant officer on active service such field punishment,(u) other than flogging as may be prescribed as a field punishment. The rules (Rule 155) made in pursuance of the above enactment must be referred to for further details on this subject.

(viii) Penal Deductions.

15. Penal deductions.—The pay of a person belonging to the regular forces, which include His Majesty's Indian forces, is protected as provided in s. 136 of the Army Act. A person subject to the Indian Army Act is therefore entitled to receive his pay without any deductions other than such deductions as may be authorised by proper authority under this section. Allowances are not so protected.

(q) I. A. A., ss. 73 and 76.
(r) I. A. A., s. 73.
(s) I. A. A., s. 47A.
(t) I. A. A., s. 49.
(u) I. A. A., s. 45.

Section 50 of the Indian Army Act lays down the circumstances in which penal deductions may be made from the pay and allowances of a person subject to the Act; Pay and Allowance Regulations, Part I, provide for the cases in which pay and allowances are to be forfeited within the limits of this section, and no discretion is given to the commanding officer whether or not to enforce wholly or partially the forfeiture. Other deductions which are not "penal" may be made from pay, etc., to meet public claims or regimental debts or claims, under the Royal Warrant, dated 22nd February 1902, which is published as the Preamble to Pay and Allowance Regulations, Part I, and in effect provides a convenient and expeditious method of enforcing such claims and recovering such debts without recourse to the civil courts.

A "penal" deduction is, in principle, a deduction made as a penalty for an offence of which the accused has been convicted, and constitutes part or the whole of his punishment. The term has, however, acquired a somewhat specialised meaning, and every deduction which is authorised in s. 50 must be understood to be "penal" irrespective of the common use of that word.

Section 51 allows the penal deductions to be enforced either from pay and allowances or from any public money due other than a pension ; and s. 52 provides for the remission of such deductions.

(ix) COURTS-MARTIAL

16. Preliminary note.—Chapter VIII of the Indian Army Act contains the principal provisions which govern the convening, composition, procedure, and confirmation of courts-martial, and certain provisions relating to jurisdiction and evidence. The remainder of the law will be found in the Statutory Rules framed under the Act.

For a general explanation of the constitution and practice of courts-martial, Chapter IV of Part I should be consulted; for details reference should be made to the Rules framed under the Act and notes.

17. Description of Courts-martial.—There are four different kinds of court-martial known to Indian military, law *viz.* :—

General Courts-martial,
District Courts-martial,
Summary General Courts-martial, and
Summary Courts-martial.

The list is identical with that in the Indian Articles of War, as amended in 1894, with the exception of regimental courts-martial which, owing to the existence of the summary court-martial were rarely held and have therefore been abolished. The general and district courts-martial correspond generally to the tribunals under the Army Act which are similarly designated, and the summary general court-martial to the field general court-martial, the only important difference being that the president is not, in trials under the Indian Army Act, appointed by name; the senior member sits as president as a matter of course.(v) Differences in procedure will be noted in the chapter dealing with courts-martial.(w).

(v) I. A. A., s. 77.
(w) Chapter IV.

18. Summary courts-martial.—The summary court-martial is peculiar to the Indian Army and therefore calls for more detailed notice. These courts were not introduced into the regular army till after the mutiny of the greater part of the Bengal Army in 1857. The discipline of the regular Indian army had, for some time before that catastrophe, seriously deteriorated and it was noticed that the irregular troops, and more especially the Punjab Irregular Force, were in this respect in a much better state than their comrades of the regular army. After the suppression of the mutiny the reason for this difference was sought, and it was found to be largely due to the position of comparative insignificance occupied by the commandant of a regular regiment, who had practically no power to punish or reward his own men. In contrast to this, the commanding officer of a regiment of the Punjab Irregular Force had almost absolute power in that regiment, and could, under the system prevailing in the Force, *himself* deal promptly and effectively with all military offenders. This system appears to have had its origin in the union, frequent in those days on the Frontier, of the functions of deputy commissioner, political officer and military commandant, in one and the same person. This union enabled the commanding officer, as such, to convict and sentence a military offender, and thereafter to issue a warrant for the execution of his sentence which was respected by the civil and prison officials as emanting from him in his civil and magisterial capacity. When a new Indian Army came to be organised on the ruins of the old, it was realised that the hands of the regimental commanding officer must be strengthened if the evils which had led to the practical disappearance of the Bengal Army were to be avoided. With this object summary courts-martial were at first introduced tentatively, and were in 1869 definitely established as part of the legal machinery of the Indian Army.(x) They have proved peculiarly suited to the conditions of that army and are now the tribunals by far the most frequently utilised in it for the trial of military offenders.

(x) Execution of Sentences

19. Effect of Prisoners Act, 1900: committal warrants.—Chapter IX of the Act provides for the execution of sentences which have been duly passed and, where necessary, confirmed. The Prisoners Act, 1900,(y) renders unnecessary the elaborate provisions as to the execution of sentences of transportation and imprisonment which found a place in the former Articles of War, and all that is now required, in ordinary cases, is to arrange for the transmission of military convicts and prisoners to civil prisons, after which the above-mentioned Act provides for their discipline and, when necessary, their transfer to other such prisons or to convict establishments. Forms of committal warrants under section 107 are provided in an Appendix(z) to the Indian Army Act Rules as well as warrants for use under s. 109 when sentences, orders or warrants are set aside or varied. This last class of warrant brings the change, as it affects the prisoner, to the official notice of the superintendent of the civil prison where he is confined, and provides for his release or the modification of the punishment to be inflicted upon him. There are several forms of warrant for use in different circumstances, and particular attention should therefore be paid by officers using them to the notes to s. 109 where the proper warrant to be used in each case is clearly indicated. The use of a wrong form of warrant might have serious consequences. When an offender whose sentence has been under suspension is subsequently committed on that sentence, by reason of its having been either specifically or automatically along with another

(x) Act V of 1869.

(y) Act III of 1900.

(z) See Appendix IV to these Rules in Part II.

sentence under s. 7(b) of the Indian Army (Suspension of Sentences) Act ordered into execution, particular care should be taken in the preparation of the warrant, which should show exactly what is the unexpired balance of the sentence on which the offender is committed.

(xi) Other Provisions

20. Other provisions of I.A.A.—The remaining chapters of the Indian Army Act deal with pardons and remissions, Statutory Rules, the disposal of the property of deceased persons and deserters, and miscellaneous subjects, one of which is the disposal of property or documents produced before courts-martial or in their custody, or regarding which any offence appears to have been committed or which have been used for the commission of any offence. The court, the confirming officer, or any authority superior to that officer may under the provisions of ss. 126A and 126B make certain orders on this subject. These chapters call for no special remarks in addition to those which will be found in the notes appended to the various sections.

CHAPTER III

ARREST:—INVESTIGATION OF CHARGES

(i) ARREST.

1. Military custody of person charged with offence.—Whenever any person subject to the Indian Army Act is charged with an offence he may be taken into military custody,(a) which means his arrest or confinement according to the usages of the service,(b) but such a course is by no means obligatory; if the offence is not serious it may be investigated and disposed of without placing the offender in arrest.

2. Nature of arrest—Officers.—In the case of an officer, custody means "arrest" —either open or close ; but, if circumstances require it, he may be placed under the charge of a guard, piquet, patrol, sentry or provost marshal. Whether the arrest is open or close will depend upon the direction of the officer who ordered it. An officer in close arrest is placed in charge of an "escort" consisting of another (if possible, a senior) officer of the same rank. He must not leave his quarters or tent except to take such exercise under supervision as the medical officer thinks necessary. An officer in open arrest may take exercisé at stated periods within certain limits, which are usually the precincts of the regimental lines or camp; he must not, however, appear out of uniform, or at any place of amusement or public resort, nor must he wear sash, sword, belt, or spurs. An officer placed under arrest should always be informed in writing of the nature of the arrest, which will be governed by the circumstances of the case; and any change in the nature of the arrest should be notified in writing to him. An officer (or other person) under arrest may be ordered or permitted to attend as a witness before a court-martial, or before a civil court, or to leave his station for some special purpose.

3. Arrest, when ordered.—As a rule, a commanding officer will not place an officer under arrest without investigation of the complaint or the circumstances tending to criminate him; though cases may occur in which it would be necessary to do so. He will always place under arrest an officer against whom he decides to prefer a charge, and it is his duty to report each case of arrest without unnecessary delay to the proper superior authority.

4. Arrest, how ordered.—An officer is put in arrest either directly by the officer who orders it, or, more generally, by some subordinate carrying out his orders, *i.e.*, by the adjutant of the unit when the arrest is ordered by the commanding officer, and by an officer of the staff when the arrest is ordered by a superior officer, and not through the channel of the commanding officer. The order may be verbal or written, the latter as being more formal being the preferable method, except where the offence is committed actually in the presence of the commanding or superior officer. On being put in arrest, an officer is deprived of his sword.

5. Release from arrest.—The release of an officer under arrest may be ordered by the officer who imposed the arrest, or the superior to whom it may have been reported; but, as a rule, except in cases of obvious error, the release should not be ordered without the sanction of the highest authority to whom the case may

(a) I. A. A., s. 124.
(b) I. A. A., s. 7 (*14*).

have been referred. An officer released, except specifically without prejudice to re-arrest, will not again be arrested on the same charge unless some new and special circumstances have arisen.

6. Warrant and non-commissioned officers.—The rules which govern the custody of officers apply also to a warrant or non-commissioned officer. If charged with a serious offence a warrant or non-commissioned officer will, as a rule, be placed under arrest forthwith; but in case of doubt as to the commission of the offence, the arrest may be delayed; and if the offence is not serious, it may be disposed of without previous arrest.

Persons subject to the Indian Army Act under s. 2(1)(c) as Indian commissioned officers, Viceroy's commissioned officers, warrant officers and non-commissioned officers (see Chapter II, para. 2) may, when charged with an offence, be placed under arrest under the same conditions as persons holding these ranks.

7. Other persons.—A person under the rank of non-commissioned officer taken into military custody on a charge of having committed an offence is placed either under close arrest or under open arrest. Close arrest in the case of such a person means confinement in charge of a guard, piquet, patrol, sentry or provost marshal. He is not to be placed in close arrest unless confinement is necessary for his safe custody or the maintenance of discipline. For minor offences, such as absence from roll calls and other slight irregularities men are placed under open arrest. A person under open arrest will not quit the regimental lines, except on duty or with special permission, until his case is disposed of, but he will attend parades and may be ordered to perform all duties.

8. Performance of duties while in close arrest.—Except on active service an offender, while under close arrest, is not to be required to perform any duty other than personal routine duties and such as may be necessary to relieve him from the care of any cash, stores, etc., for which he is responsible, nor is he permitted to bear arms, except in an emergency by order of his commanding officer, or on the line of march. If, however, by error, he is ordered to perform any duty, his offence is not thereby condoned.

9. No right to demand trial.—Except in the circumstances mentioned in R. A. I., when it is proposed to award summarily to an officer or warrant officer a punishment of forfeiture of seniority or of service for the purpose of promotion, a person subject to the Indian Army Act has no right to demand a court-martial. If he conceives himself wronged by the arrest, or otherwise, his remedy is a complaint in the manner prescribed by the Act.(c)

(ii) Investigation of charges.

10. Investigation of charges.—The charge against every person taken into military custody must be investigated without unnecessary delay.(d) The commanding officer of the accused is responsible that the investigation is begun within forty-eight hours of the committal of the person being reported to him unless investigation within that period seems to him to be impracticable with due regard to the public service. Every case of a person being detained in custody beyond forty-eight hours, and the reason for the delay in disposing of the case, must be reported to superior authority.(e)

(c) I. A. A., ss. 117 and 117A.

(d) I. A. A., s. 124 (*3*).

(e) Rule 14.

11. In the case of an Indian commissioned officer.—There is some difference in procedure between the cases of Indian commissioned officers and of other persons. In all cases the commanding officer is made responsible for deciding whether the charge ought to be dismissed or proceeded with, and in the latter event for taking the further necessary steps; but in the case of an Indian commissioned officer there need not, unless the officer requires it, be a formal examination of witnesses and a recording of their evidence in the presence of the accused. If he likes, he can waive such formal investigation;(f) at the same time the commanding officer may hold one at his discretion. The case of an Indian commissioned officer may be referred to a court of inquiry for investigation.

12. In the case of other persons.—Prior to the appearance before the commanding officer of an alleged offender, a preliminary investigation into his case is generally made by his squadron or company commander, or by the corresponding officer in other branches of the service. If the accused is not in arrest or confinement, or the case is not one which the commanding officer has reserved for his own disposal, this officer may decide to deal with the case himself by awarding one of the minor punishments within his power or by dismissing it. Any case in which the accused is in arrest or confinement is dealt with by the commanding officer, unless the latter remits it to the squadron or company commander for disposal. Rule 15 (A) of the Indian Army Act Rules applies to this preliminary investigation equally with that before the commanding officer.

13. Duty of officer conducting Investigation.—The manner in which the investigation of charges by a subordinate commander or commanding officer is to be carried out is regulated by Rules 15 to 17. This duty requires deliberation and the exercise of temper and judgment, in the interest alike of discipline and of justice to the accused. The investigation must be conducted in the presence of the accused.(g)

After the nature of the offence charged has been made known to the accused, the witnesses present on the spot who depose to the facts on which the charge is based are examined. The accused must have full liberty of cross-examination The commanding officer, after hearing what is stated against the accused will, if he is of opinion that no offence at all, or no offence requiring notice, has been made out, at once dismiss the charge.(h) Otherwise, he must ask the accused what he has to say in his defence, and whether he has any witnesses to call, and will give him full opportunity both of making a statement and of supporting it by evidence. The commanding officer will then consider whether to dismiss the case, or to deal summarily with it himself, or, if the accused is below the rank of warrant officer, to order trial by summary court-martial, or to adjourn the case for the purpose of having the evidence reduced to writing, with a view to trial by court-martial, or, when the accused is an officer under the rank of field officer or a warrant officer, summary disposal under s. 20 of the Act.(i) He cannot forthwith hold a summary court-martial, unless the offence is one which a commanding officer can try without reference to superior authority, or, if the offence is one requiring such reference, he certifies that there is grave reason for immediate action and that such reference cannot be made without detriment to discipline. (j) A summary of evidence and charge-sheet must accompany all references to superior authority.

(f) Rule 17.

(g) Rule 15 (A).

(h) Rule 15 (B).

(i) Rule 15 (C).

(j) I. A. A., s. 74.

14. Caution as to expressing opinion.—During the investigation, the officer conducting it must be careful not to let fall, before he disposes of the case, any expression of opinion as to the guilt of the accused, or one which might prejudice him at a subsequent trial. It may happen that officers who have been present at the investigation are detailed as members of the court convened in consequence of it; therefore, nothing should be said or done which might, though unconsciously, bias their judgment beforehand. Conduct sheets should be examined by the commanding officer when, and not before, he has satisfied himself as to the guilt of the accused.

15. Adjournment for taking a summary of evidence.—Where a commanding officer adjourns the case for the purpose of having the evidence reduced to writing, the evidence of all material witnesses (whether called before the commanding officer or not) must be taken down in writing before the commanding officer or (as is usually the case) before some officer deputed by him, in the presence of the accused, who must be allowed to cross-examine them.(k) The commanding officer can, if necessary, issue a summons requiring the attendance of a civilian witness. (l) The witnesses cannot be sworn or affirmed. In certain cases a signed statement of evidence may be accepted—*e.g.*, where the attendance of a witness cannot be readily produced. In such a case the officer taking the summary must certify the reason for accepting a written statement.(m)

When all the evidence for the prosecution has been taken, the accused, before he makes any statement, must be formally cautioned in the prescribed words.(n) Any statement of the accused will be taken down, but he will not be cross-examined upon it.

16. Mode of taking summary.—Great care is necessary in taking a summary of evidence. The discrepancies not infrequently observable between the statements recorded in the summary of evidence and the evidence given before a court-martial may often be traced rather to the hasty or careless preparation of the summary than to any prevarication or desire to mislead on the part of the witnesses. Moreover, a carelessly prepared summary of evidence may require references between the convening officer and the commanding officer of the accused and be a cause of delay in bringing the accused to trial.

17. Remand of accused for trial by court-martial.—When the summary of evidence has been taken, the commanding officer must consider it and finally determine whether or not to remand the accused for trial by court-martial.(o) It may be that on reading the evidence he will come to the conclusion that the case is one which ought to be disposed of summarily, or even dismissed. If a court-martial is ordered or applied for, it is a matter for discretion whether the accused need be kept in arrest or confinement until the charge is disposed of. It is the duty of the commanding officer on reading the summary of evidence to note whether or not the evidence taken down in the summary corresponds with the evidence given at the inquiry before him. If the commanding officer decides to remand the accused for trial by court-martial, he must next consider by what class of court he should be tried. As a rule this will be a summary court-martial, sanction being previously

(k) Rule 15 (D) (E).

(l) I. A. A., s. 84 (*1*) (*3*), Rule 15 (I).

(m) Rule 15 (H).

(n) Rule 15 (F) and note.

(o) Rule 16 (A).

obtained where such sanction is necessary.(p) When applying for a general or district court-martial or for sanction to hold a summary court-martial, the summary of evidence and charge-sheet should be submitted with the application.

18. Use of summary of evidence.—The summary of evidence may be used for certain limited purposes at the trial, and also for the purpose of giving notice to the accused of the charge he will have to meet, and to the convening officer, president and judge-advocate (if any) of the case to be tried. Either the summary itself or a copy must be laid before the court-martial.(q)

(iii) SUMMARY POWERS OF A COMMANDING OFFICER.

19. Powers of commanding officer.—S. 20 of the Indian Army Act authorises the Commander-in-Chief in India to specify the minor punishments which may be awarded summarily to persons subject to the Act, and the officers by whom such punishments may be awarded. The minor punishments specified under this section are set out and, for the purpose of awarding such punishments, the term "commanding officer" is explained in R. A. I.

There is no offence which a commanding officer is compelled by law or by rules to send before a court-martial, and each case should be considered on its merits, but a commanding officer should not, of course, dispose summarily of a case which he is debarred by s. 74 of the Act from trying by summary court-martial without reference to superior authority, or any other case which obviously deserves a more severe punishment than he is empowered to award summarily.

A commanding officer has no power to punish an officer, except that in the case of a Viceroy's commissioned officer he may award stoppages as authorised by S. 50 (2) (f) of the Act; but the custom of the service allows a commanding officer or any superior officer to reprove an officer for a minor breach of discipline not sufficiently serious to justify its being made the subject of a charge under the Act, and brought to trial before a court-martial, or for summary disposal by a superior authority under s. 20. Such a reproof is not a punishment, but in certain circumstances it might have the effect of condoning the offence so as to debar a charge from being subsequently laid against the officer. Commanding officers should therefore be careful not to administer such a reproof in cases where a superior authority might wish to take stronger disciplinary action.

20. Stoppages from pay and allowances.—Under s. 50 (2) of the Act, and Pay and Allowance Regulations, a person subject to the Act, other than an Indian commissioned officer, forfeits pay and allowances automatically for every day of desertion, or absence without leave, or as a prisoner of war; also for every day of imprisonment or field punishment, or in custody under any charge resulting in a conviction by a criminal court or court-martial, or under a charge of absence without leave, resulting in a summary award of imprisonment or field punishment under s. 20; also for every day in hospital on account of sickness certified to have been caused by an offence committed by him.

Under s. 52 and Rule 165.—(a) Any forfeiture of pay and allowances under s. 50 may be remitted by the Central Government; (b) on summary conviction for absence without leave for a period not exceeding five days, the commanding officer may remit the forfeiture of pay and allowances entailed by that absence; and (c) the forfeiture of pay and allowances incurred by a prisoner of war may be remitted by the prescribed authority unless a court of inquiry finds that the absence was due to the man's own fault or misconduct. Pay and Allowance Regulations

(p) I. A. A., s. 74.

(q) Rule 31 (A). As to use of summary, see note (D) (3) to Rule 27.

only authorise forfeiture of pay and allowances under clause (b) of s. 50 (2) for any period the offender may have been in confinement: a Viceroy's commissioned officer, warrant officer and non-commissioned officer in arrest (not confinement) and a person in open arrest, incurs no forfeiture of pay and allowances under this clause.

In the case of absence without leave, as pay and allowances are forfeited automatically, the officer dealing with the case should make no award as to it, but merely inform the offender of the number of days pay and allowances forfeited. If a period of absence does not amount to six hours or upwards, no pay and allowances are forfeited, except where the absence prevents the absentee from fulfilling some military duty, which is thereby thrown on some other person, in which case the absentee will forfeit a day's pay and allowances no matter how short his absence may be. If the period of absence amounts to six hours, but not to twelve hours, one day's pay and allowances are forfeited. If the period of absence amounts to twelve hours or upwards, pay and allowances are forfeited for the whole of each day during any portion of which the man was absent.(r)

A commanding officer may, where a man is not tried by court-martial, order stoppages of his pay and allowances to make compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, or regimental necessaries or military decoration, or to any buildings or property; and may likewise order the stoppage of the amount of any forfeiture or fine awarded by himself, a subordinate commander, or a court-martial, or any fine awarded by a criminal court.

21. Right of appeal from summary award.—There is no appeal from the award of a commanding officer, but, as has been already mentioned, an officer or warrant officer may, instead of submitting to a summary award of forfeiture of seniority or service for the purpose of promotion, elect to be tried by court-martial.(s) Other persons cannot demand a court-martial; but if any person conceives himself wronged by the award he may make a complaint in the manner prescribed by the Act.(t) Further, a punishment awarded by a commanding officer, which appears to be wholly or partly illegal, or too severe, can be cancelled, varied, or remitted by certain superior officers.(u)

22. No trial after punishment by commanding officer.—When once an offender has been punished or the charge otherwise disposed of by his commanding officer or some other officer, he cannot be tried by court-martial for the same offence; and similarly he cannot be subjected to a minor punishment, including a stoppage of pay, for any offence of which he has been acquitted or convicted by a court-martial or a criminal court.(v)

When a commanding officer has once awarded punishment, he cannot afterwards increase it. It is considered that his award is complete when the man has left his presence.(w)

(r) See explanation appended to I. A. A., s. 50 (*2*).

(s) See R. A. I.

(t) I. A. A., s. 117.

(u) See R. A. I.

(v) I. A. A., s. 66.

(w) Note (C) 5 to Rule 15.

(iv) SUMMARY AWARDS BY SUPERIOR AUTHORITY.

23. Summary powers of Superior authority.—Indian commissioned officers below the rank of Lieutenant-Colonel, Viceroy's commissioned officers and warrant officers may be summarily dealt with by one of the superior authorities specified in R. A. I. Such officers and warrant officers may be subjected to one or more of the following punishments :—forfeiture of seniority of rank and forfeiture of service for promotion (in the case of those whose promotion depends on length of service) for a period not exceeding twelve months severe reprimand or reprimand and stoppages under s. 50 (1) (b) or (2) (f). A commanding officer is only authorised to award stoppages to a Viceroy's commissioned officer and to a warrant officer and certain specified minor punishments to a warrant officer. Awards which appear to be illegal or excessive can be reviewed by superior authority.

24. Hearing of charge.—When an officer or warrant officer is remanded for summary disposal of a charge against him by superior authority, a copy of the summary of evidence or (in the case of an Indian commissioned officer where there is no summary of evidence) an abstract of the evidence should be given to him not less than 24 hours before the trial.

The authority empowered to deal summarily with the charge must, unless he dismisses the charge, or unless the accused has consented in writing to dispense with the attendance of witnesses, hear the evidence in the presence of the accused, who will be given full opportunity to cross-examine any witness against him, and to call any witnesses and to make a statement in his defence. If the accused consents in writing, the above authority may deal with the case summarily after reading the summary or abstract of evidence. Evidence given before a court of inquiry is not admissible, and cannot be used as a summary or abstract of evidence, even with the consent of the accused.

25. Disposal of charges.—An authority can dispose of a case summarily, not only if asked to do so, but also if he is asked to convene a court-martial for the trial of the offender. Even if he is asked to deal summarily with the case, he can, if he thinks it desirable, convene a court-martial. If on perusal of the summary (or abstract) of evidence and other documents he thinks fit, he can at once, without bringing the accused before him, either dismiss the case or order a court-martial, or he can decide to hear the evidence with a view to dealing summarily with the case. After hearing the evidence, the authority can still dismiss the case or order a court-martial, or he can deal summarily with it, but, if he proposes to award a punishment of forfeiture of seniority or service for promotion, the accused has the right to claim trial by court-martial.

CHAPTER IV

COURTS-MARTIAL.

(i) DESCRIPTION OF COURTS-MARTIAL AND HOW CONVENED.

1. Description of courts-martial.—A person subject to the Indian Army Act(a) who is to be tried by court-martial may be brought before a summary court-martial, a district court-martial, or a general court-martial. In certain circumstances trial may be by summary general court-martial.(b)

The summary court-martial is the tribunal most frequently used in the Indian Army, and is specially dealt with in paras. 92—103 of this chapter.

2. Distinction between district and general courts-martial.—The difference between a district and a general court-martial consists mainly in their composition and in the extent of punishment which each tribunal can award.

3. Order convening the court.—A district or a general court-martial depends for its jurisdiction upon the order which calls it into being, namely, the convening order issued by a person authorised under the Indian Army Act to convene it.

4. Convening of district court-martial.—A district court-martial may be convened by an officer authorised to convene a general court-martial or by an officer who has received from such officer a warrant authorising him to convene district courts-martial.(c)

5. Convening of general court-martial.—A general court-martial may be convened by the Commander-in-Chief in India or by an officer who has received from the Commander-in-Chief in India a warrant authorising him to convene general courts-martial.(d)

6. Forms of warrants.—The forms of the various court-martial warrants at present in use are set out in Part V. They are the following:—A-2 general court-martial warrant, issued by the Commander-in-Chief in India to command, district and independent area commanders in India and to commanders of colonial garrisons where Indian troops are stationed, authorising them to convene general courts-martial and also to confirm their proceedings; B-2 district court-martial warrant, issued by an officer authorised to convene general courts-martial to brigade commanders and to the commanders of stations where more than one brigade is stationed, authorising them to convene district courts-martial and also to confirm their proceedings; and C-2 district court-martial warrant, to the commanders of important stations.

7. Powers conferred by warrant.—Any such warrant may contain any reservations or special provisions(e) and may be wholly or partly revoked by a fresh warrant. It is normally addressed to an officer by the designation of his office, but sometimes by name, and gives authority to the officer on whom the command may devolve in his absence.

(a) I. A. A., s. 2.

(b) As to summary general courts-martial, see below, paras. 104—107.

(c) I. A. A., s. 55.

(d) I. A. A., s. 54.

(e) I. A. A., ss. 56 and 97.

The only special provision in regard to the convening of courts-martial at present is that the convening of general courts-martial by the commander of an independent brigade area is restricted to the permanent commander.

Where an officer has been sentenced to death, transportation, imprisonment, cashiering or dismissal, and where any other person has been sentenced to death (except in the case of mutiny) the sentence can only be confirmed by the Commander-in-Chief in India. An authority below a General Officer Commanding-in-Chief a Command is not authorised to confirm a sentence of transportation.

B-2 district court-martial warrants contain no special provisions. The holder of a C-2 warrant cannot confirm the proceedings of a court-martial convened by him for the trial of a warrant officer.

(ii) JURISDICTION.

8. Jurisdiction of summary court-martial.—A summary court-martial cannot try an officer or a warrant officer or a person subject to the Act as an officer or a warrant officer.(f) It has jurisdiction to try any offence under the Act (except such as can only be committed by an officer or warrant officer), but in the case of certain offences the sanction of superior authority must be obtained unless immediate trial is considered by the commanding officer to be necessary.(g) Certain restrictions are also placed by s. 41 upon its powers to try cases of culpable homicide and rape; it cannot, of course, try a case of murder.

A summary court-martial cannot award a sentence higher than one year's rigorous or simple imprisonment.(h).

9. Jurisdiction of district court-martial.—A district court-martial cannot try an officer or a person subject to the Act as an officer. It can try a warrant officer, but its powers of punishing him are limited. It has complete jurisdiction to try any offence (except such as can only be committed by an officer), though the same restrictions are placed by s. 41 upon its powers to try cases of culpable homicide and rape as are imposed upon a summary court-martial.

A district court-martial cannot award a sentence higher than two years' rigorous or simple imprisonment; it cannot, therefore try a case of murder where the only punishment which can be awarded is death or transportation for life.(i)

10. Jurisdiction of general court-martial.—A general court-martial can try any person subject to the Act. It has complete jurisdiction to try any offence, though the same restrictions are placed by s. 41 upon its powers to try cases of murder, culpable homicide and rape, as are imposed upon a summary and a district court-martial. A general court-martial can award any punishment authorised by the Act, including the punishment of death and transporation.(j)

11. No power to try persons already convicted, acquitted, etc.—A court-martial cannot try or punish a person for any offence of which he has been already acquitted or convicted by a court-martial or by a competent civil court; or where the charge against him has been dismissed or the offence dealt with summarily by

(f) I. A. A., s. 75.
(g) I. A. A., s. 74.
(h) I. A. A., s. 76.
(i) I. A. A., s. 73.
(j) I. A. A., s. 72.

his commanding officer; or where a charge against an officer or a warrant officer has been dismissed or the offence dealt with summarily by the authority authorised for the purpose under s. 20 of the Act.(k)

The prohibition does not apply where there has been no valid trial resulting in an acquittal or conviction, or, in the case of an acquittal or conviction which requires confirmation, where the finding and sentence have not been confirmed(l) : but a fresh trial should be ordered only in exceptional circumstances.

Pardon or condonation by competent military authority, if held to be proved, will operate to prevent a person from being tried by court-martial.(m)

12. Time limit for trial.—An offence, other than mutiny, desertion or fraudulent enrolment, cannot be tried by court-martial if three years have elapsed since the date of its commission.

In certain cases a person (other than an Indian commissioned officer) cannot be tried even for desertion (other than desertion on active service) or for fraudulent enrolment, if three years have elapsed from the date of the commission of the offence.(n)

13. Place of trial.—An offence, wherever committed, may be tried and punished at any place whatever.(o)

(iii) COMPOSITION.

14. District court-martial.—A district court-martial must be composed of at least three British or Indian commissioned officers,(p) each of whom must have held a commission for not less than two years and must be subject to military law.(q)

The members of the court may belong to the same corps or department as that to which the accused belongs, but where practicable they should belong to different corps or departments.(r)

The president is not appointed by name, the senior member sits as president,(s) and may be of any rank.

The members of the court may be mentioned by name in the convening order, or their rank and the unit to which they belong may alone be stated.

15. General court-martial.—A general court-martial must be composed of at least five British or Indian commissioned officers, each of whom must have held a commission for not less than three years and must be subject to military law.(t)

(k) I. A. A., s. 66; Rule 43 (A) (1).
(l) I. A. A., ss. 65 (3), 94 and 98.
(m) Rule 43 (A) (2).
(n) I. A. A., s. 67; Rule 43 (A) (3).
(o) I. A. A., s. 68.
(p) I. A. A., s. 58.
(q) Rule 29 (A); 29 (C) (1).
(r) Note to Rule 30 (A).
(s) I. A. A., s. 77.
(t) I. A. A., s. 57; Rule 29 (A), (C).

The members of the court must, so far as is practicable, belong to different corps or departments, and in no case shall the court be composed exclusively of officers of the corps or department to which the accused belongs.(u)

The senior member sits as president, as in the case of a district court-martial.

Four of the members must be of a rank not below that of Captain; an officer below that rank cannot be a member of the court for the trial of a field officer; and no officer junior in rank to an accused Indian commissioned officer can serve as a member if officers of equal or superior rank are available.(v)

16. Disqualifications of officers.—Officers who are eligible through the length of their commissioned service to act as members of courts-martial(w) may nevertheless be disqualified from serving on a particular court-martial. The following persons are disqualified in the case of a district or general court-martial: (i) the convening officer; (ii) the prosecutor; (iii) a witness for the prosecution; (iv) the commanding officer of the accused or an officer who investigated the charges before trial or took down the summary of evidence; (v) the company, etc, commander who made preliminary enquiry into the case; (vi) an officer who was a member of a court of inquiry into the matters on which charges against the accused are founded; (vii) where the accused has been previously tried for the same offence, but the proceedings have not been confirmed, any officer who was a member of the court-martial by which the offence was tried; and (viii) an officer who has a personal interest in the case.(x)

(iv) Duties of convening officer.

17. Consideration of proposed charges and evidence.—An application for a general or district court-martial should be accompanied by a summary or abstract of evidence, a charge-sheet and certain other documents stated on the form provided for such applications.

Before acceding to an application for a general or district court-martial submitted by a commanding officer, the convening officer must consider the nature of the case, the statutory provisions and regulations applicable to it and, subject thereto, must use his discretion as to the mode of disposing of the application. He must satisfy himself that the charge submitted by the commanding officer discloses an offence under the Indian Army Act and is properly framed in accordance with the Rules. He must also be satisfied that evidence sufficient to justify trial is disclosed in the summary or abstract of evidence; if he thinks that it does not, he should order the accused to be released; if he is in doubt, it is within his discretion to order the release of the accused or to refer the matter to superior authority(y). In any case he may direct the commanding officer to alter the form of the proposed charge in view of the evidence submitted; he may give directions that further evidence should be obtained; in a suitable case he may direct that the accused should be released without prejudice to his re-arrest when further evidence is forthcoming.

Where an accused person is to be arraigned on a serious charge, other charges in respect of minor offences may be dropped.

(u) Rule 30 (A).

(v) I. A. A., s. 57; Rule 30 (B), (C), (D).

(w) See paras. 14 and 15 above.

(x) Rule 29 (B).

(y) Rule 27 (A).

If the convening officer considers that a case should be disposed of summarily or by summary court-martial instead of by a district or general court-martial, he should take steps to effect this.

In all cases of indecency, fraud, theft (except ordinary theft) and civil offences, and in any case of doubt or where the case is to be tried by general court-martial, the charge and summary of evidence have to be submitted to the Deputy or Assistant Judge-Advocate-General of the Command before trial is ordered.(z)

18. Decision to try by court-martial.—If the convening officer is of opinion that the case should be tried either by a district or a general court-martial, he will, if the terms of the warrant granted to him permit, convene the court-martial; if the case is one for trial by a general court-martial and he holds no warrant to convene such a court, he will refer the case to proper superior authority holding such warrant.

19. Type of court-martial to be convened.—The powers of a summary court-martial are sufficient to deal with all ordinary offences committed by persons below the rank of warrant officer. In the case of aggravated offences, however, a district or general court-martial may properly be convened.

In forming his decision as to whether the case should be tried by district or general court-martial (where the circumstances permit trial by either one or the other of these tribunals) the convening officer will have regard to various considerations, including the prevalence of the particular offence charged, the general state of discipline in the corps or district, the character of the accused, and, in some cases, the sentence which the court ought to be in a position to award, if the facts alleged should be proved.

A case should not, as a rule, be sent for trial unless there is reasonable probability that the accused person will be convicted. At the same time there may be cases where disgraceful charges have been preferred and where a court-martial affords the only means to the accused of clearing his character.

20. Order for trial by court-martial.—The convening officer, having settled or approved the charges on which the accused is to be tried, will insert upon the charge-sheet an order that they are to be tried by the description of court-martial which he has decided to convene. It is within his power to direct charges to be inserted in different charge-sheets upon each of which the accused will be separately tried as far as and including the finding; if there are separate charge-sheets the convening officer may direct that in the event of a conviction upon any one of them the accused need not be tried upon the others.(a)

Each charge-sheet must be signed by the commanding officer of the accused and bear upon the face of it the convening officer's directions for trial.(b)

(v) Preparation of Defence by Accused.

21. Full information to be given to accused.—As soon as practicable after an accused has been remanded for trial by a district or general court-martial and at least 24 hours before he is brought up for trial, an officer must give to him a copy of the summary, or (if he is an Indian commissioned officer and there is no summary of evidence) the abstract, of evidence, and apprise him of his rights in connection with the preparation of his defence.(c)

(z) See R. A. I.
(a) Rule 68 (D).
(b) See note (A) 1 to Rule 18.
(c) Rule 22 (B).

As soon as trial has been ordered, proper opportunity to prepare his defence must be afforded to the accused, who must be permitted to have free communication with any witnesses whom he may desire to call, and with any 'friend', defending officer or legal adviser whom he may wish to consult if they are available.(d)

As soon as practicable before he is arraigned for trial, an officer must hand to him a copy of the charge-sheet, and, if necessary, explain the charge-sheet and charges to him. The officer in question must also inform him of his rights in connection with the securing of witnesses on his behalf.(e)

The accused, if charged jointly with any person whom he claims as a material witness for his defence, may apply to be tried separately from that person, and the convening officer may grant a separate trial if the nature of the charge permits.(f)

The accused is entitled to have, if he desires it, a list of the officers who will form the court as soon as they have been detailed;(g) he is not bound to give the prosecutor a list of his own witnesses.(h)

22. Securing legal aid for defence and prosecution.—The accused may himself arrange for the services of counsel to represent him at his trial. If he intends to be represented by counsel, he must give notice to that effect, so that the convening officer may, if he considers it desirable, obtain the services of counsel on behalf of the prosecutor. If the accused does not intend to be so represented but counsel has been obtained on behalf of the prosecutor, the convening officer must take steps to inform the accused to that effect not less than seven days before the trial, so that the accused may himself obtain counsel for his defence, if he so desires.(i) Similar notice should be given to the accused where the convening officer intends to appoint or apply for the services of an officer with legal qualifications to act as prosecutor at the trial.

23. Qualifications, duties, etc. of counsel and defending officer.—The qualifications of counsel (*i.e.*, barristers-at-law, pleaders, etc.), are set out in the Rules, as are also their functions, rights and duties.(j)

A defending officer has the same functions, rights and duties as counsel. The 'friend' of the accused can only act in an advisory capacity.(k)

24. Assignment of defending officer for accused.—In order to ensure that an accused person is represented at his trial if he so desires, it is the duty of the officer referred to in paragraph 21 above, at the time he hands the summary of evidence to the accused, to ask him to state in writing if he wishes to have a defending officer assigned to him by the convening officer; if he does so wish, the convening officer must use his best endeavours to secure the services of a suitable officer.(l)

(d) Rule 22 (A).
(e) Rule 23.
(f) Rule 24.
(g) Rule 23 (C).
(h) Rule 122.
(i) Rule 83 (A) (B).
(j) Rules 82—87.
(k) Rule 81.
(l) Rule 22 (B).

(vi) ASSEMBLY OF COURT.

25. Assembly of Court.—When a district or general court-martial assembles at the time and place named in the convening order the members will take their seats according to their army rank.(m) If a judge-advocate has been appointed, he must be present, as should also be any waiting members detailed in the convening order to serve as members of the court if required.

The order convening the court, the charge-sheet and the summary (or abstract) of evidence will then be produced by the president(n) to whom they will have been forwarded previously by the convening officer.(o)

26. Inquiry as to composition of court.—The court will examine the convening order for the purpose of ascertaining whether the members who have taken their seats, the judge-advocate (if any), and any waiting members present who may have been detailed are those mentioned in the order. If the members present are not actually named in the order they must be of the actual ranks and belong to the actual units stated therein. The members may be either all British officers or all Indian commissioned officers or a mixture of both.(p) The president is not appointed by name (as in the case of courts under the Army Act): the senior member presides.(q) The court will also have regard to Rule 30.

If the convening order appears on the face of it to be proper and to have been duly signed, the court will have fulfilled their first duty, namely, that of satisfying themselves that they have been convened in accordance with the Indian Army Act and Rules.(r)

27. Inquiry as to legal minimum of members.—The court will next ascertain that the legal minimum of members required by the Indian Army Act for a district or general court-martial (as the case may be) has been detailed and is present. (s) Where the membership of the court, as detailed in the convening order, is incomplete, waiting members, if there are any, and if they are eligible and qualified, must take the place of absentee members.

If the number of members detailed in the convening order exceeds the legal minimum, but some of them are absent at the assembly of the court, the court should ordinarily adjourn unless sufficient waiting members are available in place of the absentee members to make up the full number detailed in the convening order; but the court, in the interests of justice and for the good of the service, may proceed with the trial provided that the legal minimum is present. If the legal minimum is not present, the court must adjourn.(t)

28. Inquiry as to eligiblity and qualifications of members.—The court will then satisfy themselves(u) that all the members are eligible and not disqualified under the Indian Army Act and Rules. The eligibility of an officer depends on his status as an officer, that is, on his being subject to military law or otherwise

(m) Rule 63.
(n) Rule 31 (A).
(o) Rule 27 (D).
(p) I. A. A., s. 60.
(q) I. A. A., s. 77.
(r) Rule 31.
(s) I. A. A., ss. 57, 58; and see paras. 14 and 15 above.
(t) Rule 28.
(u) Rule 31 (A) (iii).

qualified to serve under the provisions of the Indian Army Act and having held a commission for the required period. Disqualification is a personal question, and depends on his being, or having been in any manner, a party to the case. The grounds of ineligibility and disqualification are set out in paragraphs 14—16 above.

If the trial is by general court-martial, the court must be satisfied that the members are of the required rank.(v)

29. Judge-Advocate.—Where a judge-advocate has been appointed, the court should ascertain that he has been duly appointed and is not disqualified.(w) The convening officer appoints the judge-advocate, who must be an officer of the department of the Judge-Advocate-General in India, if such an officer is available. A judge-advocate must be appointed for every general court-martial, and may be appointed for a district court-martial.(x)

30. Powers of adjournment of court.—The court have wide discretionary powers of adjournment if not satisfied on any of the above matters, and circumstances may arise which render an adjournment compulsory—*e.g.*, if the court is finally reduced below the legal minimum. Any adjournment and the reason therefore must be reported to the convening officer.(y)

31. Amenability to jurisdiction.—Having ascertained the validity of their constitution, the court will next consider whether the accused is amenable to their jurisdiction.(z) The subject of the jurisdiction of district and general courts-martial is dealt with in paragraphs 9—13 above.

32. Inquiry as to validity of charges.—Finally the court must be satisfied that each charge discloses an offence under the Indian Army Act and is properly framed in accordance with the Rules; and is so explicit as to enable the accused readily to understand what he has to answer.(a)

If not satisfied on the above matters, the court should report their opinion to the convening authority and may adjourn for the purpose.(b)

(vii) Opening of the Court.

33. Appearance of accused, prosecutor, counsel, etc.—At the conclusion of the above preliminary proceedings the accused will be brought before the court; if he is an officer, he will be in the custody of an officer; if he is a non-commissioned officer, in the custody of a non-commissioned officer; if he is a sepoy, in the custody of an escort. If necessary, an escort may be employed in any case.

The prosecutor, who must be a person subject to military law, will take his place in court, and accommodation will be afforded for the defending officer, counsel or 'friend' of the accused.

It is customary, though not obligatory, for the witnesses to be present in court from the time when the accused is brought in until after the members have been sworn; they must then withdraw and should not, as a rule, be allowed to be in the court when not under examination.

(v) I. A. A., s. 57: Rules 30 (B); (C), 31 (A) (iv).
(w) Rule 31 (B): 89.
(x) I. A. A., s. 78.
(y) Rule 31 (C).
(z) Rule 32 (A) (i).
(a) Rule 32 (A) (ii).
(b) Rule 32 (B).

34. Opening of court.—The court is now open, and the public, whether military or otherwise (including the press), may be admitted so far as accommodation permits. It may be closed at any time to enable the members to deliberate in private.(c)

A court-martial is an open court like other courts of justice, but it has inherent powers to sit *in camera* if such course is necessary for the administration of justice.

35. Objection by accused to members of court.—The convening order will next be read in full by the president or judge-advocate (if any), and the members will answer to their names.(d) The accused will be asked whether he objects to be tried by the president or any of the officers whose names have been read.

The Indian Army Act and Rules contain elaborate provisions as to the mode of enquiring into and disposing of objections by or on behalf of the accused. If, upon a successful objection to the president or a member, no waiting member, who is eligible and qualified, is available to fill the vacancy, the court should normally adjourn, but may proceed with the trial in certain circumstances, provided that there is a legal minimum of members present.(e)

Where, upon a successful objection to the president or a member of the court, an adjournment is necessary, the convening officer can, if he pleases, convene a new court, as the trial of the accused is not considered to begin until the court are sworn.(f)

36. Swearing of court, judge-advocate, etc.—As soon as the court is finally constituted, the president, members and judge-advocate (if any) will be sworn or affirmed, all present in court standing. Officers attending under instruction, the shorthand writer and interpreter (if any) will also be sworn or affirmed at this stage, though a shorthand writer or interpreter may be sworn at any time during the trial.(g) The accused has a right of objection to a shorthand writer or interpreter(h) but not to the judge-advocate(i) or officers under instruction.

The court may be sworn at one time to try several accused persons in succession provided that such persons are present when the oath is taken and have been given an opportunity of objecting to members.(j) The form of oath or affirmation and the manner of taking it by all persons required to be sworn or affirmed, and the persons who are to administer it are prescribed in the Rules. Provision is also made whereby an oath or affirmation may be taken in such form as the court ascertains to be binding on the person's conscience.(k)

37. Absence of members, during trial.—A member of a court who has been absent during any part of the evidence ceases to be a member, and an officer cannot be added to a court-martial after the accused has been arraigned.(l)

(c) Rule 69.
(d) I. A. A., s. 80; Rule 34.
(e) I. A. A., s. 80; Rule 28, 34.
(f) Rule 28 (B).
(g) Rule 35; 36; 76.
(h) Rule 76 (C).
(i) Note 2 to Rule 34.
(j) Rule 75.
(k) Rule 35; 36; 37; 95; 126.
(l) Rule 72.

(viii) ARRAIGNMENT OF ACCUSED.

38. Reading of charges.—As soon as the members, judge-advocate (if any) and others have been sworn, the accused will be arraigned. Arraignment consists in the reading of each charge upon a charge-sheet separately to the accused and asking him whether he is guilty or not guilty of it.(m) The judge-advocate or, where there is no judge-advocate, the president conducts the arraignment.

If there are several charges on one charge-sheet, the accused may claim separate trial on each or any charge on the ground that, unless so tried, he will be embarrassed in his defence.(n)

If there are alternative charges upon one charge-sheet, and the accused pleads guilty to the first of such alternatives, the prosecutor may withdraw the other alternative charges before the accused is arraigned upon them; otherwise the accused will be arraigned upon all the charges whether they are alternative or not.(o)

If there is more than one charge-sheet, the court must not arraign the accused upon any subsequent charge-sheet until their finding upon the first charge-sheet has been arrived at.(p)

The accused, if charged jointly with any person whom he claims as a material witness for his defence, may apply, if he has not already done so,(q) to be tried separately from that person, and the court may grant separate trial if the nature of the charge permits.(r)

39. Objection to charge.—Before pleading to any charge, the accused may object to the charge as not disclosing an offence under the Indian Army Act or as not being in accordance with the Rules. If the court disallow the objection, the trial will proceed; if they allow it, they will or, if in doubt, they may, adjourn to consult the convening officer, who may amend the charge and direct that the trial be proceeded with.(s)

The court may always themselves amend a mistake in the charge sheet so far as it relates to the name and description of the accused but not otherwise.(t)

Apart from any objection by the accused, the court has power, before any witnesses are examined, to report their opinion as to any charge, which appears to them to be faulty, to the convening officer, who may either amend the charge or direct a new trial to be commenced.(u)

40. Plea to the jurisdiction.—The accused, before pleading to any charge, may offer a plea to the general jurisdiction of the court and give evidence in support of that plea. The court will decide this question of jurisdiction in the same manner as any other question. If the plea is overruled, the court will proceed with the trial; if it is allowed, the court must record their decision and the reason

(m) Rule 38.
(n) Rule 68 (E).
(o) Rule 42 (A), (C).
(p) Rule 68 (A).
(q) See para. 21 *supra.*
(r) Rule 24.
(s) Rule 39.
(t) Rule 40 (A).
(u) Rule 40 (B).

therefor, report to the convening officer and adjourn; if in doubt, the court may either refer to the convening officer or record a special decision and proceed with the trial.(v)

A plea to the jurisdiction is a plea to the right to try the accused on any charge as distinct from a plea which relates to a particular charge. The grounds for such a plea are shown in paragraphs 8—12 above.

41. Recording of plea; refusal to plead, insanity, etc.—The objection and plea referred to in the two preceding paragraphs having been disposed of (if raised), the accused's plea to the charges upon which he has been arraigned will be recorded; this will normally be 'guilty' or 'not guilty'. But the accused may refuse to plead or plead unintelligibly, in which case a plea of 'not guilty' must be recorded(w); or it may be urged that the accused is unfit to plead by reason of insanity, for which event the Indian Army Act and Rules make provision.(x)

42. Plea in bar of trial.—In addition to pleading 'guilty' or 'not guilty' the accused may offer a plea in bar of trial, setting up that he has been previously acquitted or convicted of the offence now charged, or that such offence has been pardoned or condoned by competent authority (see paragraph 11 above) or that trial is barred by lapse of time (see paragraph 12 above). Upon the hearing of this plea, evidence may be offered both by the accused and prosecutor and addresses may be made. If the court find the plea not proven, they will proceed with the trial; if they find it proven, they will notify this finding to the confirming authority and adjourn, though they may proceed with any other charge not affected by the plea. In either case their finding on the plea requires confirmation.(y)

43. Plea of guilty.—If the accused pleads 'guilty' to a charge, the president or judge-advocate (if any) must, before recording the plea, carefully explain to him the nature of the charge and the effect of his plea. It should also be pointed out to him that on a plea of 'guilty' there will be no regular trial but merely a consideration by the court of the sentence to be awarded; that he is entitled to make a statement in mitigation of punishment and call witnesses as to his character.(z) He should also be informed that if he wishes to prove provocation or extenuating circumstances having direct relation to the offence he should plead 'not guilty'.

The court must not accept a plea of 'guilty' in a case where the accused is liable, if convicted, to be sentenced to death; in such a case a plea of 'not guilty' will be recorded.(a)

44. Mixed plea.—If the accused adheres to his plea of 'guilty', the court will then proceed to try the accused upon any other charge upon the same charge-sheet to which he has pleaded 'not guilty' and reach their finding thereon before proceeding further with the plea of 'guilty'.(b) The Rules make special provisions in the case where the accused pleads guilty to the first of two or more alternative charges.(c)

(v) Rule 41.
(w) Rule 42 (A).
(x) I. A. A., s. 103-A, Rule 131.
(y) Rule 43.
(z) Rule 42 (B).
(a) Rule 42 (D).
(b) Rule 44 (A).
(c) Rule 42 (C).

45. Procedure on plea of guilty.—When the court proceeds with a plea of 'guilty', the summary (or abstract) of evidence will be read and sufficient evidence will be recorded to cover any deficiencies in the summary (or abstract). The accused or his counsel or defending officer may make a statement in reference to the charge and in mitigation of punishment, and witnesses as to character may be called.(d).

If from the statement of the accused, or from the summary (or abstract) of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea, the court must enter a plea of 'not guilty' and proceed with the trial.(e)

The procedure in connection with taking evidence of the character of the accused and the particulars of his service and the consideration and award of sentence is dealt with in paragraphs 67—78 below.

46. Duties of president.—It should be stated here that the president is responsible for the proper conduct of every trial whether the accused pleads 'guilty' or 'not guilty'. He must ensure that the accused does not suffer any disadvantage by reason of the fact that he is being tried, or because of his ignorance or incapacity to make clear either his defence to the charge or the grounds upon which he relies in mitigation of any punishment which may be awarded.(f)

(ix) TRIAL ON PLEA OF 'NOT GUILTY'.

47. Duties of prosecutor.—The prosecutor should always make an opening address if the case is a complicated one, and the court may require such address to be made. He should explain the substance of the charge and outline the proposed evidence to be called in support of it.(g)

The prosecutor is not a partisan but an officer of justice whose duty it is by laying all relevant facts in evidence before the court to assist the court in ascertaining the truth. He must act with scrupulous candour, fairness and moderation towards the accused, the witnesses and the court.(h) Any departure from this rule of conduct should at once be checked by the court.

48. Witnesses for prosecution.—The witnesses for the prosecution will now be called. Each witness will take the necessary oath or make the required affirmation(i) and his examination will be conducted by the prosecutor, who must be careful to refrain from asking leading or suggestive questions. After giving his evidence "in chief" or "in direct examination" a witness may be cross-examined by or on behalf of the accused and re-examined by the prosecutor on matters raised by the cross-examination.(j) The president, judge-advocate (if any), and, with permission of the court, any member of the court may question a witness at any time before he withdraws, but such questions should not be put until after the re-examination by the prosecutor.(k)

(d) Rule 44 (B), (C).
(e) Rule 44 (D).
(f) Rule 65.
(g) Rule 46 (A).
(h) Rule 66 (A), (B).
(i) Rule 126.
(j) See Chapter V, paras. 102—116.
(k) Rule 128.

49. Recording the evidence.—As a witness gives his evidence it must be translated (if not in English) and taken down, in narrative form in as nearly as possible the words used; occasionally it may be material or desirable to take down question and answer *verbatim*. The judge-advocate or, if there is none, the president must record the evidence or cause it to be recorded, and is responsible for its accuracy and for the proceedings as a whole.(l) The form in which record is to be made is provided in the Third Appendix of the Rules.

50. Interpreters.—Where an interpreter is employed, great caution should be exercised to ensure accurate translation and to guard against misconception of the true meaning of any expression, from either the incompetence or possible bias of the interpreter.

A member of a court-martial is not disqualified from acting as an interpreter, but this is inconvenient where the evidence requiring interpretation is likely to be prolonged.

51. Reading over the evidence.—Before a witness withdraws, the whole of his evidence as recorded must be read to him to ensure its accuracy; he may then make further explanations or corrections.

52. Procedure on case for defence.—After the evidence for the prosecution has been given, the accused will be asked if he wishes to call witnesses in his defence either as to the facts or as to character; his answer will be recorded. The correct procedure to be followed hereafter will depend upon the answer which he has given and whether or not he is represented by a defending officer or counsel; and in order to determine the proper sequence in which, in varying circumstances, the evidence for the defence is to be taken and the statement of the accused and the addresses on behalf of the prosecution and defence are to be made, the court will consult Rules 47 and 48, wherein every possible variation and contingency are provided for.

53. Addresses for defence and reply.—Where an opening address by or on behalf of the accused is permitted, the terms of such address should be directed mainly towards outlining the evidence to be called for the defence. The prosecutor in his final address or reply may sum up the evidence generally and comment on the statement of the accused and on the evidence of the witnesses for the defence, and he may suggest the inferences which the court may draw from the facts proved.

In no case may the prosecutor, counsel or defending officer, in the course of an address, state as a fact any matter which has not been proved or which it is not intended to prove in evidence; nor may they state what is their opinion as to any matter of fact which the court has to decide.(m)

54. Latitude to accused in defence.—The accused must be allowed great latitude in making his defence, and will not, within reasonable limits, be stopped by the court merely for making irrelevant observations.(n)

If the accused elects to make a statement in his defence, he cannot be cross-examined by the prosecution or questioned by the court or any other person.(o)

(l) Rule 78.
(m) Rule 86, note 2.
(n) Rule 66(C).
(o) Rule 47 (B) (ii) (a); 48 (ii) (a).

55. Witnesses for defence.—The witnesses for the defence will be examined by leave of the court, a witness may be recalled for the purpose of having further the prosecutor, and re-examined; they may also be questioned by the court.(p)

56. Recalling of witnesses.—At the request of the prosecutor or accused, and by leave of the court, a witness may be recalled for the purpose of having further questions put to him through the president or judge-advocate (if any). The court may also allow the prosecutor to call or recall a witness to rebut any material evidence on any unforeseen matter which may have arisen or, as a reply to the witnesses to character called for the defence, to prove previous convictions against the accused. In all these cases the additional evidence must be given before the closing address by or on behalf of the accused. The court may, of their own motion, call or recall any material witness if it is necessary to do so in the interest of justice; such witness may be called or recalled at any time before the finding of the court is arrived at.(q)

57. Withdrawal of plea of not guilty.—An accused person is at liberty at any time to withdraw a plea of 'not guilty' and plead 'guilty).(r)

58. Summing-up by judge-advocate.—When all evidence has been given and addresses made, the judge-advocate (if any) will sum up, unless both he and the court consider a summing-up to be unnecessary. He should always do so where the facts are difficult or complicated, and in particular where special legal directions are required to be given. The summing-up should be in writing and must be impartial. (s)

(x) Consideration of finding

59. Finding in closed court.—The finding must be considered in closed court,(t) the members, judge-advocate (if any) and officers under instruction alone being present. The court must record a finding on every charge upon which the accused was arraigned, including any alternative charge.(u)

60. Onus of proof reasonable doubt; corroboration.—At the outset of their deliberations the court must remember that the accused is presumed to be innocent until he is proved to be guilty, and that the burden of proof rests upon the prosecution. Unless, therefore, the guilt of the accused has been established beyond reasonable doubt, the accused must be acquitted, as the prosecution has failed to sustain adequately the burden of proving his guilt.

It is legally open to a court to convict an accused person upon the evidence of one credible witness. But in some cases corroboration of such witness is required by practice almost amounting to a rule of law; in others it is desirable that corroboration should be looked for, though not actually required by law or practice.(v)

61. Extraneous consideration.—The court in considering their decision, must not be influenced by the consideration of any supposed intention of the convening officer in sending the accused for trial by a particular kind of court-martial. In

(p) See Chapter V, paras. 102—117; Rule 128 (A).

(q) Rule 129.

(r) Rule 45.

(s) Rule 49; 91.

(t) Rule 50.

(u) Rule 51 (A).

(v) See Chapter V, and particularly, as regards corroboration, para. 90.

many cases the convening officer will have decided no more than that a *prima facie* case against the accused is shown upon the summary of evidence, and he will have formed no opinion as to the guilt of the accused. An acquittal, therefore, is not in itself a reflection upon the convening officer. Even if it were, it would afford no reason whatever for a court to convict, unless the evidence established the charge.

62. Proof of facts charge; special finding on the charge.—The court must decide whether the facts alleged in the particulars of each charge have been proved in evidence, and, if proved, whether they disclose the offence stated in the charge itself or an offence of which they may, pursuant to their powers under (s) 86 of the Indian Army Act, find the accused guilty. Thus, on a charge of desertion they may find the particulars as to the period of absence proved, but not the intent to leave the service altogether or to avoid some particular important service—a necessary ingredient of the charge. In such a case they may return a finding of not guilty of desertion but guilty of absence without leave.(w)

63. Special finding as to the particulars of a charge.—Where the court find that the facts proved in evidence differ materially from the facts alleged in the particulars of a charge, but are nevertheless sufficient to prove the offence charged, and that the difference is not so material as to have prejudiced the accused in his defence, they may record a special finding as to the particulars. Thus, on a charge of desertion, if the court are satisfied that the charge, as laid, is proved, but the period of absence was shorter than that alleged in the particulars, they may make a special finding to that effect.(x)

64. Reference to confirming authority before finding.—The court, having arrived at a decision as to the facts of a case have power, in cases of doubt as to the legal effect of such a decision upon the charges preferred, to refer to the confirming authority for an opinion upon the matter before recording their finding. (y)

65. Voting on the finding.—Every member must give, by word of mouth, his opinion as to the finding which should be made on each charge separately.(z) The opinions must be taken in succession beginning with the junior in rank.(a) If the votes given are equal the accused will be deemed to be acquitted. The president has no second or casting vote upon the finding. A majority of votes will decide the issue, and the finding of the majority will be recorded as the finding of the court.(b)

66. Acquittal.—A finding of acquittal by a district or general court-martial, whether upon all or any one or more of the charges in a charge-sheet, is not valid until confirmed by the confirming authority, (c) and it may be revised.(d).

An accused person may be "honourably acquitted" if his honour was affected by the charges preferred.(e)

(w) I. A. A., s. 86 (*1*).
(x) Rule 51 (D), (E).
(y) Rule 51 (C), (G).
(z) Rule 50 (B); 73 (A).
(a) Rule 73 (B).
(b) I. A. A., s. 81.
(c) I. A. A., s. 94.
(d) I. A. A., s. 100.
(e) Rule 51 (A).

The record of the proceedings in the case of an acquittal upon all the charges in a charge-sheet will be authenticated by the signature of the president and judge-advocate (if any) and forwarded to the confirming officer.(f).

(xi) PROCEEDINGS ON CONVICTION

67. Evidence as to character, and service.—If the finding upon any charge is "guilty" (whether or not the accused has pleaded "guilty" thereto), and the trial of all charges and charge-sheets has been completed, the court, for the purpose of determining their sentence, must, whenever possible, take and record evidence as to the character, age, service, etc., of the accused. This evidence must be given by a witness on oath or affirmation, usually by the prosecutor, who will produce extracts from the regimental books relating to the accused in accordance with the Rules. The accused or his representative may then cross-examine this witness. Oral evidence of bad character cannot be given for the prosecution.

The accused may call evidence as to his good character at this stage, as well as during the hearing of the case for the defence, and the prosecutor has the right of cross-examination to test the veracity of such evidence, even if he thereby brings out evidence of the accused's bad character.

After all evidence as to character has been given, the accused, or his counsel or defending officer may address the court thereon and in mitigation of punishment.(g)

The court will then be closed for consideration of sentence.

(xii) AWARD OF SENTENCE.

68. Legality and form of sentence.—The punishment awarded must be one of those allowed by the Indian Army Act(h); in some cases a combination of punishments is permitted by the Act.(i)

One sentence only must be awarded in respect of all the offences of which an accused person has been found guilty, even if the trial has proceeded on different charge-sheets, and where an accused person has been found guilty upon several charges, a sentence which can legally be awarded in respect of one of them will be valid notwithstanding that it could not legally have been awarded in respect of the others.(j)

The sentence should follow the prescribed forms set out in the third Appendix to the Rules; or, if no form is exactly applicable, it should follow as nearly as possible the words of the Indian Army Act.

69. Discretion as to sentence.—A court-martial has (except in the case of an obligatory punishment for an offence under s. 41 *e.g.*, murder) an absolute discretion as to its sentence. It may award the maximum punishment allowable for the particular offence charged or such less punishment as is laid down in s. 43 of the Act, which sets out a graduated scale of punishments which a court-martial may award.(k)

(f) Rule 52.
(g) I. A. A., s. 93; Rule 53.
(h) I. A. A., Chapter VI.
(i) I. A. A., s. 47; as to warrant officers, I. A. A., s. 73.
(j) Rule 54.
(k) I. A. A., s. 44.

70. Maintenance of discipline—the object.—In deliberating on their sentence a court-martial should remember that the object of awarding punishment is the maintenance of discipline.

The proper amount of punishment to be inflicted is the least amount by which discipline can efficiently be maintained. Occasionally the exigencies of discipline, apart from the circumstances of a particular case, may render a severe sentence necessary, but in all cases the whole force should be in a position to realise that the punishment awarded to an individual is not more than is necessary in the interest of the force itself and for the maintenance of that discipline, without which any body of troops must become an irresponsible mob and useless for the purpose for which it exists. It must be the object of all concerned to aim at that high state of discipline which springs from a military system administered with judgment and impartiality, and to induce in all ranks a feeling of confidence that, while no offence will be passed over, no offender will in any circumstances suffer injustice.

71. Other considerations—degrees of criminality, etc.—A non-commissioned officer should, as a rule, be more severely punished than a sepoy concerned with him in the commission of the same offence, while the instigator of an offence should receive a more severe sentence than the person who was instigated to commit it. Where several offenders are found guilty of the same offence, it may often be proper to award different amounts of punishment and, in order that the respective degrees of criminality of several offenders charged in respect of the same transaction but tried separately may be more accurately determined, a court-martial has power to postpone the awarding of any sentence until all the offenders have been tried.(1)

72. Premeditation and provocation.—The court must pay special regard to the question whether the offences of which the accused has been found guilty were committed with or without premeditation and with or without provocation. It is obvious that a theft committed after long preparation deserves more severe punishment than a theft committed on the spur of the moment. Similarly, a court would be justified in awarding a more lenient sentence to a soldier who has been provoked into using criminal force to his superior officer than to one who had deliberately used criminal force to his superior officer without provocation. As a general rule the improper use of words should not be treated with the same severity as offences against discipline involving physical acts.

73. Previous convictions.—Again, due regard should be paid by the court to previous convictions. A habitual offender deserves far more severe punishment than an infrequent offender, and a first offender should always, if possible, be treated leniently.

74. Prevalence of offence.—Military offences must sometimes be considered in reference to circumstances other than those connected with the individual offender. When there is a general prevalence of offences or of offences of some particular kind, an example may be necessary, and on that account a severe punishment may properly be awarded in respect of an offence which would otherwise receive a more lenient punishment. In such cases the punishment must be regarded more from the point of view of the effect which it will produce on the force to which the offender belongs than from that of the offender himself.

(1) Rule 75 (D).

75. Punishment to be just and proper.—Finally, the court, having due regard to the foregoing considerations, must always award such punishments as they themselves consider to be just and proper in the circumstances of the particular case. They must not presume that the convening officer, in sending the case for trial, took a more serious view of the facts than they themselves take.

76. Recommendation to mercy.—In view of the discretion of the court in the matter of awarding sentence,(m) a recommendation to mercy will be exceptional. If such recommendation is made, it must form part of the proceedings and the reason for it must be recorded.(n) It will usually be made only when the court, though unwilling to pass a lenient sentence lest the offence should be considered a venial one, think that owing to the offender's character and other exceptional circumstances, he should not suffer the full penalty which the offence would ordinarily demand. As a rule, the court will be able to adjust the sentence according to what, in their judgment, the offender should suffer having regard to the attendant circumstances. It is indisputable that offences are more effectually prevented by certainty, than by severity, of punishment.

Any expression of opinion as to anything occurring before the court, and any matter which the court may desire to report, must be stated in a separate document for the information of the confirming authority.(o)

77. Voting on the sentence.—Every member of the court must give his opinion as to the sentence to be awarded, even if he had voted for an acquittal upon the finding. The officer junior in rank must first give his opinion. In the case of an equality of votes, the decision must be in favour of the accused. The president has no second or casting vote upon the sentence. An absolute majority of the opinions of the members must be secured(p) but sentence of death may not be passed without the concurrence of at least two-thirds of the members.(q)

78. Signature and forwarding of proceedings.—When the sentence has been decided upon, it must be recorded upon the proceedings, which will then be dated and signed by the president and judge-advocate (if any). The judge-advocate or, if there is none, the president, must then forward the proceedings as soon as possible to the confirming authority or the person directed in the convening order to receive them.(r)

(xiii) Confirmation and Revision.

79. Conviction not valid till confirmation.—A finding of a district or general court-martial and the sentence consequent thereon are not valid until confirmed. Until promulgation confirmation is not complete and the accused will be in ignorance of the sentence awarded.

Under the Indian Army Act a finding of acquittal requires confirmation (see para. 66 above) and can be revised. In this respect the Indian Army Act differs from the Army Act under which a finding of acquittal is final and is announced at once; it cannot be revised, nor does it require confirmation by superior authority.

(m) See para. 69 above.
(n) Rule 55.
(o) Rule 78 (E).
(p) I. A. A., s. 81.
(q) I. A. A., s. 87.
(r) Rule 56.

80. Confirmation of district and general court-martial.—The finding and sentence of a district court-martial are to be confirmed by an officer authorised to convene general courts-martial, or deriving authority to confirm from an officer authorised to convene general courts-martial.(s)

The finding and sentence of a general court-martial are to be confirmed by the Commander-in-Chief in India, or by an officer deriving authority to confirm from the Commander-in-Chief in India.(t)

Authority to confirm is given by warrants which may contain such reservations or special provisions as the issuing officer may think fit. The warrants at present issued under the Indian Army Act are explained in paras. 6 and 7 above.

81. Revision of finding and sentence.—Upon receipt of proceedings the confirming authority, before confirming, may direct the re-assembly of the court for the purpose of revising their finding and sentence or either of them. Only one revision can be ordered or made. If the court is directed to take fresh evidence, such evidence must be taken in open court and in the presence of the accused; otherwise the proceedings on revision must be in closed court.

If the finding is sent back for revision and the court do not adhere to it, they must revoke it and record a new finding. If the finding is revoked, they must also revoke the sentence, and, if the new finding involves a sentence (*i.e.* is not an acquittal) must pass a new sentence.

If the sentence only is sent back for revision, the court may not revise the finding. In practice, revision of a sentence only is seldom necessary in view of the powers of the confirming authority.

It should be noted that, under the Indian Army Act, a finding of acquittal can be revised and the accused found guilty and sentenced, a sentence can be increased on revision, and evidence can (if so ordered) be taken on revision. In these respects the Indian Army Act as to revision differs from the Army Act.(u)

82. Non-confirmation and re-trial.—As the finding and sentence of a district or general court-martial are not valid until confirmed,(v) a refusal of confirmation, duly entered upon the proceedings, operates to annul the whole trial. In such a case the accused has not been acquitted or convicted and may legally be tried again; but re-trials should rarely be resorted to, unless the needs of discipline and justice demand that an offender shall not escape punishment on account of a legal technicality. It must be remembered that if an accused at the first trial has disclosed his defence, that defence at the second trial may thereby be prejudiced. Re-trial should not be ordered until the Deputy or Assistant Judge-Advocate-General has been consulted and the sanction of superior authority obtained.

If the confirming officer considers that the proceedings of a court-martial are illegal, or involve substantial injustice to an accused person, he will withhold his confirmation.

It is open to the confirming officer to withhold confirmation either wholly or in part, and then refer the proceedings to a superior authority competent to confirm them.(w)

(s) I. A. A., s. 96.
(t) I. A. A., s. 95.
(u) I. A. A., s. 100; Rule 57.
(v) I. A. A., s. 94.
(w) Rule 57 (E).

83. Powers of confirming authority over findings.—The confirming authority has no power to alter or amend the finding, whether original or revised, of a court-martial. After one revision, or if he does not order a revision, he can only confirm it or refuse confirmation, and any superior authority to whom he may refer the proceedings for confirmation is in the same position.

Similarly, the confirming authority cannot alter the finding on a plea in bar of trial or on a finding of insanity, both of which require confirmation to support their validity.

Where the confirming authority refuses confirmation of the finding of 'guilty' on some but not on all the charges, he must take into consideration the fact of such non-confirmation and mitigate, etc., the sentence as may seem just, having regard to the offences in the charges the findings on which he has confirmed.(x)

84. Powers of confirming authority over sentences.—The following are the powers of the confirming authority with relation to the sentences of courts-martial whether or not they have been revised :—

(a) *mitigation* of a punishment to a less amount of the same punishment;(y)

(b) *remission* of the whole or part of a sentence;(y)

(c) *commutation* of the punishment to a different form of punishment lower in the scale of punishments authorised in s. 43 of the Indian Army Act;(y)

(d) *variation* of a sentence informally expressed, or which is in excess as regards its duration of the punishment allowed by law (e.g., three years' imprisonment awarded by a district court-martial); (z)

(e) *suspension* of the execution of a sentence (which will, however, be in force during the suspension). This power can only be exercised by the confirming officer if he is a "superior military authority" under the Indian Army (Suspension of Sentences) Act, and only where the sentence awarded is one of transportation or imprisonment. *If the confirming officer is not a "superior military authority", he can direct that the offender shall not be committed until the orders of a superior military authority have been obtained;*(a)

(f) in the case of a sentence of imprisonment for a period not exceeding three months, the confirming officer may direct under the first proviso to s. 107 of the Indian Army Act, that the sentence shall be carried out by confinement in military custody. Advantage should be taken of the proviso to this section where no sentence of dismissal is added to such sentences. Unless a direction to this effect is given, the offender has to be committed to a civil prison (except on active service), which is most undesirable in the case of a person who is to return to duty after undergoing his punishment. Sentences of imprisonment combined with dismissal should, as a rule, be undergone in a civil prison.

(xiv) PROMULGATION

85. Promulgation of finding, etc.—The charge, finding and sentence and any recommendation to mercy must be promulgated to the accused as well as the confirmation or non-confirmation of the proceedings. Promulgation must be carried out in such manner as the confirming authority may direct or, if no direction is given, according to the custom of the service.

(x) Rule 59 (A).
(y) I. A. A., s. 99.
(z) Rule 61.
(a) See Indian Army (Suspension of Sentences) Act, in Part III.

As confirmation is not complete until promulgation, the confirming officer may always alter his minute of confirmation or non-confirmation before the proceedings have been promulgated.(b)

The execution of sentences is dealt with in para. 19 of Chapter II

(xv) Procedure after Promulgation.

86. Setting aside conviction.—Even after promulgation, the authority who confirmed the finding and sentence (for any authority superior to him), on the advice of the Deputy or Assistant Judge-Advocate-General, may direct the record of the conviction to be erased and the accused to be relieved of all consequences of his trial if he thinks that the proceedings are illegal, or that circumstances have arisen which show that the accused could not have been guilty, or that the conviction involves substantial injustice to the accused.(c)

When the conviction on any one but not on all the charges has been annulled, the authority having power to mitigate, etc., the sentence under s. 112 of the Indian Army Act must take into consideration the fact of such annulment and mitigate, etc., the sentence as may seem just, having regard to the offences the convictions on which have not been annulled.(d)

87. Substitution of valid for invalid sentence.—If after promulgation a sentence is found to be invalid, the authority who would have had power under s. 112 of the Indian Army Act to commute it if it had been valid may pass a valid sentence provided that such substituted sentence is not higher in the scale of punishments than, or in excess, of, the punishment awarded by the invalid sentence.(e)

88. Mitigation, etc., after confirmation.—After promulgation the punishment awarded can only be mitigated, remitted or commuted by the higher authorities referred to in s. 112 of the Indian Army Act and by "Superior military authorities" under the Indian Army (Suspension of Sentences) Act. The latter authorities, however, can only deal with sentences of transportation and imprisonment, which they can suspend or remit, etc., at any time.(f)

89. Date from which sentence operates.—A sentence of transportation or imprisonment must be reckoned to commence on the day on which the original sentence (even if it was subsequently revised) was signed by the president of the court. If, therefore, a sentence is ultimately confirmed and promulgated, it will probably have been running for several days although not yet put into actual execution.(g)

90. Custody of courts-martial proceedings.—After promulgation, court-martial proceedings (other than summary court-martial) must be forwarded to the Deputy or Assistant Judge Advocate General of the Command for transmission for safe custody to the office of the Judge-Advocate-General in India, where they must be preserved for not less than seven years in the case of a general court-martial or three years in the case of a summary general and district court-martial.(h)

A copy of the proceedings must be supplied upon payment to any person tried by court-martial if he demands it.(i)

(b) Rule 58.
(c) See R. A. I.
(d) Rule 59.
(e) I. A. A., s. 103.
(f) Indian Army (Suspension of Sentences) Act, ss. 2 (*e*) and 8.
(g) I. A. A., s. 106.
(h) Rule 132.
(i) Rule 133.

91. Petition.—A person who considers himself aggrieved by the finding or sentence of a court-martial may forward a petition to the confirming officer or, in the case of a summary court-martial, the reviewing authority through the usual channels. (j).

(xvi) SUMMARY COURTS-MARTIAL

92. Jurisdiction.—The jurisdiction of summary courts-martial is dealt with in paras. 8, 11, 12 and 13 above. A commanding officer is not ordinarily competent to try by summary court-martial a charge for any offence specified in the proviso to s. 74 of the Indian Army Act without the sanction of superior authority. He may, however, do so if he considers that there is grave reason for immediate action and reference cannot without detriment to discipline be made to the officer empowered to convene a district court-martial or on active service a summary general court-martial.

If he tries without reference such an offence, he must attach an explanatory memorandum to the proceedings. (k).

In all cases of indecency, fraud, theft (except ordinary theft) and civil offences, and in any case of doubt, the charge and summary of evidence are to be submitted to the Deputy or Assistant Judge-Advocate-General of the Command before trial is ordered. (l).

93. Application for sanction to try by summary court-martial.—When a commanding officer applies to the officer referred to in para. 92 above for sanction to hold a summary court-martial, the summary of evidence and charge-service a summary general court-martial.

In forming his decision as to whether the case should be tried by summary court-martial or by some other tribunal the officer receiving the application should remember that the powers of a summary court-martial are sufficient to deal with all ordinary offences committed by persons below the rank of warrant officer. In the case of aggravated offences which appear to merit a higher punishment than a summary court-martial can award, a district or general court-martial may properly be convened, and it is generally undesirable that a commanding officer should try by summary court-martial a case in which he has a personal interest. (m) Sanction to try any offence by summary court-martial may, however, legally be given by the proper authority.

The officer receiving the application has a similar duty to that of a convening officer (see para. 17 above) of satisfying himself that the charge is properly framed and that the evidence is sufficient to justify trial, and he may direct the commanding officer to alter the charge or to obtain further evidence; in a suitable case he may order the release of the accused or the case to be dealt with summarily.

The authority sanctioning trial by summary court-martial will insert or cause to be inserted on the charge-sheet his order for trial by that tribunal.

94. Preparation of defence by accused.—As soon as trial has been ordered, proper opportunity to prepare his defence must be afforded to the accused, who must be allowed to have free communication with any witness whom he may

(j) I. A. A., s. 117, note 3.
(k) Rule 116.
(l) See R. A. I.
(m) I. A. A., s. 74 and notes.

desire to call, and with any 'friend' or legal adviser whom he may wish to consult if they are available.(n)

As soon as practicable before he is arraigned for trial, an officer must hand to him a copy and a vernacular translation of the charge-sheet, and, if necessary, explain the charge-sheet and charges to him. The officer in question must also inform him of his rights in connection with the securing of witnesses on his behalf.(o)

95. Composition of summary court-martial.—The commanding officer of the accused, as defined in s. 7 (6) read with s. 64 of the Indian Army Act, alone constitutes the court, but the presence throughout the proceedings of two other officers, one or both of whom may be a British officer, Indian commissioned officer or Viceroy's commissioned officer, is essential to the legality of the trial.(p) These officers are not sworn, take no part in the proceedings and have no special duties, but the officer holding the trial may consult with them, if he desires to do so. The accused cannot object to the court or interpreter.(q)

96. Interpreter.—An interpreter will be appointed when any evidence is given in a language which the court or the accused or an officer attending the trial does not understand.(r) If an interpreter has been appointed he must take the interpreter's oath or affirmation, though the proceedings are not necessarily invalidated by failure to sewear or affirm the interpreter(s). It will generally be convenient that the officer holding the trial should (if competent to interpret in the language of the accused) himself take the interpreter's oath or affirmation in addition to the oath or affirmation prescribed for the court. If necessary, he can appoint a competent interpreter, who may be one of the officers attending the trial.

97. Friend of accused and prosecutor.—The accused may be assisted by a 'friend': but such friend, whether a legal adviser or not, may only assist the accused by suggesting questions and preparing the defence: he is not allowed to examine or cross-examine witnesses, personally address the court, or take any part in the proceedings.(t)

A prosecutor is not appointed; the prosecution is conducted by the court.

98. Assembly of court and arraignment of accused.—When the court assembles, the officer holding the trial (*i.e.*, the court) and the interpreter (if any) will be sworn or affirmed in the manner prescribed in the Rules.(u) The accused will then be arraigned (see para. 38 above) (v) and may object to the charge.(w) At any time during the trial the court may amend the charge-sheet in so far as it relates to the name and description of the accused, and at any time before it has begun to examine witnesses it may amend a defective charge and proceed with the trial, after giving the accused due notice of the amendment, and with the sanction of higher authority if the amended charge requires such sanction.(x)

(n) Rule 22 (A).
(o) Rule 23.
(p) I. A. A., s. 64 (2).
(q) Note to Rule 94.
(r) Rule 93.
(s) Rule 135.
(t) Rule 115.
(u) Rule 95.
(v) Rule 97.
(w) Rule 98.
(x) Rule 99.

99. Procedure on plea of "guilty" or "not guilty", and special pleas.—On a plea of "guilty" or "not guilty", if a special plea to the jurisdiction of the court or in bar of trial is offered, the procedure laid down for a district or general court-martial is applicable, with necessary modifications (see paras. 40-46 and 48-51 above).(y)

After all the evidence for the prosecution has been given the accused will be asked if he has anything to say in his defence. He may call witnesses, including witnesses as to character, and he may address the court either before or after his witnesses have been examined.(z)

The accused cannot give evidence on oath or affirmation, and if he elects to make a statement in his defence, he cannot be cross-examined by the court, but the court may, if he considers it necessary in the interest of justice, call witnesses in reply to the defence.(a)

100. Consideration of finding and procedure on acquittal and conviction.—The court must make a finding on every charge upon which the accused was arraigned, including any alternative charge.(b)

In considering the finding, the court must have regard to the considerations set out in paras. 60, 62 and 63 above.

If the finding upon all the charges in a charge-sheet is "not guilty", the court will date and sign the proceedings, the findings will be announced in open court and the accused will be released.(c)

If the finding upon any charge is "guilty", and the trial of all charges and charge-sheets has been completed, the court records of his own knowledge, or takes and records evidence of, the character, service, etc., of the accused(d) and sentence is awarded.(e)

101. Sentence.—In considering the sentence, the court must have regard to the considerations set out in para. 68-75 above and should bear in mind the general instructions and normal scale of punishments contained in R. A. I. A summary court-martial cannot award a sentence higher than one year's rigorous imprisonment.(f)

It is desirable that sentences of three months imprisonment or less awarded to a person whose services it is desired to retain should be undergone in military custody. The court should, therefore, have regard to the first proviso to s. 107 of the Indian Army Act and when awarding such a sentence to which no sentence of dismissal is added, direct that the sentence shall be carried out by confinement in military custody. Unless a direction to this effect is given, the offender has to be committed to a civil prison (except on active service). Sentences of imprisonment combined with dismissal should, as a rule, be undergone in a civil prison.(g)

(y) Rules 100, 101, 102, 103, 104.
(z) Rule 104.
(a) Rule 105.
(b) Rule 107 (A).
(c) Rule 108.
(d) Rule 109.
(e) Rule 110.
(f) I. A. A., s. 76.
(g) I. A. A., s. 107 and notes.

Under s. 3 (1) of the Indian Army (Suspension of Sentences) Act the officer holding a summary court-martial may direct that an offender sentenced to imprisonment be not committed until the orders of superior military authority have been obtained.

102. Proceedings not open to revision and do not require confirmation.—The proceedings of a summary court-martial cannot be revised and do not require confirmation. The sentence awarded by the court should, therefore, except as provided in s. 101 of the Indian Army Act and s. 3 (1) of the Indian Army (Suspension of Sentences) Act, be put into execution forthwith, the offender being also committed, if the sentence is one of imprisonment for three months or more, to undergo the unexpired portion of any former suspended sentence.(h)

103. Review of proceedings.—The proceedings must be forwarded for review (through the Deputy or Assistant Judge-Advocate-General of the Command, if the trial is held in India) to the district or brigade commander.(i) The reviewing officer should, if he considers that justice has been done and that the proceedings may legally be upheld, countersign the proceedings or a staff officer should record that he has seen them, and he may enter thereon any remarks he may consider to be called for or necessary for the future guidance of the officer who held the trial. If a direction under s. 3 (1) of the Indian Army (Suspension of Sentences) Act has been recorded, he will, if he is himself a superior military authority, issue his orders thereon, or, if not himself a superior military authority, forward the proceedings for the orders of such an authority.

The reviewing officer can, for reasons based on the merits of the case, set aside the proceedings or the conviction on one or more of several charges, or reduce a legal sentence to any other which the court might have passed. If the sentence is illegal it may be treated as a nullity, or one of the higher authorities referred to in s. 103 of the Indian Army Act can substitute a valid sentence. If he decides to treat it as a nullity, he should, when countersigning the proceedings, set aside the sentence and direct that the accused be relieved from all consequences of the sentence, though not of the conviction.

After review the proceedings will be returned to the corps to which the accused belonged where they are preserved for not less than three years.(j)

(xvii) Summary General Courts-Martial.

104. Composition and powers.—The foregoing remarks have left out of notice a court-martial of an exceptional kind, termed a summary general court-martial, which corresponds roughly to the field general court-martial under the Army Act. The court consists of three members, who may be either British or Indian commissioned officers or a mixture of both(k), and has the same powers as a general court-martial.(l) If it passes a sentence not exceeding that awardable by a district court-martial its proceedings, except in the case of an officer and in the case of an acquittal, do not require confirmation, unless specially ordered, and the sentence is carried out forthwith. Where confirmation is required, the findings and sentence must be confirmed by the convening officer or, if the convening officer so directs, by an authority superior to him.(m)

(h) Indian Army (Suspension of Sentences) Act, s. 7 (*b*).
(i) I. A. A., s. 102; Rule 119.
(j) Rule 132 (B).
(k) I. A. A., ss. 60 and 63.
(l) I. A. A., s. 72.
(m) I. A. A., s. 98.

105. Summary general court-martial in time of peace.—A court of this character is not suited to peace conditions, but it may sometimes be necessary to convene such a court at a remote station where a sufficient number of officers to constitute a general court-martial are not available. The power to convene summary general courts-martial in time of peace is restricted to officers empowered by the Central Government or the Commander-in-Chief in India,(n) and the officer convening the court should direct that the evidence and the statement of the accused in defence should be recorded in full, instead of in the abbreviated form allowed by Rule 146, the proceedings bein gthus assimilated, so far as circumstances permit, to those of an ordinary general court-martial.

106. Summary general court-martial on active service.—On active service a summary general court-martial may be convened by :—

(a) the officer commanding the forces in the field, or any officer empowered by him; or

(b) an officer commanding any detached portion of His Majesty's troops.

The last mentioned officer, however, can convene the court only when, in his opinion, it is not practicable having due regard to the exigencies of the service to try the offence by an ordinary general court-martial. Such opinion should be recorded in the order convening the court.(o)

107. Procedure.—A summary general court-martial is subject to exceptional rules(p) under which the procedure is or can be of a more summary character than that of an ordinary general court-martial. But provision is made whereby a large number of the rules which are applicable to district or general courts-martial should be applied to a summary general court-martial so far as is practicable having regard to the public service.(q)

The Third Appendix to the Rules contains a simple form for the convening of these courts and the record of their proceedings.

(xviii) Suspension of Sentences.

108. Suspension of sentences.—When a sentence of transportation or imprisonment has been awarded by a court-martial under the Indian Army Act, the confirming officer, when confirming, if the sentence requires confirmation, or the president or officer holding the trial, if the sentence does not require confirmation, must consider whether the offender should be committed to undergo his sentence or whether he should be kept in arrest pending the orders of a superior military authority as to his commitment or release under suspended sentence. If a superior military authority has issued general instructions, under s. 3 (2) (a) of the Indian Army (Suspension of Sentences) Act, that no person sentenced to transportation or imprisonment shall be committed to prison until his orders have been ascertained, the officer mentioned above must defer committing the offender to undergo his sentence until the directions of the superior military authority have been taken. If the officer decides to recommend the sentence for suspension or is bound to refer the case to the superior military authority, he will record a direction on the proceedings of the court-martial that the offender be not committed to undergo his sentence until the orders of a superior military authority have been obtained.(r)

(n) I. A. A., s. 62 (*a*).
(o) I. A. A., s. 62 (*b*) (*c*).
(p) Rules 137-151.
(q) Rule 150.
(r) Indian Army (Suspension of Sentences) Act, s. 3 (*1*).

If the confirmating officer is also a superior military authority, i.e., the Commander-in-Chief in India or an officer empowered under the Indian Army Act to convene general or summary general courts-martial(s) he may dispense with the direction referred to above and forthwith issue orders as a superior military authority.

A superior military authority may suspend a sentence at any time, whether or not it has been put into execution, and he may order a suspended sentence into execution, provided that the sentence is still running and that the offender is still subject to the Indian Army Act.(t)

It should be noted that, whether the sentence is put into execution or is suspended, it will run as from the date of award until it normally expires; suspension does not affect the continuity of the sentence.(u)

109. Considerations as to suspending sentences, and on review.—The considerations which guide an officer in deciding whether or not it is advisable to suspend a sentence immediately after trial are many and vary with the state of the discipline of the force under his command, the nature of the duties on which it is engaged, and the character of the man concerned.

Suspension of sentences is primarily applicable to offences of a military nature only, although in special cases it may be applied to offences of a civil character.

In all cases special attention should be directed to the following points :—

(i) The age and previous character of the offender.

(ii) Whether the offence is a first one.

(iii) Whether the offence was premeditated.

(iv) Whether the offender was at the time subjected to any special stress, fatigue, disability or temptation.

(v) Whether the offender was influenced by others older or of worse character than himself.

On active service additional considerations may arise. For example, some men may deliberately commit crimes in the hope that a long sentence may enable them to avoid doing duty with their units, whilst others may commit grave military offences through momentary loss of control over their nerves and without any real wrongful intent. Each case, therefore, must be considered on its merits, it being remembered that the system of suspension of sentence is designed, on the one hand, to ensure instant punishment for those who properly deserve it, and, on the other hand, to postpone, and often entirely to avoid, punishment for those whose offences, though serious, are such as may in the circumstances not call for immediate committal to prison; the power of suspension of sentence places in the hands of the commander a means of clemency and within reach of the soldier an opportunity to redeem his character.

Upon review of an already suspended sentence other considerations arise. All that need be considered then is the gravity of the offence of which the man was convicted, his previous character and his conduct since conviction. As a general rule, it may be said that the more grave the offence and the worse his character before conviction the longer is the period required to prove whether the man is honestly trying his best to redeem himself and that only acts of conspicuous merit

(s) Indian Army (Suspension of Sentences) Act, s. 2 (*f*).
(t) Indian Army (Suspension of Sentences) Act, ss. 3 (*2*) (*b*) and 5.
(u) Indian Army (Suspension of Sentences) Act, s. 4.

(such as bravery or devotion to duty in action) would justify a remission of sentence without regard to the length of the period during which it had been suspended.

Apart from such special acts, remission of sentence would be justified if the soldier has by his consistent good conduct really shown that he has done his utmost to retrieve his character and become a good and efficient soldier. Promotion to a higher rank should always be regarded as sufficient proof of good conduct to justify remission.

Unsatisfactory conduct subsequent to suspension will justify an order to put a suspended sentence into execution, whilst a mere negative abstention from crime would point to the advisability of directing a reconsideration of the sentence at a later date.

In considering a case, a report must always be obtained from the man's commanding officer, which should be attached with a copy of the man's conduct sheet to I. A. F. D. 921 for future reference.

A soldier under a suspended sentence is to be regarded entirely as a free man and is to be placed under no disability whatever excepting only the liability of having his suspended sentence put into execution if he misbehaves.

110. Procedure when case referred to superior military authority.—When a superior military authority receives the proceedings of a court-martial containing a recommendation for suspension of the sentence, he will, to avoid undue delay, telegraph his decision to the officer commanding concerned, who will at once issue the necessary instructions. Until instructions are received from the superior military authority, the offender cannot be committed to undergo his sentence.

Whenever a sentence is suspended, the authority directing its suspension will be responsible for preparing I. A. F. D. 921, which will be despatched through the usual channels to the officer commanding the unit concerned, who will make an entry in the man's conduct sheet and in Part II Orders. Except on active service, the commanding officer is the authority directed to hold I. A. F. D. 921, and he is responsible, in the case of a suspended sentence, for resubmitting it at the proper time to the competent military authority with such information and recommendations as may be necessary for the reconsideration of the case. On active service the form should be kept in the custody of such officer as the officer commanding the forces may appoint. When the sentence is remitted or completed, the form will be forwarded to the officer having the custody of the court-martial proceedings.

111. Review of suspended sentences.—It is the duty of a "competent military authority", who, if not himself a superior military authority, is an officer appointed by a superior military authority(v), to review suspended sentences at intervals of not more than four months.(w) He may in his discretion either keep a suspended sentence further suspended by ordering it to be brought forward for reconsideration on a specified date not more than four months ahead or, if not himself a superior military authority, refer it to a superior military authority with a recommendation either that the offender be committed to undergo the unexpired portion of the sentence or that the sentence be remitted.

(v) Indian Army (Suspension of Sentences) Act, s. 2 (*b*).
(w) Indian Army (Suspension of Sentences) Act, s. 6.

112. Dismissal combined with suspended sentence.—In the case of a sentence of dismissal combined with a suspended sentence, the dismissal does not take effect until so ordered by a superior military authority.(x) If the offender is subsequently committed to undergo the unexpired portion of his sentence he should ordinarily order the dismissal to take effect as provided in Rule 154. If the sentence remains suspended until it expires the dismissal, though automatically remitted under s. 9 of the Indian Army (Suspension of Sentences) Act, should nevertheless be formally remitted under s. 112 of the Indian Army Act.

113. Procedure when sentenced for a further offence.—Where a person already under a suspended sentence is awarded a further sentence which is also suspended, the two sentences will run concurrently. If the further sentence is not suspended and is for a period of three months or more, the offender must also be committed on the unexpired portion of the previous (suspended) sentence, but both sentences will run concurrently. If the further sentence is for a period of less than three months and is not suspended, the previous sentence continues to be suspended unless a superior military authority orders that the offender be committed.(y)

(x) Indian Army (Suspension of Sentences) Act, s. 9.

(y) Indian Army (Suspension of Sentences) Act, s. 7.

CHAPTER V

EVIDENCE

(*i*) *Introductory*

1. Indian Evidence Act applies to Court-martial under Indian Army Act.—The Rules of Evidence for courts-martial under the Indian Army Act are contained in the Indian Evidence Act, 1872 (reproduced in Part IV) (a) and in certain provisions of the Indian Army Act which deal with the same subject.(b) The Indian Evidence Act is based on the English law of evidence, modified to suit Indian conditions, while most of the sections of the Indian Army Act which deal with the matter in hand are suggested by corresponding provisions of the Army Act. The principles on which the rules of evidence applicable to courts-martial under the Army Act are based, an admirable summary of which is contained in the War Office Manual of Military law, (c) are therefore to a great extent applicable to trials under Indian Military law. This summary therefore has been largely drawn upon in the compilation of the present chapter. The structure of the Indian Evidence Act, and the way in which the subject of "relevancy" is treated,(d) have however prevented its being either followed closely, or adopted as a whole.

2. Questions to be determined at every trial.—The object of every criminal trial is, or may be, to determine two classes of questions—questions of fact and questions of law. If the accused person pleads guilty, there is no question of fact involved in the trial; but if he does not, he raises two questions or issues, first, whether the facts charged against him happened; and next, if they did happen, what is their legal consequence. In trials before courts-martial, the members of the courts both find the facts and lay down the law. It is their duty, when applying their minds to questions of fact, to consider themselves bound by the rules of evidence above referred to. In deciding questions of law, a court-martial should be guided by the advice of the judge-advocate (if a judge-advocate has been appointed) and should not disregard it except for very weighty reasons.(e)

3. Nature of evidence.—A member of a court-martial is supposed to bring with him to the consideration of the questions which he has to try common sense, and a general knowledge of human nature and of the ways of the world. But he is not supposed to bring with him any special knowledge enabling him to answer the particular questions of fact raised in the trial. His knowledge of these matters is derived from what is proved to him at the hearing.(f) The means of proof, or evidence, usually consists of statements made by witnesses under examination, or of documents produced for inspection, and is therefore commonly classified as being either "*oral evidence*" or "*documentary evidence*". But the members of the court may supplement by direct information the knowledge derived from these sources. Thus, they may inspect for themselves anything sufficiently identified by evidence and produced in court as material to their decision; or they may go to view any place the sight of which may help them to understand the evidence,(g) and they are also expressly authorised to make use of their general military knowledge.(h)

(a) Act I of 1872.
(b) I. A. A., ss. 88—93.
(c) Chapter VI of M. M. L.
(d) See para. 10 below.
(e) Rule 91 and note.
(f) But see I. A. A., s. 89, and I. E. A., ss. 56 and 57, as to "judicial notice".
(g) Rules 70, 114, 149 (A).
(h) I. A. A., s. 89.

4. Difference between judicial and non-judicial inquiries.—There is no difference in principle between the method of inquiry in judicial and in extra-judicial proceedings. In either case a person who wishes to find out whether a particular event did or did not happen tries, in the first place, to obtain information from persons who were present and saw what happened (*direct* evidence): failing that, he tries to obtain information from persons who can tell him about facts from which he can draw an inference as to whether the event did or did not happen (*indirect* evidence). But in judicial inquiries the information given must be *on oath or affirmation,* and must be liable to be tested by cross examination, and the Indian Evidence Act, (i) by allowing evidence to be given only regarding facts which are "in issue" or "relevant", excludes particular classes of indirect evidence which an ordinary inquirer would naturally take into consideration. Statements so excluded are said to be "not admissible as evidence".

5. Reasons for excluding certain classes of evidence.—The answer to the question why particular statements, oral or written, should be excluded from evidence in judicial inquiries is that their exclusion has been found by practical experience useful on various grounds, and notably on the following :—

(1) It assists the court.
(2) It secures fair play to the accused.
(3) It protects absent persons.
(4) It prevents waste of time.

It assists the court by concentrating their attention on the questions immediately before them, and preventing them from being distracted or bewildered by facts which either have no bearing on the questions before them, or have so remote a bearing on those questions as to be practically useless as guides to the truth, and from being misled by statements or documents, the effect of which, through the prejudice which they excite, is out of all proportion to their true weight. It secures fair play to the accused, because he comes to the trial prepared to meet a specific charge, and ought not to be suddenly confronted by statements which he had no reason to expect would be made against him. It protects absent persons against statements affecting their characters. And, lastly, it prevents the infinite waste of time which would ensue if the discussion of a question of fact in a court were allowed to branch out into all the subjects with which that fact is more or less connected.

6. "Proved".—The definitions of "proved," "disproved" and "not proved" in s. 3 of the Indian Evidence Act should be particularly noticed. These are :—

"A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

"Disproved".—"A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist."

"Not proved".—"A fact is said not to be proved when it is neither proved nor disproved."

7. These definitions to be borne in mind.—Members of courts-martial under the Indian Army Act should bear these definitions carefully in mind when deliberating upon their finding, and they are fortunate in having so clear a guide in the performance of a most difficult duty.

(i) I. E. A., s. 5.

(ii) What must be proved

8. Charge must be proved.—What must be proved, in order to obtain a conviction, is the particular charge brought. As a general rule, every charge alleges, or ought to allege, a specific offence constituting a breach of a specific enactment; and, subject to certain exceptions, it is of this offence, and of this offence alone, that the person charged can be convicted. The reason for the rule is the unfairness of requiring a person to meet a charge for which he is not prepared. And the exceptions(j) will be found not to conflict with this reason, since they relate either to cases where the distinction between two offences is mainly technical or a matter of correct legal description; or to cases where the distinction is one of degree, but not of kind, and the accused, having been charged with the more serious, is allowed to be convicted of the less serious offence.

9. But its substance only need be proved.—It is the substance only of the charge that need be proved. Allegations which are not essential to constitute the offence, and which may be omitted without affecting the validity of the charge, do not require proof, and may be rejected as surplusage. In some cases, as in charges against a sentry for sleeping on his post, or in charges for not giving immediate notice of desertion, the time or place of the offence is material, but, as a rule, it is not so. Where the court think that the facts proved differ materially from the facts alleged in the particulars of the charge, but prove the same charge, they are empowered by Rule 51 (D) or 107 (C), as the case may be, to record a special finding, instead of a finding of "Not guilty".

(iii) Arrangement of the Indian Evidence Act

10. Arrangement of the Act.—The law of evidence shows how a court may lawfully be convinced that the facts alleged in the charge happened, or that their happening was so probable that it may be regarded as proved. The Indian Evidence Act deals with this subject thus—

(1) Part I and certain portions of Part III show what sort of facts may be proved in order to produce this conviction in the minds of the court.

(2) Part II deals with the proofs of facts, that is, what sort of proof is to be given of those facts.

(3) The greater portion of Part III deals with the production of that proof, that is, who is to give it, and how it is to be given.

Unlike the corresponding provisions of English law, which assume that we know what is, speaking generally, admissible as evidence and merely lay down certain exclusive or negative rules as to what shall not be admitted, the Indian Evidence Act states definitely that evidence may be given of "facts in issue" and of such other facts as are declared by it to be "relevant" *but of no others*. The test therefore as to the admissibility of any piece of evidence is,—does it state a fact in issue or a relevant fact (as defined)? If it does, it is admissible; if not, it is inadmissible. A definite rule such as this is clearly more suited to Indian conditions than the English system would have been, while the list of "relevant" facts has been so framed as to arrive at practically the same results as in English law.

(j) I. A. A., s. 86; Criminal Procedure Code, ss. 237, 238.

11. "Facts in Issue".—The facts which are "in issue" in a criminal trial are those on which, either by themselves or in connection with other facts, the existence, non-existence, nature or extent of the accused person's liability to punishment depends.(k) For instance, A is accused of the murder of B. At his trial the following facts may be in issue :—

That A caused B's death ;

That A intended to cause B's death ;

That A had received grave and sudden provocation from B ;

That A, at the time of doing the act which caused B's death, was by reason of unsoundness of mind, incapable of knowing its nature.

(iv) Relevant facts

12. What evidence is admissible.—We have now to consider what facts are "relevant". The Indian Evidence Act answers this question by enumerating these in the sections which make up Chapter II "of the relevancy of facts." If a fact is not included in this enumeration of "relevant facts" it is inadmissible unless it is actually in issue, or its admission is specially provided for elsewhere(l) in the Act, or by some other provision of law.(m)

13. Circumstantial evidence.—Facts which are "relevant"(n) or which are otherwise specially admitted, (o) constitute what is sometimes called "circumstantial evidence" of the fact in issue with which they are connected. From the circumstances in which crimes are ordinarily committed, it follows that the evidence of witnesses who directly saw the main "fact in issue" happen can rarely be obtained, and that in very many cases reliance must be placed on circumstantial evidence. Such evidence is in no way inferior to direct evidence, and is in some respects superior to it; for it has become a proverb that "facts cannot lie," whilst witnesses may. On the other hand, it must always be borne in mind that if facts cannot "lie," they may, and often do, deceive; in other words, that the interpretation which they appear to suggest is often not that which ought to be placed upon them. Therefore, before the court finds an accused person guilty on circumstantial evidence, it must be satisfied not only that the circumstances are consistent with the accused having committed the act, but that they are inconsistent with any other rational conclusion than that the accused was the guilty person.(p)

14. Relevant facts.—The kinds of "relevant" evidence most likely to be met with in court-martial practice will be considered in the following paragraphs.

15. Facts forming part of one transaction.—Facts which form part of the same transaction as a fact in issue are relevant.(q)

For example, A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the same transaction, is a relevant fact. So also on a charge of theft, though it is not material in general to inquire into any taking

(k) I. E. A., s. 3.
(l) See I. E. A., ss. 145, 146, 148, 153, 155, 156, 157 and 158.
(m) *e.g.*, the special provisions as to evidence contained in the I. A. A.
(n) See paras. 14—63 below.
(o) See para. 64 below.
(p) For an example of the difference between good and bad circumstantial evidence, see M.M. L., Ch. VI, para. 43.
(q) I. E. A., s. 6.

of goods other than that specified in the charge, yet for the purpose of identifying the thief it may be very relevant, and therefore admissible, to show that other goods which had been left on the same premises and were stolen on the same night, were afterwards found in the possession of the accused. This is strong evidence of the accused having been near the owner's house on the night of the theft. Such evidence the section now under consideration makes relevant. Again, A is accused of waging war against the King, by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

16. Facts which are occasion, cause, etc., of a relevant fact.—Facts which are the occasion, cause, or effect of a fact in issue or relevant fact or which afforded an opportunity for its occurrence are relevant.(r)

For example, on the trial of A for robbing B, the facts that shortly before the robbery B had money in his possession and showed it publicly to third persons are relevant. Under this rule also, evidence may be given of bruises which a medical officer or other person sees next day on the body of the non-commissioned officer whom a soldier is accused of striking.

17. Facts showing motive or preparation.—Facts which show or constitute a motive or preparation for a fact in issue or relevant fact are themselves relevant,(s) as is also the conduct of accused persons and those against whom offences are committed, if such conduct is influenced by a fact in issue or relevant fact.

Complaints.—Thus, evidence may be given that, after the commission of the alleged offience, the accused absconded, or was in possession of the property or the proceeds of property acquired by the offence, or that he attempted to conceal things which were or might have been used in committing the offence, or as to the manner in which he conducted himself when statements were made in his presence and hearing. This rule also allows evidence of a complaint made shortly after the alleged crime was committed, and of the terms in which such complaint was made, to be given in any case in which an offence against the complainant is the subject of proceedings. The English law only allows such evidence in cases rape and similar offences, but the Indian law is wide enough to cover other crimes, *e.g.*, robbery, causing hurt, etc.

18. Distinction between a statement and a complaint.—A distinction is to be marked however between a bare *statement* of the fact of rape or robbery, and a complaint. The latter evidences conduct; the former has no such tendency. There may be sometimes a difficulty in discriminating between a statement and a complaint. It is conceived that the essential difference between the two is that the latter is made with a view to redress or punishment, and must be made to some one in authority—the police, for instance, or a parent, or some other person to whom the complainant was justly entitled to look for assistance and protection. The distinction is of importance; because while a complaint is always relevant, a statement not amounting to a complaint will only be relevant under particular circumstances, *e.g., if it amounts to a dying declaration, or can be used as corroborative evidence.*(t)

19. Explanatory and introductory acts.—Facts necessary to explain or introduce a fact in issue or relevant fact are relevant, as well as those which support or rebut an inference suggested by a fact in issue or relevant fact, establish the

(r) I. E. A., s. 7.
(s) I. E. A., s. 8.
(t) I. E. A., ss. 32 and 157.

identity of a person or thing whose identity is relevant, fix the time or place at which any fact in issue or relevant fact happened, or show the relation of the parties.(u). The facts here referred to are only relevant in so far as they are necessary for the purposes indicated.

20. Acts of conspirators.—In cases of conspiracy, after *prima facie* evidence has been given of the existence of the plot, and of the connection of the accused therewith, anything said, done or written by one conspirator in reference to their common intention is a relevant fact as against each and all of the conspirators.(v)

Thus, on the consideration of a charge of mutiny, or exciting mutiny, evidence of this kind may, after such *prima facie* proof, be received against a particular prisoner. The Indian law is wider in this respect than that of England. Under English law only acts and statements of conspirators in *furtherance of the common purpose* may be given in evidence, and only if the act was done or statement made before the connection of the conspirator against whom it is offered with the conspiracy had ceased. The Indian law admits against a conspirator everything said, done or written by a co-conspirator *in reference to the common intention*, even if said, done or written after the conspirator against whom it is offered had ceased to be connected with the conspiracy or before he joined it. The English law would reject such evidence as hearsay (in the case of things written or said) and as irrelevant in the case of things done.

21. Inconsistent facts.—Facts which are inconsistent with, or which render highly probable or improbable, a fact in issue or relevant fact are themselves relevant.(w)

"Alibi".—This rule is of importance to the party whose object is to disprove something which is asserted by the opposite side. An "alibi" is a familiar instance of this. If A is accused of a crime committed at Lahore and he can show that he was at Calcutta on the same day, his innocence is clear, while if he can even show that shortly before and after the time when the crime was committed he was so far from Lahore that it was most improbable he could get there and back, a strong point in his favour will have been established.

22. Facts showing state of mind or body.—Facts showing the existence of any relevant state of mind or body are relevant.(x)

Thus, where any state of mind (*e.g.*, intention, knowledge, the absence of good faith, negligence, rashness, or ill-will) is an ingredient of an offence, the commission of the principal act being either admitted or proved, evidence may, for the purpose of proving the existence of such a state of mind in reference to the particular matter in question, be given of similar acts committed by the accused on different occasions. Thus, although on a charge of murder or of using criminal force, evidence as to the disposition of the accused is inadmissible, former menaces or attacks or expressions of vindictive feeling against the same person are admissible as evidence of intention.

On charges of criminal breach of trust effected by falsifying accounts, evidence of other incorrect entries in the accused's accounts are admissible to show that particular errors covered by the actual charge were not made accidentally.

On charges of "receiving", evidence may be given that other stolen property was found at the same time in the possession of the accused, to prove his guilty knowledge.

(u) I. E. A., s. 9.
(v) I. E. A., s. 10.
(w) I. E. A., s. 1.
(x) I. E. A., s. 14.

Upon charges of uttering forged notes or counterfeit coin, evidence is admissible to prove the uttering on other occasions of notes or coins which were not genuine or the possession thereof.

Where the gist of an alleged offence is fraud, evidence of similar offences is admissible to prove the intent. Thus, on a charge of obtaining cash by falsely representing that the cheque given in exchange was good, in order to prove intent or knowledge, evidence is admissible as to another cheque (dishonoured on presentation) having been given to a third person.

23. Other instances.—In support of a charge for malicious, disrespectful, or unbecoming language, addressed by word of mouth, or written to, or used of, a superior officer at a stated time, or in a particular letter, after having proved the words in the charge, the prosecutor, to show the spirit and intention of the accused, may prove also that he spoke or wrote other disrespectful or malicious words on the same subject, either before or afterwards, or that he published or disseminated copies of the letter set forth as disrespectful in the charge. This evidence is admissible, not in aggravation of the offence charged, but for the purpose of proving the deliberate malice or disrespect imputed in the charge.

24. Facts showing intention.—Facts which show whether an act was intentional or accidental by indicating the existence of a series of acts of which it formed part are relevant.(y)

This is a special case of the principle discussed above. Thus, on a charge of murder by shooting, if it is questionable whether the shooting was by accident or design, evidence may be given that at another time the accused intentionally shot at the same person. Again, on a charge of fraudulently issuing passage warrants to certain persons who were not entitled to them, after having proved that the accused had issued the warrants, evidence may be admitted of a series of similar transactions extending over a considerable period as negativing a defence that the issue of these warrants was due to a mistake on the part of the accused.

25. Course of business.—Facts which show a course of business according to which a fact in issue or relevant fact would naturally have been done, are relevant. For example, the question is whether a particular letter reached A The facts that it was posted in due course, and that it was not returned through the Dead Letter Office, are relevant.

(*v*) *Admissions and Confessions*

26. Rule as to admissions.—Admissions are statements made by a party to the proceedings, or his representative, as to the subject-matter of the case, or the facts relevant thereto.(z) The general rule is that they may be proved against those who made them but not in their favour(a). *In connection with crime admissions usually occur in the form of confessions. A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference, that he committed that crime.*(b) The value of a confession, if true, is obviously very great, but special provision as to their receipt has been made in the Indian Evidence Act, in order to guard against torture or duress for the purpose of extorting them. Confessions are therefore only relevant subject to certain conditions. These conditions will now be considered.

(y) I. E. A., s. 15.
(z) I. E. A., s. 18.
(a) I. E. A., s. 18.
(b) I. E. A., s. 21.

27. Confession only admissible against person who makes it.—The general rule is that a confession *is not admissible as evidence against any person except the person who makes it.*(c) But a confession made by one accomplice in the presence of another is admissible against the latter to this extent, that if it implicates him, his silence under the charge may be used against him, whilst on the other hand his prompt repudiation of the charge might tell in his favour.(d) The Indian law, differing in this respect from the English, further enacts that when two or more persons are tried jointly for the same offence, a confession made by one of such persons, affecting himself and any other of the accomplices jointly tried with him, when proved, may be *taken into consideration* by the court against that other accomplice as well as against the person who made it.(e) The confession may have been made at any time and not necessarily in the presence of the accused; but the confessing person must implicate himself substantially to the same extent as the accomplice against whom the confession is taken into consideration. Though the confession of an accomplice may thus, under certain circumstances, be "taken into consideration" and thus be an element in the consideration of the case against the other co-accused, it must necessarily be of less weight than sworn evidence, less even than the sworn evidence of an accomplice who is not jointly tried. The courts have accordingly established the following rules with regard to this kind of evidence :—

(1) Where there is absolutely no other evidence, such a confession alone will not justify the conviction of a person who is being tried jointly with its author.

(2) The confessions of co-accused must be corroborated by independent evidence, both in respect of the identity of all the persons affected by it and of the fact that the crime was committed.

28. Confession must be voluntary.—To be relevant, and therefore admissible as evidence, a confession must be voluntary. Under the English law the onus lies upon the prosecution to prove that a confession is voluntary before it can be used in evidence. Under the Indian law, though it is highly desirable that the prosecutor should prove the circumstances in which a confession was made, the onus lies upon the accused of showing that a confession made by him was not voluntary and therefore irrelevant. Unless, therefore, it appears doubtful whether a confession is voluntary, a court need not require the prosecutor affirmatively to establish that fact.

29. What this means.—A confession is not deemed to be voluntary, if it appears to the court to have been caused by any inducement, threat, or promise, having reference to the charge against the accused person, proceeding from a person in authority (*e.g.*, the prosecutor or a person having the custody of the accused) and sufficient, in the opinion of the court, to give the accused person grounds, which would appear to him to be reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.(f) Thus, if a hand-bill issued by the Government promising a reward and pardon to any accomplice in a certain crime who would confess were brought to the knowledge of an accomplice in the crime, who, under the influence of a hope of pardon made a confession, that confession would not be voluntary and could not be used at his trial.

(c) Stephen Dig., Art. 21.
(d) I. E. A., s. 8.
(e) I. E. A., s. 30. When one of several persons jointly tried pleads guilty, he ceases to be tried jointly with the others, and therefore any confession made by him cannot be taken into consideration against the others.
(f) I. E. A., s. 24.

30. Subject continued.—A confession does not cease to be voluntary merely because it appears to have been caused by the exhortations of a person in authority to make it as a matter of religious duty, or by an inducement collateral to the proceedings, or by inducements held out by a person having nothing to do with the apprehension, prosecution, or examination of the accused. Thus a confession made by a prisoner to a gaoler in consequence of a promise by the gaoler that if the prisoner confessed he should be allowed to see his wife, would be admissible in evidence.

31. Confession obtained by fraud, etc.—It is, of course, improper to endeavour to trap a man into incriminating himself; but if a confession is otherwise admissible as evidence it does not become inadmissible merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, or because he was not warned that he was not bound to make the confession, and that evidence of it might be given against him.(g)

32. Confession voluntary if made after removal of impression produced by inducement etc.—A confession is deemed to be voluntary if, in the opinion of the court, it is shown to have been made after the complete removal of the impression produced by any inducement, threat, or promise which would otherwise render it involuntary.(h) Thus, A is accused of a military offence, B an officer tries to induce A to confess by promising to get the commanding officer to dismiss the case with an admonition if he does so. The commanding officer informs B that he cannot give any such undertaking, and this is communicated to A. A statement subsequently made by him is voluntary.

33. Confession to Police officers.—Two provisions which are peculiar to Indian law may be mentioned here—

(1) No confession made to a police officer can be proved against a person accused of an offence.(i)

(2) No confession made by any person whilst in the custody of a police officer, unless it be made in the immediate presence of a magistrate, can be proved as against such person.(f)

Nevertheless, facts discovered in consequence of a confession which is itself inadmissible under (1) or (2) above, and so much of the confession as distinctly relates to the facts thereby discovered, may be proved.(k) Thus A, accused of house-breaking by night, makes a confession to a policeman. Part of it is that A had thrown a lantern into a certain pond; the fact that he said so, and that the lantern was found in the pond in consequence, may be proved.

34. Whole confession must be given in evidence.—If a confession is given in evidence, the whole of it (subject as stated in para. 33) must be given, and not merely the parts disadvantageous to the accused person.

35. Confession made on oath in previous proceedings.—A confession may be used as such against the person who makes it, though it was given as evidence on oath and though the proceedings in which it was given had reference to the

(g) I. E. A., s. 29.
(h) I. E. A., s. 28.
(i) I. E. A., s. 25.
(j) I. E. A., s. 26. The term police officer in ss. 25 and 26 should be construed according to its more comprehensive and popular meaning; it includes any sort of police officer from a Deputy Commissioner of Police down to a village chowkidar.
(k) I. E. A., s. 27.

same subject-matter as the proceedings in which it is to be used; but if, *after refusing to answer any question,* the witness was compelled to answer, his answer is not admissible against him.(s) Thus, A is charged with causing hurt to B. A had voluntarily appeared as a witness for C, who was charged with the same offence at a previous trial, and had not declined to answer any question. A's evidence can be used against him on his own trial. The same rule applies to statements made by a man when charged before his commanding officer, or at the taking of a summary of evidence, but Rule 15 (F) requires the officer taking a summary of evidence, to caution the accused before recording his statement. The proceedings of a court of inquiry, or any confession or statement made at a court of inquiry, cannot be used as evidence against a person subject to the Indian Army Act before a court-martial, unless the court-martial is one for the trial of such person for wilfully giving false evidence before the court of inquiry.(f)

(vi) Statements by persons who cannot be called as witnesses

36. "Hearsay" excluded.—As a general rule the statements of persons not called as witnesses are inadmissible as evidence of the truth of the facts stated. This does not mean that evidence of what absent persons said is absolutely excluded. Such statements may, for instance, be admissible as part of the transaction,(u) as conduct influenced by it (v) or as indicative of states of mind or body which are relevant.(w) The cries of a mob led by the accused, the complaints referred to in para. 17 above, and statements made by the victim in a poisoning case before his illness as to his health, and during his illness as to his symptoms, are examples of this.

37. Reasons for exclusion of "hearsay".—The reasons for excluding "hearsay" (*i.e.,* the statements of persons not called as witnesses) are, first, that such statements are not made on oath or affirmation, and secondly, that the person affected by the statement has no opportunity of cross-examining its author. The rule has often been criticised on the ground that it sometimes excludes the only means of proof obtainable, but its utility in excluding irresponsible statements is obvious. The general rule that "Hear-say is not evidence" is, under every system of law, subject to important exceptions. Following the principle already explained, the Indian Evidence Act arranges for this by declaring that certain kinds of hearsay shall be "relevant," all other kinds, which are not mentioned, being left outside its enumeration of "relevant" facts and thus made inadmissible.

38. Statements of absent person which are specially admitted.—In addition to such statements as are relevant by reason of their falling under one of the heads of relevancy already discussed, the most important of the statements thus made evidence are :—

(1) Statements by persons since dead as to the cause of their death ;(x)

(2) Statements or entries made in the ordinary course of business;(y)

(3) Statements which are against the interests of their authors, or which would have exposed them to a criminal prosecution or a suit for damages.(z)

(s) I. E. A., s. 132.
(t) Rule 158 (*1*).
(u) I. E. A., s. 6.
(v) I. E. A., s. 8.
(w) I.E. A., s. 14
(x) I. E. A., s. 32 (*1*).
(y) I. E. A., s. 32 (*2*).
(z) I. E. A., s. 32 (*3*).

39. Comparison with English law.—The law of India in all the above cases differs in a greater or less degree from English law. As to (1) the English rule is that a dying declaration is only admissible in trials for the murder or manslaughter of the declarant and only if it is proved that he had, at the time of making the declaration, abandoned all hope of living and was expecting to die within a very short time, though not necessarily immediately. Under Indian law, however, the statement of a person who has since died is admissible in any proceeding in which the cause of his death comes into question, and there are no conditions as to the declarant being in expectation of death or having abandoned all hopes of recovery. These considerations do not therefore affect the *admissibility* of such evidence, though they may materially affect the weight which should be attached to it.

40. Comparison with English law.—The statements, etc., referred to in (2) and (3) are, under English law, only admissible when their author is dead. The Indian Evidence Act, however, allows of such statements being given in evidence when he cannot be found, or has become incapable of giving evidence, or when his attendance cannot be procured without an amount of delay or expense, which, under the circumstances of the case, appears to the court to be unreasonable.

41. Comparison with English law.—If such a statement or entry as is referred to in (2) was made in the ordinary course of business no question as to the source of the information or the time when the entry or statement was made will affect its admissibility. Under English law such statements or entries are only admissible if made in the ordinary course of business *in performance of a duty and contemporaneously* with the act to which they relate; further they can *only prove facts which it was the duty* of the declarant to *include* in the statement or entry and of which he had *personal knowledge*. The Indian law is different in these respects; so long as the statements or entries are made in the ordinary course of business, it need not have been the declarant's duty to make them, they need *not* have been made *contemporaneously*, it is not necessary that the declarant should have had *personal knowledge* of the transaction recorded, and they may be used to *prove independent collateral matters i.e.*, matters which it was not necessary to include in the ordinary course of business.

42. Evidence at previous enquiry when admitted.—It may sometimes happen that a material witness, who has given evidence at a preliminary inquiry, cannot attend at the trial, if the evidence was given in a judicial proceeding, or before a person authorized by law to take it and was taken on oath or affirmation, with liberty to the accused to cross-examine (as for instance, the inquiry before a committing magistrate), the Indian Evidence Act,(a) allows it to be used at the subsequent trial of the accused on the same charge, if the witness,—

(1) is dead,

(2) cannot be found,

(3) is incapable of giving evidence,

(4) is kept out of the way by the accused, or

(5) if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable.

43. Subject continued.—This provision will sometimes admit of the evidence which was given at a court-martial which is dissolved before coming to a finding being used at the subsequent trial of the same accused before another court.

(a) I. E. A., s. 33.

It will also admit (subject to the above conditions) of evidence recorded before a magistrate, in the presence of the accused and with liberty to cross-examine, in relation to the same charge as that on which he is afterwards tried by court-martial being used at such subsequent trial. This provision may be useful as a means of perpetuating testimony when the life of a witness is in danger, or he is under orders for active service and cannot be detained to give evidence.

44. Summary of evidence, how far admissible.—In the case, however, of trial by court-martial, there is no similar provision making a summary of evidence taken before a commanding officer, when an accused person is remanded for trial, evidence under the same circumstances as depositions taken on oath and in a judicial proceeding. Accordingly, the summary, except so far as it contains statement by the accused himself, cannot be admitted as evidence of the facts recorded in it unless the accused has pleaded guilty.(b) But where a statement recorded in the summary is put in issue before a court-martial, as, for example, where a discrepancy is alleged between that statement and the evidence given before the court, or where the alleged wilful falsehood of such a statement is made the subject of a charge, the summary, if purporting to give *verbatim* signed statement of the witness, may be given in evidence as confirmatory of the statement having been made.

(vii) Statements made under special circumstances

45. Documents.—The rule excluding hearsay evidence is applicable to written, or documentary, as well as to oral evidence. The statement of a person who is not called as a witness is nonetheless "hearsay" because it has been reduced to writing, and is offered in that form to the court. But in its application to documents of a public or official character, the rule is subject to very important qualifications. In the case of many such documents, the statements which they contain are, under express statutory provisions, admissible as evidence of the matters to which they relate.

46. Entries in books of accounts.—Thus, by the Indian Evidence Act, entries in books of account regularly kept in the course of business are relevant, but such entries are not, by themselves, sufficient to charge any person with a liability.(c)

47. Entries in public records, etc.—So also an entry in any public or other official book, register or record made by a public servant in the discharge of his official duty or by any other person in the discharge of a duty imposed on him by law, is admissible as evidence of the facts to which it relates.(a) Statements in maps generally offered for public sale, or prepared under the authority of any Government in British India, are similarly admissible as evidence as to matters usually represented in such maps.(e) as are also statements of the law of any country contained in the official publications of its Government;(f) and a statement of any fact of a public nature, if made in a recital contained in any Act of Parliament, or in any Act of the Central Legislature or any other legislative authority in British India or in a Government notification or notification by the Crown Representative appearing in the Official Gazette is admissible as evidence of that fact.(g)

(b) Rules 44, 102, 146.
(c) I. E. A., s. 34.
(d) I. E. A., s. 35.
(e) I. E. A., s. 36.
(f) I. E. A., s. 38.
(g) I. E. A., s. 37.

48. Special provisions of I.A.A.—Under the special provisions of the Indian Army Act enrolment papers, letters, returns and documents respecting service, dismissal or discharge, army lists and gazettes published by authority and showing the status and rank of officers or warrant officers, records in regimental books, certificates in certain cases stating fact, date and place (but not the circumstances) of the surrender or apprehension of absentees, the reply of a Government officer to a communication addressed to him under section 92 of the Act and the "return" of a commission are made evidence of the facts stated in them (h)

49. Judgments of courts of law.—The judgments of courts of law are also in some cases relevant facts.(i) Courts-martial are chiefly interested in this matter so far as it concerns pleas in bar of trial and the proof of previous convictions. As regards the former it need only be remarked that the production of the judgment of a criminal court convicting the accused of the same offence, or a certified copy thereof, effectually bars his trial; while as to the latter, a previous conviction may be proved either by a *verbatim* extract from the regimental books or by the production of a properly certified extract from the records of the court which convicted the accused.(f)

(viii) Opinion of third persons, when relevant

50. Rules as to opinion.—The general rule is that the opinion or belief of a witness is not evidence. A witness must depose to the particular facts which he has seen, heard, or otherwise observed, and it is for the court to draw the necessary inference from these facts. Thus, a witness may not on a trial for desertion characterise the prisoner's absence as "desertion". This is a matter of inference, and is the point which it rests with the court to determine according to the evidence. The examination of the witness should be confined to the fact of the accused absenting himself, and to such other facts relevant to the charge as may be within the knowledge of the witness. In certain exceptional cases, however, opinion is for special reasons admitted as evidence. These cases are dealt with in sections 45 to 51 of the Indian Evidence Act, which, following the system already explained, declare these opinions to be relevant, leaving all others outside the enumeration of relevant facts.

51. Exception in case of "Experts".—The chief exception to the rule excluding opinion is that the opinion of an "expert"—*i.e.*, a person specially skilled in a foreign law, in any science or art, or in the identification of handwriting or finger impressions, is admissible on any point within the range of his special knowledge.(k)

52. Example.—Thus, in a poisoning case, a doctor may be asked as an expert whether, in his opinion, a particular poison produces particular symptoms. And, where unsoundness of mind is set up as a defence, an expert may be asked whether, in his opinion, the symptoms, exhibited by the accused commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of their acts, or of knowing that what they do is either wrong or contrary to law. An officer may be asked, as an expert, to give his opinion on a point within his special military knowledge, but to make his opinion admissible his knowledge must be of a kind not possessed by the court generally. Thus, in a trial before a court-martial, it is not proper to ask a witness for an opinion on matters with which all officers should be familiar, but

(h) I. A. A., ss. 85, 91, 91-A and 92.
(i) I. E. A., ss. 40—44.
(j) I. A. A., s. 93.
(k) I. E. A., s. 45.

it may be perfectly proper to put questions involving opinion to an engineer as to the progress of a sap, or to an artillery officer as to the probable effect of his arm, if directed as assumed, since these matters, though having reference to military science, are not of such a nature as to be presumably known to each member of a court-martial.

53. Grounds on which opinions are based when relevant.—When an opinion is relevant, facts which support or are inconsistent with it, and the grounds on which it is based, are also relevant.(l) Evidence as to the grounds on which an opinion is based can, except as mentioned in para. 71, below, only be given when the author of the opinion is alive, as the grounds on which a deceased person's opinion was based must obviously be either guess-work or hearsay.

54. Handwriting—who may give opinions regarding it.—The opinion of any person acquainted with the handwriting of the person by whom any document is supposed to have been written or signed is relevant even though the former is not an "expert" in handwriting. A person is said to be acquainted with the handwriting of another if,—

(1) he has seen that person write;
(2) he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person; or
(3) documents purporting to be written by that person have been habitually submitted to him in the ordinary course of business.(m)

55. Proof of handwriting by comparison.—Handwriting may also be proved by comparison, under section 73 of the Indian Evidence Act. It will, therefore, be convenient to consider this section here, though it occurs in a later portion of the Act. It allows a writing admitted or proved to be written by any person to be compared with another which *purports* to be written by that person, in order that the genuineness of the latter may be established or rebutted. Nothing is said as to who is to make the comparison, and it may therefore be made either by the court or by an expert. A combination of both methods is the safer course. A comparison of handwriting is at all times as a mode of proof hazardous and inconclusive, and especially so when it is made by one not conversant with the subject and without such guidance as might be derived from the arguments of counsel and the evidence of experts.

The same section goes on to provide that a court may require any person present in court to write any words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by such person. The comparison is, it will be noticed, made by the court in this case. It must be borne in mind that writing made for the purpose of comparison is not unlikely to be disguised.

The importance of an expert's evidence in such cases lies not so much in the opinion which he expresses as in the fact that he draws the attention of the court to similarities and dissimilarities which they might not notice without his assistance, but the value of which (when pointed out) they can fully appraise for themselves. Where a question of forgery is to be decided by comparison of handwritings only, the assistance of an expert is most desirable.

56. Other methods of proof.—The methods referred to above are the usual ones by which an individual's authorship of a document is proved. They are not, however, the only ones, and in addition to the writer's own admission or

(l) I. E. A., ss. 46 and 51.
(m) I. E. A., s. 47.

the evidence of someone who saw him write it, the authorship of a document may be proved by a circumstantial evidence. For instance, A, whose credit is unimpeachable, is able to swear that B was the sole occupant of a room, and that, as soon as B left it, he (A) entered and found a letter, with the ink still wet, lying on the table. There could be no more convincing proof that B wrote the letter however, unlike his ordinary penmanship the writing might be. Again, the writing of an anonymous letter is the subject of a court-martial charge. Circumstances directing suspicion to a particular regiment, company, or class have come to light and specimens of the hand-writing of all suspected persons have been procured from the regimental school or otherwise. One of these corresponds with the writing of the anonymous letter. It has been held that section 73 can be invoked where the document in issue is alleged by the prosecution to have been written by the particular person, such allegation being based on the resemblance of the handwriting to that of other documents admitted or proved to have been written by that person. The opinions of one or more experts as to the letter and the specimen being by the same writer and evidence as to the authorship of specimen are, however, relevant (Indian Evidence Act, ss. 45 and 11) and from them the authorship of the anonymous letter may be inferred.

57. Summary of law as to proof of authorship of document.—The result of the foregoing remarks is that the authorship of a document may be proved by—

(*a*) the evidence of experts (para. 51),

(*b*) the evidence of persons acquainted with the handwriting of the alleged writer (para. 54),

(*c*) comparison under Indian Evidence Act, section 73 (para. 55),

(*d*) the admission of the writer or the evidence of someone who saw him write it (para. 56), and

(*e*) circumstantial evidence (para. 56).

58. Evidence of belief not excluded.—The rule which requires a witness to state what he knows, and not what he thinks, does not require him to depose to facts with an expression of certainty that excludes all doubt in his mind. For example, it is the constant practice to receive in evidence a witness's belief as to the identity of a person or thing, or as to the fact of a certain handwriting being the handwriting of a particular person, though he will not swear positively to those facts. A witness who falsely swears that he "believes" a thing to be so and so is as much guilty of perjury as one who falsely swears that "it is" so and so.

59. Opinion as to conduct how far admissible.—In cases affecting the conduct of the accused, either as to deportment or language, it is not only proper, but often necessary, to require a witness to declare his opinion, because that opinion may be an impression derived from a combination of circumstances occurring at the time referred to, which it would be difficult if not impossible, fully to impart to the court. But it would be improper to draw the attention of a witness to facts, whether stated by himself or by another witness, and to ask his opinion as to their accordance with military discipline or usage, because the court, when in possession of facts, are the only proper judges of their tendency. If the witness is asked a question inviting him express his opinion as to the general conduct of the person accused, or to give his judgment on the whole matter of the charge, he may, and should, decline to answer it.

(ix) *Character, when relevant.*

60. Evidence of character when admissible.—In criminal proceedings (in which term are included trials by court-martial) the fact that the accused is of good character is always relevant,(*n*) but the fact that he has a bad character is irrelevant, unless evidence has been given that he has a good character.(*o*) "Character" by Indian law includes both reputation and disposition, but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown,(*p*) as an exception, however, to this, previous convictions can be proved as evidence of bad character, when such evidence is otherwise admissible, *i.e.*, when evidence of good character has been given.(*q*)

61. Evidence of character, etc., after conviction.—By a special provision(*r*) of the Indian Army Act, evidence of character (good or bad), previous convictions, and certain other prescribed matters, information on which is necessary to enable the court to decide upon their sentence, is admitted after the accused has been convicted, while at a summary court-martial the officer holding the trial may record such matters of his own knowledge. With these exceptions, no unfavourable evidence as to character is admissible unless the accused has brought it on himself by calling or eliciting evidence of his good character.

62. Effect of evidence as to character.—Evidence of general good character cannot avail the accused against evidence of the fact, but where some reasonable doubt exists as to his guilt, it may tend to strengthen a presumption of innocence, and proved good character should be taken into consideration with all the other facts and circumstances, not as positive evidence contradicting any that has been brought on the other side, but as probable testimony to induce the court to doubt whether the other evidence is correct, and not to discard that evidence if the court thinks that it is correct.

On a charge of stealing, character for honesty may be entitled to considerable weight; so also on a charge implicating the courage of a soldier, character for bravery and resolution. But it would be manifestly absurd, on a charge of stealing, to allow character for bravery to weigh heavily, or, on a charge of cowardice, to be biassed by a character for honesty. General character, unconnected with the charge, though it may not weigh with the court, except in awarding punishment in discretionary cases, may essentially serve the accused by influencing the superior with whom it rests to mitigate or remit the sentence.

63. Evidence tending to show disposition not admissible.—As a general rule, it is not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those included in the charge against him for the purpose of leading to the conclusion that he is a person likely from his conduct or character or disposition to have committed the offence for which he is being tried. Thus, on a charge of murder, the prosecutor cannot give evidence of the conduct of the accused in respect of other persons for the purpose of proving a blood-thirsty and murderous disposition. On a charge against a sentry of having been asleep on his post on a particular occasion, evidence that he had been found asleep on his post on other occasions would not be admissible for the purpose of showing that he would be likely to commit the offence; and on a charge of insubordination, evidence of insubordinate

(n) I. E. A., s. 53.
(o) I. E. A., s. 54.
(p) I. E. A., s. 55, Explanation.
(q) I. E. A., s. 54, Explanation 2.
(r) I. A. A., s. 93.

conduct on other occasions would not be admissible for the purpose of showing a tendency to insubordinate conduct. Evidence as to other crimes committed by the accused may however be admissible under paras. 15, 22 or 24, above, if these crimes form part of the same transaction, show the existence of a relevant state of mind or body, or negative the theory of accident or misfortune.

64. Conclusion of list of "relevant facts".—This concludes the list of what the Indian Evidence Act classes as "relevant" facts. Special provision is however made elsewhere for the admission of certain other evidence, a consideration of which may be helpful to a court in arriving at a decision as to how far a witness is to be believed. These are—

(1) Answers to certain questions which are admissible on cross-examination.

(2) Evidence impeaching the credit of witnesses.

(3) Corroboration of the statements of witnesses.

They will be considered later, when dealing with the portions of the Indian Evidence Act in which they occur.

(x) *Facts which need not be proved.*

65. Two categories of facts which need not be proved.—Having thus settled what sort of facts may be proved, the Indian Evidence Act goes on to show how these facts are to be brought to the notice of the court which tries a case. In the first place, certain facts need not be proved at all. These fall into two categories, *viz.*, facts of which courts take judicial notice, and admissions.

66. Judicial notice.—A court is said to take judicial notice, in other words not to require evidence, of any facts which are assumed to be so generally known as not to require special proof. By s. 89 of the Indian Army Act a court-martial is expressly authorised to take judicial notice of all matters within the general military knowledge of its members. Thus, evidence need not be given as to the relative rank of officers, as to the general duties, authorities, and obligations of different members of the service, or generally as to any matters which an officer, as such, may reasonably be expected to know. The Indian Evidence Act further requires courts to take judicial notice of certain other matters. Among these are :—all Indian laws, Acts of Parliament, the course of proceeding of Parliament and of the Indian legislatures, the accession and sign-manual of the King, the Great Seal and Privy Seal, the seals of all courts of British India and of certain British courts, the seal of any notary public, the existence, title and flag of recognised states, the divisions of time, the geographical divisions of the world, the territories of the Crown, the commencement, continuance, and termination of hostilities between the Crown and any other state or body of persons, and the "rule of the road".

67. Books of reference may be consulted.—In all those cases, and also on all matters of public history, literature, science or art the court may consult appropriate books of reference and may require the party asking it to take judicial notice of a fact to produce such a book, before it takes judicial notice of the fact.(*s*)

68. Facts admitted.—Facts which the parties admit in court need not be proved, otherwise than by such admissions, unless the court require them to be so proved.(*t*) It is the practice of courts-martial to receive admissions made in

(s) I. E. A., s. 57.
(t) I. E. A., s. 58.

open court as to collateral or comparatively unimportant facts which are not in dispute, but must be proved on the part either of the prosecution or of the defence. Thus, it is the practice to allow either party the option of admitting the authenticity of orders or letters, or the signature of a document, or the truth of a copy, put in by the other party, in cases where such writings are receivable when proved; or that certain details in an enumeration of stores, or in an account, are correctly stated; or that a promise or permission to a certain effect was actually given, or that a certain letter was sent or received on a given day; and so in similar cases where admissions may expedite the proceedings and do not go to the merits of the matter before the court.

69. Plea of "Guilty".—The commonest instance of an admission is a plea of guilty, which is an admission by the accused of all the averments in the charge-sheet. On such a plea no further evidence of the guilt of the accused is necessary and he can be convicted and sentenced accordingly.

(xi) *Oral Evidence.*

70. Oral evidence defined.—All other facts must be proved by oral or documentary evidence. Oral evidence means statements made to the court by witnesses, while documentary evidence means the production of documents for the inspection of the court.(u) All facts, except the contents of documents, may be proved by oral evidence(*v*) which must in all cases be direct;(*w*) that is to say—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

71. Special rule as to treatises by experts.—The opinions, however, of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead, or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable.(*x*)

72. Court may require production of things referred to.—If oral evidence refers to the existence or condition of any material thing, other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.(*y*)

(u) I. E. A., s. 3.
(v) I. E. A., s. 59.
(w) I. E. A., s. 60.
(x) I. E. A., s. 60, proviso 1.
(y) I. E. A., s. 60, proviso 2.

(xii) *Documentary evidence.*

73. Rule as to documentary evidence.—The existence, condition, or contents of a public document may be proved either by primary or by secondary evidence.(*z*) The existence, condition, or contents of a private document may be proved by primary evidence, and in certain circumstances may also be proved by secondary evidence.(*a*) It should be remembered that contents of a document, and not the *truth* of these contents is here referred to. A document is, as a rule, only proof that certain marks have been made on the paper, or whatever *it is*, on which they are inscribed; *e.g.*, that a certain statement has been written down. It is only in exceptional cases that a document is proof of the truth of the matters recorded; these cases are dealt with separately.

In all cases the document must be produced by a witness on oath or affirmation.

74. Primary evidence.—Primary evidence is the production of the document itself for the inspection of the court, or, if it is one of a number of documents produced by a uniform process (*e.g.*, printing, lithography or photography), the production of one of them.(*b*) If, however, a number of documents so produced are copies of a common original, they are not primary evidence of the original. For example, the type of a book is set up from the author's manuscript and a number of copies printed. Every copy is primary evidence of the contents of the others, but not of the contents of the manuscript.(*c*)

75. Document which must be attested.—If the document is of a kind which is required by law to be attested, but not otherwise, it is also necessary to call an attesting witness to prove its due execution. But this rule is subject to the following exceptions :—

(*a*) If there is no attesting witness alive, subject to the process of the court, and capable of given evidence, or if the document appears to have been executed in the United Kingdom, then it is sufficient to prove that the attestation of at least one attesting witness is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.(*d*)

(*b*) If the document is proved, or purports to be, thirty years old or more, and is produced from what the court considers to be its proper custody, an attesting witness need not be called, and it may be presumed without evidence that the document was duly executed and attested.(*e*)

76. Secondary evidence, when given.—Secondary evidence may be given of the existence, condition or contents of a document(*f*) in the following cases:—

(1) When the original is shown or appears to be in the possession or power of—

(*a*) the opposite party, or

(*b*) any person out of reach of, or not subject to, the process of the court, or

(z) I. E. A., ss. 61, 64 and 65 (*e*).
(a) I. E. A., ss. 61, 64 and 65 (*a*) to (*d*), (*f*) and (*g*).
(b) I. E. A., s. 62.
(c) I. E. A., s. 62, Explanation 2.
(d) I. E. A., ss. 68 and 69.
(e) I. E. A., s. 90.
(f) I. E. A., s. 65.

(*c*) any person legally bound to produce it, and when, after due notice (see section 66 of the Indian Evidence Act), such person does not produce it,

any kind of secondary evidence (see para. 77 below) may be given.

(2) When the existence, etc., of the original have been admitted in writing by the party against whom it is to be proved, the written admission is admissible as secondary evidence.

(3) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time, any kind of secondary evidence (see para. 77 below) may be given.

(4) When the original is of such a nature as not to be easily movable, any kind of secondary evidence (see para. 77 below) may be given.

(5) When the original is a public document or document of which a certified copy is permitted by law to be used as evidence; (*g*) in such cases a certified copy is the *only* secondary evidence permissible.

(6) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection, evidence may be given as to such general result by any person who has examined them, and who is skilled in the examination of such documents.

77. Secondary evidence, nature.—Besides certified copies [see clause (5) of the preceding paragraph] secondary evidence of a private document given at a court-martial will generally take one of the following forms:—(*h*)

(1) Copies made from the original by a mechanical process which ensures accuracy (*e.g.*, photography) and copies compared with such copies.

(2) Copies made from or compared with the original.

(3) Oral accounts of the contents of a document given by persons who have seen it.

78. Public documents defined.—The following are "public documents":—

(1) Those which form the Acts or records of the Acts—

(*i*) of the sovereign authority,

(*ii*) of official bodies and tribunals, and

(*iii*) of public officers.

(2) Private documents defined.—Public records kept in British India of private documents. (*i*) All other documents are private (*j*) As mentioned above secondary evidence can always be given of the contents of a public document. The nature of this secondary evidence varies with the character of the document, the most usual kind being a "certified copy." (*k*) and if the document is one provable by a "certified copy", this is the *only* secondary evidence admissible.(*l*) The secondary evidence required to prove the various kinds of public documents is dealt with in sections 76 to 78 of the Indian Evidence Act, which should be consulted in the original, if necessary. The public documents specified in section

(g) *e.g.*, the Bankers' Book Evidence Act (XVIII of 1891).
(h) I. E. A., s. 63.
(i) I. E. A., s. 74.
(j) I. E. A., s. 75.
(i) I. E. A., s. 74.
(l) I. E. A., s. 65.

78 are provable as therein stated, all other (except certain English documents specially provided for in section 82 of the same Act and with which courts-martial are unlikely to be concerned) are provable by "certified copies" as provided for in sections 76 and 77.

79. Provisions as to extracts and copies of certain documents.—Under the special provisions of the Indian Army Act extracts from or copies of official records are in certain cases made admissible as evidence.(*m*) while under the general law referred to above(*n*) orders and notifications of the Central Government or of the Crown Representative are provable by copies purporting to be printed by order of that Government or of the Crown Representative, as the case may be, and orders and regulations of His Majesty or a Department of the Home Government by copies purporting to be printed by the King's printer.

(xiii) *Presumptions as to documents.*

80. "Shall presume" and "may presume".—Sections 79 to 90 of the Indian Evidence Act provide that certain documents shall be presumed to be what they purport to be, unless and until the contrary is proved and that, as to certain others, courts *may* in their discretion, either make a similar presumption or require the genuineness of the document to be proved by the party who puts it forward. This distinction between what courts "shall presume" and what they "may presume" should be noticed.(*o*) An instance of the former class of presumption is found in section 90 of the Indian Army Act which provides that certain signatures shall be presumed to be genuine until the contrary is shown. An instance of the latter is that regarding telegraph messages contained in the Indian Evidence Act.(*p*) A court may either presume that a message forwarded from a telegraph office to the addressee corresponds with a message delivered for transmission at the office of origin, or may require that fact to be proved by the party asserting it. This provision does not, however, authorise the court to make any presumption as to who delivered the message for transmission, or as to the truth of its contents.

81. Contract, etc., rule as to.—Where a contract, grant or other disposition of property is reduced to the form of a document, the document itself (or secondary evidence of its contents when admissible) is, save in certain exceptional cases, the only admissible evidence of the matter which it contains, and the written contract cannot therefore, save as aforesaid, be varied by verbal explanations or additions.(*q*)

(xiv) *Of the burden of proof.*

82. Burden of proof.—The burden of proving the existence (or non-existence) of any fact lies on the side which wishes the court to believe in its existence or non-existence, as the case may be, and which would fail if no evidence at all were given on either side.(*r*) In criminal trials the effect of this is that the burden of proof is, in the first instance, on the prosecutor, or as it is sometimes expressed, "every man is presumed to be innocent until he is proved to be guilty." An exception to this rule is that, when any fact is especially within

(m) I. A. A., ss. 91, 91-A and 93.
(n) I. E. A., s. 78.
(o) I. E. A., s. 4.
(p) I. E. A., s. 88.
(q) I. E. A., s. 91, *et seq.*
(r) I. E. A., ss. 102 and 103.

the knowledge of any person, the burden of proving that fact is upon him,(*s*) *e.g.*, in charges for being "out of bounds" without a pass, leaving a post without orders, releasing a prisoner without authority, absence without leave, etc. In such cases, the main fact being proved, the burden of proving the possession of a pass, leave, etc., lies on the accused, and such evidence as the prosecutor may be in a position to give—including inferences from the conduct of the accused—may be accepted as justifying a conviction in the absence of explanation by the accused.

83. Rule as to general and special exceptions.—When any person is accused of an offence, the burden of proving the existence of facts bringing the case within any of the "general exceptions" of the Indian Penal Code or any special exception or proviso applicable to the particular offence is on the accused.(*t*) For instance, A is accused of murdering B. The burden of proving that A killed B is on the prosecution. A, however, pleads grave and sudden provocation; the burden of proving this provocation is on A.

84. Presumptions.—In certain cases the burden of proof is determined, not by the relation of the parties to the question at issue, but by what are called "presumptions." Certain presumptions have been discussed already in connection with documents, and section 114 of the Indian Evidence Act further provides that a court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business. An instance of such a presumption is that a man who is in possession of stolen goods soon after the theft may be presumed to be either the thief or a guilty receiver unless he can account for his possession.

In some cases a state of mind (*e.g.*, intention, knowledge) is an ingredient of the offence; but a state of mind is not capable of positive proof; it can only be inferred from overt acts, which when proved, raise a presumption of intention or knowledge. As a general rule, a person is presumed in law to have intended the natural and probable consequences of his act.

85. "Shifting" of the burden of proof.—Where the prosecution have proved a *prima facie* case, the burden of disproving any facts or presumptions raised by the prosecution lies on the accused. It is not infrequently said that the burden of proof "shifts" on to the accused, but this is not, strictly speaking, correct, because an accused person is not bound to make any defence and will not necessarily be convicted if he makes no defence. For instance, A is accused of stealing a five-rupee note, and the prosecution prove that immediately after its loss it was found in A's possession. There is obviously a strong presumption that he stole it, and, as a matter of common sense, the court would almost certainly convict him, if he offered no explanation (or no reasonable explanation). Still, in law the burden remains on the prosecution to the end, and does not shift to the accused.

(xv) *Witnesses.*

86. Competency of witnesses.—Under Indian law all persons, other than the accused or persons tried jointly with him,(*u*) are competent witnesses unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by reasons of—

(1) tender years,

(s) I. E. A., s. 106.
(t) I. E. A., s. 105.
(u) But the confession of a jointly tried person may be taken into consideration against the accused; see para. 27 above.

(2) extreme old age,

(3) disease of mind or body, or

(4) any other cause of the same kind.(*v*)

87. Comparison with English law.—The English law adds to these disqualifications "or from knowing that he ought to speak the truth". Under Indian law the court have not to enter into enquiries as to the religious belief, or as to the knowledge of the consequences of giving false evidence, of a witness whose age, appearance or circumstances suggest the probability of a want of moral perception. The court has only to consider whether he can understand a question and give a rational answer to it. Other considerations do not affect the competency, though they may often affect the credibility of a witness. The English law further disqualifies both the accused and his wife from giving evidence except for the defence, subject, in the case of the wife, to certain statutory exceptions. The Indian law, as already mentioned, absolutely disqualifies the accused from giving evidence. It however makes his wife (subject to the privilege mentioned, in para. 98 below) a competent witness both for the prosecution and defence.

88. Accused cannot give evidence but may make a statement.—Though the accused cannot give evidence, he is permitted to make an unsworn statement in his defence(*w*) to which a greater or less degree of credence may be afforded, and which is one of the "matters before it" which the court is bound to consider when arriving at a decision as to whether the charge is or is not "proved".

89. Persons jointly tried cannot give evidence.—Persons jointly tried are incompetent to testify against each other. If, therefore, the prosecution find it necessary to call one participator in a crime as a witness against the others, the proper course is not to arraign him with them, or (if he has been so arraigned) to offer no evidence and take a verdict of acquittal.

If an accused thinks that the evidence of a person whom it is proposed to try with him is material to his defence, he should claim a separate trial.(*x*)

90. Evidence of accomplice.—The evidence of an accomplice is admissible against his principal, and *vice versa*, unless they are tried together, but the evidence of an accomplice should always be received with great caution. No particular number of witnesses is legally necessary to prove any fact,(*y*) and the uncorroborated evidence even of an accomplice is, therefore, in strict law sufficient,(*z*) if the court consider him credible, but a court-martial should very carefully consider the danger of convicting the accused on the uncorroborated evidence of an accomplice; and, if there is a judge-advocate, it is his duty to warn the court of the danger, though at the same time pointing out that it is within their legal province to convict upon it if they choose. The corroboration required is independent testimony which confirms in some material particular not only the evidence that the crime has been committed but also that the accused committed it.

91. Deaf or dumb witness.—A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing or signs must be made in open court. Evidence so

(v) I. E. A., s. 118.
(w) Rules 47, 48, and 145.
(x) Rule 24.
(y) I. E. A., s. 134.
(z) I. E. A., s. 133.

given is deemed to be oral evidence.(*a*) The same rule would, no doubt, apply to a deaf, or deaf and dumb, witness, who might be communicated with by writing or signs provided the court was satisfied with the reality and accuracy of such communication.

92. Member as witness.—A member of a court-martial is a competent witness in favour of the accused, and might, as such, be sworn or affirmed to give evidence at any stage of the proceedings; but the Indian Army Act Rules(*b*) direct that a witness for the prosecution shall not sit on a court-martial for the trial of any person against whom he is a witness.

(xvi) *Privilege of witnesses.*

93. Incriminating questions.—It by no means follows that, because a person is *competent* to give evidence, he is *compelled* to answer every question he may be asked when giving evidence. Under English law, a witness cannot be compelled to answer a question if the answers would, in the opinion of the court, incriminate him, and though in Indian law there is no such absolute privilege,(*c*) still a witness, on such a question being put to him, is entitled to ask to be excused from answering it; and if *after he has asked to be excused,* the court *compel* him to answer (as they are entitled to do) his answer cannot be proved against him at any criminal proceedings, except a prosecution for giving false evidence by such answer.

94. Official matters.—Another class of privilege is based on considerations of public policy. No one is permitted to give evidence derived from unpublished official records relating to any affairs of State, except with the permission of the head of the department concerned.(*d*). No public officer can be compelled to disclose communications made to him in official confidence, if he considers such disclosure injurious to the public interests,(*e*) and in particular no magistrate or police officer can be compelled to state whence he got any information as to the commission of any offence.(*f*)

95. Confidential reports.—On this principle, a confidential report, or letter, or official information of a confidential character, although it may refer to matters which a court-martial may have decided to be relevant to the inquiry before it, cannot be produced or disclosed except by consent of the superior authority; and this consent is refused if the production or disclosure is considered detrimental to the public service. Proof of the refusal should be laid before the court by the examination of a witness or by a written communication, read in open court and attached to the proceedings.

96. Courts of inquiry.—So also, the proceedings of a court of inquiry cannot be called for by courts-martial, nor witnesses examined as to their contents; nor is any confession or statement made at a court of inquiry admissible against an officer or soldier before a court-martial.(*g*) The only exception to this rule is in the case of a court-martial for giving false evidence before the court of inquiry.

(a) I. E. A., s. 119
(b) Rule 29 (B) (ii).
(c) I. E. A., s. 132.
(d) I. E. A., s. 123.
(e) I. E. A., s. 124.
(f) I. E. A., s. 125.
(g) Rule 158.

97. Privilege which cannot be waived.—The modified privilege referred to in para. 93 is the privilege of the witness, and therefore he may waive it, and answer (without being compelled to do so) if he chooses, but the privilege referred to in the following paragraphs is for the protection of other parties and cannot be waived except with their consent.

98. Communications during marriage.—A husband must not be compelled to disclose any communication made to him by his wife during the marriage; and a wife must not be compelled to disclose any communication made to her by her husband during the marriage.(*h*)

99. Legal advisers—communications to.—A legal adviser is not permitted, whether during or after the termination of his employment as such, unless with his client's express consent, to disclose any communication, oral or documentary, made him *as such legal adviser,* by or on behalf of his client, during, in the course of, and for the purpose of his employment, or to disclose any advice given by him to his client during, in the course of, and for the purpose of such employment. But this protection does not extend to—

(1) any such communication if made in furtherance of any illegal purpose;

(2) any fact observed by a legal adviser in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment, whether his attention was directed to such fact by or on behalf of his client or not; or

(3) any fact with which the legal adviser became acquainted otherwise than in his character as such.

The expression "legal adviser" includes the clerks of legal advisers and interpreters between them and their clients, and the person representing or assisting the accused during trial before a court-martial.(*i*)

100. Procedure when privilege claimed.—The questions, whether answered or not, should be entered on the proceedings. When a witness claims the privilege of not answering, it is (except as mentioned in para. 94 above) for the court to decide whether the question is within any of the exceptions. Courts-martial should in practice interpose by informing a witness, at the time when a question is put to him, that he is not bound to answer. Any such interposition, and any claim of privilege by the witness, and the fact whether the witness is required to answer or not, should be noted on the proceedings.

(xvii) *of the Examination of Witnesses.*

101. Points requiring attention of court.—It will be the duty of the court in every case to see that the rules of evidence are strictly conformed to. The following points will require special attention in relation to any evidence that may be tendered :—

(*a*) That it relates to a "fact in issue" or "relevant fact".

(*b*) That it is not within the rule rejecting hearsay evidence.

(*c*) That (except in the case of experts) it is not a mere expression of opinion.

(*d*) That, if it is a confession or admission, it is legally admissible.

(*e*) That, if it is a document, it is legally admissible and properly put in evidence.(*j*)

(h) I. E. A., s. 122.
(i) I. E. A., ss. 126 and 127.
(j) A document is said to be "put in" when it is produced to the court by a witness on oath or affirmation.

(*f*) That no document or other thing is used for the purposes of the trial which has not been properly put in.(*k*)

(*g*) That any witnesses called are legally competent to give evidence.

(*h*) That any document with which a witness proposes to refresh his memory is legally admissible for the purpose.

(*i*) That the examination of witnesses is fairly and properly conducted.

102. How examination of witnesses is conducted.—The points mentioned in (*a*) to (*g*) have been already considered and (*h*) will be noticed later. The Indian Evidence Act deals with (i) as shown in the following paragraphs. The examination of a witness by the person who calls him is called his examination-in-chief; and on this examination the questions must relate to the matters in issue at the trial or relevant to the issue. The court must, of course, in all cases see that a witness is not compelled to answer any question in respect of which he is entitled to claim privilege; and they must also see that, as far as possible, a witness is so dealt with that his honest belief is obtained from him.

103. Leading questions.—Leading questions must not, if objected to by the adverse party, be asked in examination-in-chief or in re-examination, except with the permission of the court.(*l*) Leading questions as to matters which are introductory, or undisputed, or which the court considers already sufficiently proved are, however, permitted,(*m*) and the court may also allow leading questions to be put to a "hostile witness".(*n*) A leading question is one suggesting the answer which the person putting the question wishes or expects to receive.(*o*) For instance, a witness must not be asked, "Did the accused then go into the barrack-room?" but "What did the accused do next?". If it were not for this rule a favourable and dishonest witness might be led to give any evidence that is desired. It would, of course, be mere waste of time to enforce the rule where the questions asked are simply introductory and form no part of the real substance of inquiry, or where they relate to matters which, though material, are not disputed. But where a question relates to a contested point, which is either directly conclusive of the matter in issue, or directly and proximately connected with it, the rule should be strictly enforced, and no question should be allowed in a form which directly or indirectly suggests to the witness the answer desired, or which, embodying a material fact, admits of a conclusive answer by a simple "Yes" or "No".

104. Test of what are leading questions.—Care must, however, be taken in enforcing this rule not to exclude questions which do not really suggest an answer, but merely direct the attention of the witness to the subject as to which he is questioned. It is often, indeed, extremely difficult in practice to determine whether or not a question is in a leading form, and in all such cases the real test should be whether or not the examination is being conducted fairly and with the object of eliciting the honest belief of the witness.(*p*)

(k) On a charge for theft, the articles, the subject of the charge, must be produced and identified in the presence of the court, by witnesses or their absence satisfactorily accounted for. For purposes of identification a document or thing may, however, be shown to a witness before it has been formally proved and put in.

(l) I. E. A., s. 142.

(m) *Ibid.*, second clause.

(n) I. E. A., s. 154.

(o) I. E. A., s. 141.

(p) For examples of fair and unfair examination, see M. M. L. Ch. VI, para. 111.

105. Rules as to directing attention to articles.—When any article, such as a stick, belt, or document, is produced in court for the purpose of identification, the witnesses may be asked such question as "Whether he recognises it," and "Whether he saw anything done with it, or to it:" but such a question as "Whether he saw A strike B with the stick or belt," or "Whether he saw A make an alteration in the document," should not be admitted.

106. Hostile witness.—The court may, in its discretion, permit the person who calls a witness to put any questions to him which the adverse party might put in cross-examination.(*q*) This is called the treating of a witness as "hostile". If a person calls a witness and the witness appears to be directly hostile to him, or interested on the other side, or unwilling to give evidence, the reason of the rule forbidding leading questions fails, and the court may allow the person calling the witness not only to ask him leading questions, but to cross-examine him, and to treat him in *every* respect as though he were a witness called by the other side. In such circumstances he can therefore be asked questions tending to show his bad character, and his credit may be impeached in the same way as that of a witness called by the adverse party; neither of these things can be done under English law.

107. Rules as to cross-examinations.—When the examination-in-chief is finished the opposite party cross-examines the witness. In cross-examination leading questions may be put and also questions, otherwise irrelevant, which tend—

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or

(3) to shake his credit by injuring his character.(*r*)

108. Subject of cross-examination—continued.—A witness may be cross-examined as to previous statements made by him in writing, or reduced to writing, without such writing being shown to him, but if it is intended to contradict him by the writing his attention must be called to it before it can be proved.(*s*) It is often important that when a witness is under cross-examination as to his previous statements, the fact of their having been reduced to writing should be concealed from him. It is only reasonable, however, that, when he has given his answer, he should be shown the document and have the chance of correcting himself. The summary of evidence may be used to prove any statement which the witness made, and which it is proposed to contradict, and evidence may be called to prove that the evidence of a witness, though consistent with the summary, is not consistent with evidence given by him at the investigation before the commanding officer.

109. Subject of cross-examination—continued.—Questions which assume that facts have been proved which have not been proved, or that answers have been given which in fact have not been given, are improper, and should not be allowed even in cross-examination. Nor should a witness be pressed in cross-examination as to any facts, which, if admitted, would not affect the matter at issue or his credibility. If the person cross-examining intends to adduce evidence contradicting the evidence given by the witness, he should put to the witness in cross-examination the substance of the evidence which he proposes to adduce, in order to give him an opportunity of retracting or explaining what he has said.

(q) I. E. A., s. 154.
(r) I. E. A., s. 146.
(s) I. E. A., s. 145.

110. Subject of cross-examination—continued.—A witness under cross-examination may be asked any questions which tend to test his veracity, discover who he is, or shake his credit by injuring his character. But a witness may, of course, decline to answer a question as to which he is entitled to claim privilege, and the right of asking questions tending merely to discredit (a right which has sometimes been seriously abused in civil courts in England) is qualified in the case of trials under Indian law by section 148 of the Indian Evidence Act, which provides that when a question which is only relevant as affecting his credit by injuring his character is put to a witness, the court shall decide as to whether or not he shall be compelled to answer it, and that in exercising this discretion the court shall have regard to the following considerations :—

(1) **injurious questions.**—Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies.

(2) Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he testifies.

(3) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.

(4) The court may, if it sees fit, draw, from the witness's refusal to answer the inference that the answer if given would be unfavourable.

111. Exclusion of evidence to contradict answers to questions testing veracity, etc.—It is further provided that when a witness has been asked, and has answered such a question no evidence can be given to contradict his answer.(*t*) This rule is however subject to two exceptions :—

(1) When the witness is asked whether he has been previously convicted and denies it, evidence of his previous conviction may be given.

(2) When he is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, proof may be given of the truth of these facts.

112. Impeaching credit of witnesses.—The credit of a witness may be impeached by the adverse party, or *with the consent of the court* by the party who calls him, by the evidence of persons who testify that they, from their knowledge of witness, believe him to be unworthy of credit.(*u*) Such persons may not, on their examination-in-chief, give reasons for their belief, but they may be asked their reasons in cross-examination, and their answers cannot be contradicted. When the credit of a witness is so impeached, the party who called the witness may give evidence in reply to show that he is worthy of credit.

113. Subject continued.—The credit of a witness may also, under similar conditions, be impeached by proof that he has been bribed, or by proof of former statements inconsistent, with any part of his evidence which is liable to be contradicted, and, at trials for rape or an attempt to ravish, it may also be shown that the woman against whom the offence is alleged to have been committed was of general immoral character.(*v*)

(t) I. E. A., s. 153.
(u) I. E. A., s. 155 (*1*).
(v) I. E. A., s. 155 (*2*), (*3*), (*4*).

114. Corroboration of witnesses.—In order to corroborate the testimony of a witness as to a relevant fact he may be asked questions as to any other circumstances which he observed at or near the time or place at which that fact occurred.(*w*) Thus A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed. Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

115. Former statements by witnesses.—In order to corroborate the testimony of a witness, any former statements made by such witness relating to the same fact.—

(1) to *any one*, at or about the time when the fact took place; or

(2) at *any time* before an authority legally competent to investigate the fact;

may be proved.(*x*) The above conditions are, to some extent, a safeguard against fictitious statements designedly made to support subsequent evidence, but it is obvious that the corroborative value of such statements depends on the circumstances of each case, and that they may easily be entirely valueless. The mere fact of a man having, on a previous occasion, made the same assertion, often adds but little to the chances of its truthfulness, and courts should distinguish such testimony from really corroborative evidence.

116. Re-Examination.—At the conclusion of the cross-examination of a witness the person who called him may, if he pleases, re-examine him ; but the re-examination must be directed exclusively to the explanation of matters referred to in cross-examination. If new matter is, by permission of the court, introduced in re-examination, the other side may further cross examine upon it.(*y*)

117. Questions by court.—After the re-examination of a witness is closed, the court often ask him questions to clear up some point which they regard as material.

Frequently, too, the court recall a witness, or allow him to be recalled for further examination; and sometimes they even call and examine a witness who has not been called by either party. In any of these cases the party affected by the answers should be allowed to suggest further questions, or to cross-examine (as the case may require).

If a witness is so called or recalled after the case for the accused is closed, the accused should also be allowed to give further evidence in rebuttal, and to comment upon the fresh evidence if he has already made his address.(*z*)

118. Refreshing memory.—A witness may not read his evidence or refer to notes of evidence already given by him; but he may, while under examination, refresh his memory by referring to any writing made by him at the time of the transaction concerning which he is questioned, or so soon afterwards that the court consider it likely that the transaction was at that time fresh in his memory. He may also refer to any such writing made by another person, but read by himself within the time aforesaid if, when he read it, he knew it to be correct. Whenever a witness may refresh his memory by reference to any document, he may, if the court is satisfied that there is sufficient reason for the non-production

(w) I. E. A., s. 156.
(x) I. E. A., s. 157.
(y) I. E. A., s. 138.
(z) Rules 128, 129.

of the original, be permitted to refer to a copy of such document. An expert may also refresh his memory by reference to professional treatises.(*a*) Any writing referred to under the provisions of this paragraph must be produced and shown to the adverse party if he requires it, and that party may, if he pleases, cross-examine the witness upon it.(*b*)

119. Notes referred to are not evidence of themselves.—But a witness who refreshes his memory by reference to writing must always swear positively as to the fact, or that he has a perfect recollection that the fact was truly stated in the memorandum or entry at the time it was written.(*c*) If on referring to a memorandum not made by himself he can neither recollect the fact nor recall his conviction as to the truth of the account or writing when the facts were fresh in his memory, so that he cannot speak as to the fact further than as finding it noted in a written entry, his testimony is objectionable, as being hearsay.

(xviii) *Conclusion.*

120. Rule as to evidence improperly received or rejected.—The Indian Evidence Act concludes by providing that the improper admission or rejection of evidence shall not be ground of itself for invalidating a trial if it appears that, independently of the evidence improperly admitted, there was sufficient evidence to justify the decision of the court, or that, if the rejected evidence had been received, it ought not to have varied the decision.(*d*) This provision, while not excusing a court which breaks the law, will often prevent a miscarriage of justice where the improper admission or rejection of evidence does not really affect the merits of the case.

121. How to act when in doubt.—If a member of a court-martial is in doubt whether a statement or document which it is proposed to put before him is, or is not, admissible as evidence, the most useful advice that can be given to him is, first to use his common sense as to whether the matter proposed to be proved has any practical bearing on the question which he has to try, and, if he thinks that it has, then to consider whether its admission is excluded by any provision of the Indian Evidence Act, *e.g.*, as being hearsay. He should remember that the enumeration of relevant facts in the Indian Evidence Act is so wide that admissibility is the rule and exclusion the exception.

(a) I. E. A., s. 159.
(b) I. E. A., s. 161.
(c) I. E. A., s. 160.
(d) I. E. A., s. 167.

CHAPTER VI

CIVIL OFFENCES

Introductory

1. Definition of civil offence, and jurisdiction of courts-martial over civil offences.—A "civil offence", for the purposes of the Indian Army Act, means an offence which, if committed in British India, would be triable by a criminal court.(*a*)

Courts-martial are prohibited from trying cases of murder or culpable homicide of a person not subject to military law or rape, if the offence is committed at any place in which the Central Government exercises jurisdiction, unless the offence is committed on active service or at a specified frontier post.

Concurrent jurisdiction.—Subject to the above exceptions, a court-martial can try all civil offences of a person subject to the Indian Army Act wherever committed.(*b*)

2. A criminal court and a court-martial may each have jurisdiction in respect of the same offence. Conflicts of jurisdiction are provided for by ss. 69 and 70 of the Indian Army Act, which give the military authorities the right of deciding by which court the alleged offender is to be tried, subject, however, to the reservation that, when a criminal court considers that proceedings ought to be instituted before itself, it may require the prescribed military authority to deliver over the offender or to postpone proceedings pending a reference to the Central Government.

It should be noted that the civil offences contained in Chapter VII of the Indian Penal Code (offences relating to the Army, Navy and Air Force), if committed by persons subject to the Indian Army Act, are not triable by the civil power and are therefore not triable by a court-martial under s. 41 of the Indian Army Act. Such an offence may, however, be tried by a court-martial if it amounts to a military offence or to some other civil offence triable under s. 41 and is so charged.

3. Principles on which jurisdiction should be exercised.—But though a wide power of trial by court-martial is given, it is not as a rule expedient to exercise the power universally.

Where troops are stationed at places having no competent criminal (civil) courts, it is necessary to try all offences committed by persons subject to the Indian Army Act by military tribunals.

But in British India and at places outside British India where a competent civil court has been established it is, as a general rule, desirable to try by a civil court a civil offence committed by a person subject to the Indian Army Act if the offence is one which relates to the property or person of a civilian or is committed in conjunction with a civilian, or if the civil authorities intimate a desire to bring the case before a civil court.

The general rule is, however, subject to qualifications. The line dividing the military from the civil offence may be narrow. The offence may have been committed within the military lines. The offender may be one of a body of

(a) I. A. A., s. 7 (*18*).
(b) I. A. A., s. 41.

troops about to proceed on active service. There may be reasons making the prompt infliction of punishment expedient. In any such case it may be desirable to try the offence by court-martial.

There may be also considerations arising out of the importance of maintaining discipline. If offences of a particular kind, or offences generally, are rife in a corps or at a station, it may be necessary, for the sake of discipline, to try every offence, whether civil or military, by court-martial, so that the punishment may be prompt and in accordance with the requirements of discipline.

The heinousness of an offence is also an element for consideration. A trifling offence, such as would, if tried by a civil court, be properly punishable by a small fine, may well be punished by the military tribunal immediately, especially if the case is one in which stoppages may be ordered to make good damage occasioned by the offence. On the other hand, certain civil offences (*e.g.*, complicated frauds) are not suitable for trial by court-martial and had better be relegated to the civil court, as should also any case where intricate questions of law are likely to arise.

4. The Indian Penal Code.—Most of the civil offences as defined in para. 1 above and triable by courts-martial are included in the Indian Penal Code,(*c*) an Act which codifies the criminal law of India, but a few, *e.g.*, the offences against the Indian Official Secrets Act,(*d*) are created by special statutes. It should be noted that words and expressions defined in the Indian Penal Code have, when used in the Indian Army Act (unless defined in that Act), the meanings attributed to them by that Code.(*e*) Thus, wherever "theft", "assault", or "housebreaking" are mentioned in the Indian Army Act the offence so defined in the Indian Penal Code is intended. Also, all the penal sections of the former Act are subject to the "general exceptions" of the latter.

The Indian Penal Code has been included in Part IV of the Manual, and a table of offences against the ordinary law, with the punishment assigned to each, is appended to this chapter. The description of the civil offences in the first column of this table should be followed when framing charges under s. 41 of the Indian Army Act.

5. Scheme of the chapter.—The object of this chapter is to give some description of the civil offences which may come before courts-martial. The list is not exhaustive, but the more common offences have been treated in greater detail than those which experience shows rarely, if ever, to come within the cognisance of courts-martial.

Before proceeding to a description of the various offences it will be convenient to discuss, first, the punishments which may be awarded, and, secondly, the general principles as to criminal responsibility, principles, it must be remembered, which are applicable to military not less than to civil offences.

(i) *Punishments*

6. Punishment.—Section 41 of the Indian Army Act specifies the punishments which may be awarded for civil offences charged under that section. If the offence is punishable under the law of British India with death or transportation, a court-martial is empowered to award any punishment (other than whipping) assigned for the offence by that law.(*f*) It should be noted that in substitution for the

(c) Act XLV of 1860. See Part IV.
(d) Act XIX of 1923. See Part IV.
(e) I. A. A., s. 7 (22).
(f) See I. P. C., ss. 59 and 75.

punishment assigned by the law creating the offence (*e.g.*, the Indian Penal Code) a court-martial is empowered by s. 45 of the Indian Army Act to award on active service field punishment to any person below the rank of warrant officer, and in addition to or in substitution for any such punishment, any one or more of the punishments specified in s. 47.

With regard to every other civil offence charged under s. 41, the effect of the section is to empower courts-martial to award imprisonment up to 14 years or any less punishment mentioned in the Indian Army Act or the punishment (other than whipping) which under the civil law may be awarded for the offence.

Courts are, of course, subject to the limitation placed on its powers of punishment, *e.g.*, a district court-martial cannot award a higher punishment than two years' rigorous imprisonment.

7. Subject continued.—In the table at the end of this chapter will be found the punishments which a civil court can award for each offence. A comparison of the various punishments will be a guide to the court as to the heinousness of each offence in the eye of the law. It must be remembered that each punishment specified in the table is a maximum and that, except in the case of offences for which an obligatory punishment is assigned (*e.g.*, death or transportation for life for murder), any less punishment, if authorised, may be awarded by a court-martial for a civil offence, even if such punishment is not one which a civil court could have awarded, *e.g.*, dismissal from the service. In awarding punishment for a civil offence a court-martial should be guided by exactly the same principles as those which guide them in punishing military offences.(*g*)

(ii) *Responsibility for Crime*

8. Every one responsible for natural consequences of his actions.—The general rule is that a person is responsible for the natural consequences of his acts. If, therefore, a person's acts, and the natural consequences which follow them, bring him within the penal provisions of the Indian Penal Code, he is criminally, responsible under that code, unless his case falls within one of the "general exceptions"(*h*) or any special exception applicable to the particular offence. Thus, a person who kills another under circumstances which amount to murder as defined in the code(*i*) is liable to the punishment assigned to that offence; but if he killed the other while himself in such a state of involuntary intoxication as would bring him within the terms of s. 85 of the Indian Penal Code, or in the lawful exercise of his right of private defence (general exceptions), he is excused, while if he did it under grave and sudden provocation (a special exception) his offence is reduced to culpable homicide.

9. Illegal omissions.—Words in the code, which refer to acts, also extend to illegal omissions,(*j*) that is, omissions to do what a person is legally bound to do. The omission to do anything which one is not bound by law to do is not an offence; thus, if a man sees another drowning and is able to save him by holding out his hand, but omits to do so, even *in the hope* that the other may be drowned, still he is not criminally responsible.

On the other hand, where the law imposes upon a person the duty of performing some particular act, he is held responsible if he omits to do so. Every person who has charge of another, *e.g.*, a child, a person of unsound mind, an

(g) See Ch. IV, paras. 69 to 75.
(h) I. P. C., Ch. IV.
(i) I. P. C., s. 300.
(j) I. P. C., s. 32.

invalid, or a prisoner, is bound to provide him with necessaries if he is so helpless as to be unable to provide himself; and if death results from a neglect of such duty, the person in charge will be responsible unless he can show some good excuse.

So, in the case of an animal known to be dangerous, the person in charge is bound to take such precautions as will safeguard the public from danger

10. Omission to perform duty.—Similarly, if a person undertakes to do any act the omission of which may endanger human life (as for instance, warning persons from a range whilst firing is going on), and without lawful excuse omits to discharge that duty, he is responsible for the consequences. Again, if a person undertakes to administer surgical or medical treatment, or to do any other act which may be dangerous to human life, he is responsible if death results from a want of reasonable care and skill on his part. For instance, if a soldier were to undertake to cut off the trigger finger of another soldier and mortification set in, he would be responsible for the consequences of his act.(*k*)

11. Parties to offence.—The responsibility of a person for the natural consequences of his act is not limited to the simple case where he is present, and actually commits an offence with his own hand.

12. Assisting offence.—Thus, the Indian Penal Code provides that when a criminal act is done by several persons, in furtherance of the common intention of all, each is liable for that act as if he had done it alone.(*l*) If, therefore, two or three men go out to commit house-breaking and one waits at the corner of the street to keep watch while the others break into the house, the watcher will be guilty of house-breaking equally with the others, though he never goes near the house. Further, when an offence is committed by means of several acts, whoever intentionally co-operates by doing any one of those acts, commits that offence.(*m*) If, therefore, in pursuance of a common intention to commit the reft, A steals goods in a house and hands them to B who is waiting outside, and B then carries them away, both are guilty of theft. On the other hand, if the offence charged involves some special intent, it must be shown that the assistant was cognisant of the intentions of the person whom he assisted;(*n*) thus, since B in the last example knew of A's intention to steal, and waited outside the house to assist him, his offence was theft, but if he had been unaware of the intention till the goods were handed to him his offence would not have been theft but receiving stolen property.

13. Common intent.—If several persons combine together for an unlawful purpose or for a lawful purpose to be effected by unlawful means, each is responsible for every offence committed by any one of them in furtherance of that purpose, but not for an offence committed by another member of the party which is unconnected with the common purpose unless he personally instigates or assists in its commission. Thus, if some of the party of house-breakers in the example given above are armed with revolvers, and the others all know it, thus showing a common intention not only to break into the house but to carry out their criminal object there in spite of all resistance, and the owner is killed in defending his

(k) In the class of cases referred to in this paragraph, there would rarely be such intention or knowledge as would make the offence murder or culpable homicide under Indian Law. It might often, however, amount to causing death by a rash or negligent act. See I. P. C., s. 304-A and para. 27 below.

(l) I. P. C., s. 34.

(m) I. P. C., s. 37.

(n) I. P. C., s. 35.

property, all the party, including even the watchers outside, are guilty of murder. But if two persons go out to commit theft and one, unknown to the other, puts a pistol in his pocket and shoots a man, the other is not responsible.

14. Abettor present when offence committed.—Another case in which a person incurs full responsibility for the act of another is when an abettor (*see* para. 15 below) is present at the place when the act or offence he abets is committed.(*o*) In this case, and in the cases referred to above, the person made responsible for the acts of another is deemed to be guilty of the actual offence committed and should be so charged, *i.e.*, all the party in the first example in para. 12 should be charged with house-breaking, and, if murder results from the pursuit of their common intention (*see* para. 13), with murder also. Similarly, if A instigates B to murder C (abetment) and A is present when B commits the murder, A is guilty of murder and should be so charged.

15. Abetment.—A person may make himself responsible for the crime of another by instigating, conspiring with, or intentionally aiding the actual criminal in one of the ways described in ss. 107 and 108 of the Code. In such cases he cannot (except as already mentioned) be charged with the actual offence committed by the other, and must be charged with "abetting" that offence. The abetment of an offence is punishable under s. 109 of the Indian Penal Code and under ss. 40 and 41 of the Indian Army Act.

16. Innocent agent.—It does not always follow that the person who commits the offence which is abetted is himself criminally responsible. Thus, if A instigates *B*[a child under seven years of age(*p*) or a person in a state of involuntary intoxication(*q*)] to murder C, and B does so, A has abetted the murder of C, but B has committed no offence. Similarly, if a soldier, knowing that a pair of boots does not belong to him, induces a comrade to steel them by representing that they are his property and not the property of the actual possessor, the former is guilty of abetting theft though the latter has committed no offence at all.(*r*)

17. Harbouring offenders.—A person may incur criminal responsibility even after an offence has been committed by helping the offender to escape from justice, or by destroying the evidence of his guilt. This form of responsibility is provided for in the sections of the Code which deal with harbouring and screening an offender.(*s*) Persons who offend against these sections do not, however, make themselves *fully* responsible for the original crime, as in the cases referred to in para. 14 above, and cannot be so charged. The word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person in any way to evade apprehension.(*t*) The wife or husband of an offender is exempted from any penalty for harbouring that offender; an exception to this rule is, however, the harbouring of a State prisoner who has escaped.(*u*)

18. Attempt to commit offence.—A person who attempts to commit an offence or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, is criminally responsible even though the attempt is unsuccessful.(*v*)

(o) P. C., s. 114.
(p) P. C., s. 82.
(q) P. C., s. 85.
(r) P. C., s. 108, Illustration (d).
(s) P. C., ss. 136, and 212 to 216-B.
(t) P. C., s. 216 B.
(u) P. C., s. 130.
(v) P. C., s. 511; as to attempts to mured, sec. s. 307.

A mere intention to commit an offence unaccompanied by acts will not amount to an actual "attempt", nor will acts themselves if they are merely preparatory to the commission of the offence. For instance, if A, intending to murder B by poison, purchases poison and mixes it with food which remains in A's keeping, the mere mixing with food is not an attempt to murder by poison. Some act must be done which is more than an intention or preparation, and which is a real step towards the commission of the offence; thus, if A had placed the food on B's table, or delivered it to B's servants to place it on B's table, he would have been guilty of an attempt to murder.

It is no defence to a charge of attempting to commit a crime that it was legally or physically impossible for the offender to have committed the full offence.

Where a person is charged with committing an offence but the evidence shows merely an attempt to commit that offence, a court-martial may convict him of the attempt to commit the offence charged..(*w*)

(iii) *Homicide*

19. Culpable homicide.—Whoever causes the death of a human being by doing an act—

(1) with the intention of causing death, or

(2) with the intention of causing such bodily injury as is likely to cause death, or

(3) with the knowledge that he is likely by such act to cause death,

commits at the least culpable homicide(*x*) and his act may amount to murder if certain further conditions as to his intention and knowledge are present. The intention or knowledge, express or implied, of the accused in such a case is therefore all important and it lies on the prosecution to show, by direct evidence or by inference from the facts of the case, that he had such intention or knowledge as is necessary to constitute the offence charged. In arriving at a decision upon this point a court will, however, presume that a man intends the natural consequences of his acts. This presumption will often arise in shooting cases or in other cases where death is caused with a lethal weapon.

20. Murder.—The kinds of intention or knowledge which will make culpable homicide amount to murder are set out in s. 300 of the Indian Penal Code. If these are compared with para. 19 above, it will be seen that, subject to certain exceptions which are considered in para. 21, culpable homicide of the first kind is *always* murder: that of the second kind is murder only if the offender intends to cause such bodily injury either (*a*) as he knows to be likely to cause the death of the person to whom it is caused or (*b*) as is sufficient in the ordinary course of nature to cause death: and that of the third kind is murder only if the offender knows that his act is so imminently dangerous that it must in all probability cause either death or such bodily injury as is likely to cause death. Thus, where a person hurt another, who was suffering from disease of the spleen, intentionally, but without the intention of causing death, or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and by his act caused the death of the other, it was held that the offence committed was that of voluntary causing hurt.(*y*)

(w) I. A. A., s. 86 (*6*).

(x) I. P. C., s. 299.

(y) Empress *v.* Fox, I. L. R., 2 All. 522.

21. Exceptions.—Culpable homicide which would otherwise be murder is reduced to "culpable homicide not amounting to murder" in certain circumstances which are specified in the exceptions to s. 300 of the Indian Penal Code. Briefly these are—

(1) Grave and sudden provocation.

(2) Right of private defence exceeded.

(3) Powers of public servant exceeded.

(4) Sudden fight.

(5) Consent by the person killed.

The full text of these exceptions will be found in the Indian Penal Code, which should be consulted, but the first is that most frequently met with and demands more detailed notice.

22. Grave and sudden provocation.—It must be clearly established in all cases where grave and sudden provocation is put forward as an excuse that *at the time* when the crime was committed the offender was actually so completely under the influence of passion arising from the provocation, that he was *at that moment* deprived of the power of self-control; and with this view it will be necessary to consider carefully the manner in which the crime was committed, the nature of the weapon used, the length of the interval between the provocation and the killing, the conduct of the offender during that interval, and all other circumstances tending to show his state of mind.

23. Subject to certain provisos.—This exception is further subject to three provisos,—

(1) The provocation must not be sought by the person provoked. Thus, if A provokes B to strike him with the express purpose of providing himself with an excuse for killing B, and A kills B, the offence is murder.

(2) Provocation given by anything done in obedience to law, or by a public servant in the lawful exercise of his powers, does not reduce murder to culpable homicide. Thus, a non-commissioned officer *lawfully* arresting a soldier may give great provocation to the latter, but if the arrest is lawful, the soldier connot successfully plead grave and sudden provocation if he kills the non-commissioned officer. On the other hand, an *unlawful* arrest would constitute such provocation.

(3) Provocation given in the lawful exercise of the right of private defence does not reduce murder to culpable homicide. For example, A, in defending himself, and his property from B who is trying to rob him, strikes B in the face with a whip. This so enrages B that he kills A, B cannot successfully plead grave and sudden provocation.

24. Culpable homicide of persons other than the one intended.—It will be noticed that the intention and knowledge referred to in para. 19 are an intention to kill or vitally injure *any one*, and a knowledge that the death of *any one* is likely. Culpable homicide may therefore be committed by a person who intends to kill one man and kills another by mistake. In such a case the character of the culpable homicide is determined by what its character would have been if the person intended had been killed.(*z*)

(z) I. P. C., s. 301.

25. Burden of proof.—Under Indian law the killing being established, the burden of showing such intention or knowledge as makes the crime murder or culpable homicide is still upon the prosecution.(*a*) If, however, facts raising a presumption of such intention or knowledge (*e.g.*, the nature of the weapon used) are shown to exist, the burden of disproving the presumption is on the accused. The killing and the requisite intention or knowledge being established, the burden is on the accused of showing that his case falls within any general or special exception (*b*) as for instance, by showing that he acted under a *bona fide* mistake of fact and the fact (if true) would have excused him, or that he acted on grave and sudden provocation.

26. Penalty for murder.—The penalty for murder is death, or transportation for life.(*c*) A court can, at its discretion, award either penalty, but must sentence the offender to one or the other. When a person already under sentence of transportation for life is convicted of murder the death sentence is obligatory.(*d*)

27. Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide may be punished with imprisonment extending to two years and with fine.(*e*)

A person is criminally responsible for causing death, if he fails to take proper precautions when doing anything which is in its nature dangerous, even though he had not the least intention of bringing about the consequences of his act. The offence is equivalent to what under English law is called manslaughter by negligence. It must be shown, in order to justify a conviction, that the negligence from which death resulted was so gross and culpable and showed such disregard for the life and safety of others as to amount to a crime and to conduct deserving punishment.

Thus, if a soldier fires his rifle without taking the precautions proper under the particular circumstances and the bullet kills a man, the soldier will be criminally responsible for his death. Again, if a person points a gun at another in sport and pulls the trigger without having good grounds for believing, or without having taken any proper precautions to ascertain, that the gun was unloaded, he will be responsible if death results, as the accident might clearly have been prevented if he had not been culpably negligent.

Other examples of this offence are :—causing death by rash and negligent driving; and by negligently mixing a live round with blank cartridges.

(iv) *Hurt and grievous hurt*

28. "Hurt" and "grievous hurt" defined.—Whoever causes bodily pain, disease, or infirmity to any person is said to cause "hurt".(*f*) and if that hurt is one of the graver kinds (specified in s. 320 of the Indian Penal Code) he is said to cause "grievous hurt". Whoever does an act with the intention of causing hurt to any one, or knowing that he is likely to cause hurt to any one, and does thereby cause hurt to the same or any other person, is said "voluntarily to cause hurt". If the hurt intended or known to be likely to be caused is grievous hurt and the hurt actually caused is grievous hurt (either of the same or a different kind) he is said "voluntarily to cause grievous hurt".(*g*)

(a) I. E. A., s. 103.
(b) I. E. A., s. 105.
(c) I. P. C., s. 302.
(d) I. P. C., s. 303.
(e) I. P. C., s. 304 A. See also para. 10 above.
(f) I. P. C., s. 319.
(g) I. P. C., ss. 321, 322.

Voluntarily to cause hurt or grievous hurt to any one is an offence which varies in its gravity according to the instrument used, the provocation given, the status of the person hurt, and the object of the offender. The table appended to this chapter shows the different descriptions of hurt and grievous hurt and the punishment awardable in each case.

(v) *Criminal Force and Assault*

29. "Force" defined.—The sections of the Indian Penal Code which deal with these crimes are chiefly of interest to officers as defining the offences described in section 27(*d*) of the Indian Army Act. The definition of force in the Indian Penal Code(*h*) is of a highly metaphysical nature but, for ordinary purposes, there is little difficulty in understanding what is meant by the application of force to a person, or through a thing to a person, and whoever intentionally uses force to a person without his consent, in order to commit an offence, or with an intention to cause injury, fear or annoyance, is said to use "criminal force."(*i*) Whoever makes any gesture or preparation—

(1) **"Assault".**—intending to cause any one to apprehend that the person making the gesture, etc., is about to use criminal force to him, or

(2) knowing it to be likely that such gesture, etc., will cause such an apprehension,

is said to commit an "assault".(*j*) Mere words cannot amount to an assault, but words accompanied by gestures or preparations may give the latter such a meaning as to amount to an assault.

30. Difference between Assault and use of criminal force.—It will be noticed that if actual violence is done to a person, or attempted, an assault is not the proper description of the offence, which then becomes "using criminal force", or "attempting to use criminal force", as the case may be.

(vi) *Rape*

31. Penetration.—Rape is defined in s. 375 of the Indian Penal Code. Penetration is sufficient to constitute such sexual intercourse as is there referred to: it must therefore be proved that there was actual penetration of the female organ by some part of the male organ. The slightest penetration will be sufficient; it is not necessary to prove that there was such penetration as would be sufficient to rupture the hymen. Whether there was an emission of semen or not is immaterial.

It is not an excuse that the woman was a common prostitute or the concubine of the ravisher, if the offence was committed by force or against her will; though proof of such facts is admissible, and is, of course, important in considering whether or not she is likely to have consented.

32. Consent, when valid.—A consideration of s. 375 of the Indian Penal Code will show that the offence consists in sexual intercourse with a women against her will, without her consent, or even with her consent when such consent has been obtained by putting her in fear of death or hurt, or by pretending to be her husband, or with or without her consent when she is under fourteen years of age; further, consent is not valid under the Indian Penal Code when given by a person who from unsoundness of mind, or intoxication, is unable to understand the nature

(h) I. P. C., s. 349.
(i) I. P. C., s. 350.
(j) I. P. C., s. 351.

and consequence of that to which she gives consent.(*k*) Sexual intercourse with a woman who has, by drugs or liquor, been reduced to such a condition as is indicated above will therefore constitute rape.

33. Caution as to evidence in cases of alleged rape.—A word of caution regarding charges for this offence is necessary. As Sir Matthew Hale, an eminent judge has said : "It is an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused though never so innocent." Such charges are often brought from motives of revenge or blackmail, or to shield a reputation which has been voluntarily endangered. Courts should therefore examine and sift the evidence, especially that of the woman said to have been ravished, with the greatest care.

34. Attempted rape.—When the offence is incomplete for want of penetration the accused may be convicted of an attempt to commit rape, provided that the court is satisfied that it was his intention to gratify his passions at all events and notwithstanding any resistance. An indecent assault with intent to have illicit intercourse is not sufficient, in itself, to constitute such an attempt.(*l*)

(vii) *Theft and Cognate Offences*

35. Property which can be subject of theft.—Theft is defined in s. 378 of the Indian Penal Code. It can only be committed in respect of moveable property which is in the possession of some one.

36. Moveable property.—All corporeal property except land and things attached to it is moveable property.(*m*) A difficulty which exists in English law is got over by the first and second explanations to s. 378, which expressly state that things attached to the land may become moveable property by severance, and the act of severance may of itself be theft. The cutting down of a tree, with the intention of dishonestly removing it without the owner's consent, is thus theft.(*n*)

37. Property must be in possession of some one.—The property must be in the possession of *some one*, but it does not matter whether that possession is rightful or wrongful. A thing can be stolen from a thief who has himself stolen it, not less than from the rightful owner of the thing. A person cannot steal a thing which is in his own possession, or a thing which is not in the possession of any one. Wild animals (including game and fish) while at large, not being in the possession of any one, cannot be the subject of theft, but if they have been tamed or are in confinement they can be stolen like any other property.(*o*) When a man mislays property in his own house it still remains legally in his possession, and any one finding it is bound to assume that it belongs to him.

38. Possession through another.—Property in the possession of a person's wife, clerk or servant, on that person's account is in that person's possession within the meaning of the Indian Penal Code.(*p*) The same principle also extends to other cases where a man's property is in the physical possession of some one to whom he has entrusted it and from whom he can demand it unconditionally whenever he pleases. Thus, where a servant has his master's plate in his keeping, or a shepherd is in charge of his master's sheep, the legal possession remains with the

(k) I. P. C., s. 90.
(l) Queen-Empress *v.* Shankar, I. L. R., 5 Bom., 403.
(m) I. P. C., s. 22.
(n) I. P. C., s. 378, Illustration (*a*).
(o) Queen *v.* Ravu Pothadu, I. L. R., 5 Mad., 390; Maya Ram Surma *v.* Nichala Katani I. L. R., 15 Cal., 402, Queen-Empress *v.* Shaik Adam., I. L. R., 10 Bom., 193.
(p) I. P. C., s. 27.

master; similarly, the landlord of an inn retains the legal possession of the forks and spoons which his customers are handling at the dinner table and a shop-keeper retains the legal possession of goods which a purchaser takes up in order to inspect them. The possession of anything by a servant on his master's behalf is thus considered to be the possession of the master or the possession of the servant according to the circumstances under which the servant originally received it. If, for instance, a servant is given the custody of anything by his master, or by a fellow-servant who has been given the custody of it by his master, the servant will have no real possession of the thing, and the possession will remain in the master. Therefore, any dishonest taking of the thing by the servant will be theft. If, however, a servant receives anything from a third person on his master's behalf, then the servant will have possession of the thing, and the master will have no possession until the servant does some act by which the possession is transferred from the servant to the master—as, for example, by placing it in a till, cart or godown, in which the master's goods are kept or carried.

39. What constitutes theft.—To constitute theft there must be—

(1) a dishonest intention to take the property out of the posession of its real or temporary owner (*i.e.*, he who has "possession" of it) without his consent, and

(2) a moving of the property in order to such taking.(*q*)

The intention must be a dishonest one, that is an intention to cause wrongful gain to one person or wrongful loss to another,(*r*) and therefore inconsistent with a *bona fide* claim of right. If the property is taken under the supposition, honestly entertained, that the taker has an immediate right to possession, the intention is not dishonest, and there is no theft; on the other hand, a person who has pawned his watch can steal the watch from the pawnbroker, because he has no right to possession until he has redeemed it. A claim of right would not justify a person in taking property out of another's possession without his consent with the intention of thereby coercing the other to pay a debt due to the taker(*s*). It must be remembered that consent is not valid if given under fear or misconception.(*t*) Some cases of what is known in English law as "larceny by a trick", will therefore be theft in Indian law, but in others this will not be so (*see* para. 46 below).

40. Moving.—In addition to the dishonest intention there must be a moving of the property in order to the taking of it. It is not necessary to prove that the goods were removed out of their owner's reach, or were carried away at all from the place in which they were found. In this respect the Indian law differs from the English law, under which some degree of "carrying away" is necessary. Here all that is necessary is movement, and, that being proved, and the other ingredients of theft being present, the offence is complete.

41. Other allied offences.—Closely allied to theft are the offences of dishonest misappropriation and criminal breach of trust. These differ from theft in that, while theft is committed in respect of property in the possession of answer, these two offences consist in dealing dishonestly with property which is lawfully in the possession of the offender.

(q) I. P. C., s. 378.
(r) I. P. C., s. 24.
(s) Queen-Empress *v.* Sree Churn Chungo, I. L. R., 22 Cal., 1017: Queen Empress *v.* Aga Muhammad Yusuf, I. L. R., 18 All., 88.
(t) I. P. C., s. 90.

42. Dishonest misappropriation.—The dishonest misappropriation of property, honestly come by, is punishable with imprisonment which may extend to two years, or with fine, or with both, and even a temporary misappropriation, if dishonest, is within the terms of the section.(*u*) A common instance of this offence is the dishonest misappropriation of lost property by the finder. The mere taking of such property into his possession by the finder is not, in itself, an offence, but he is guilty of dishonest misappropriation if he appropriates it to his own use when he knows or has means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.(*v*) A person appropriates property to his own use when he sells it, realises it, or in any other way puts it out of his own power to restore it, or when he definitely makes up his mind to keep it at all hazards as his own.

43. Criminal breach of trust.—Criminal breach of trust is defined in s. 405 of the Indian Penal Code, from which it will be seen that the offence consists in a person who has been entrusted with any property, or with any dominion over it, dealing dishonestly with that property. A person is entrusted with property when he is given the actual possession of it, as, for example, when a servant receives property from a third party to deliver to his master, but does not do any act to change his original possession into possession on account of his master. A person is entrusted with dominion over property when it remains legally in the owner's possession, but he is given a limited authority to deal with it, as for instance a shopman who can dispose of his master's stock, but must hand over to the latter the price he receives for it.

44. Receiving stolen property.—For a person to receive or retain stolen property knowing or having reason to believe that it has been stolen is an offence. (*w*) For this purpose, the words "stolen property" includes property the possession of which has been transferred by theft extortion, or robbery, as well as property in respect of which criminal misappropriation or criminal breach of trust has been committed.(*x*)

The guilty knowledge of the receiver must be established: it is not sufficient to prove that he merely suspected the property to have a tainted origin, but it will be sufficient if it is shown that under the circumstances a reasonable man must have felt convinced that the property was stolen property. The fact that he bought it much below its value, or that he falsely denied his possession of it might be *evidence* of guilty knowledge.

A person is considered to receive the goods as soon as he obtains control over them. But actual manual possession is not necessary; it is sufficient if they are in the actual possession of a person over whom the receiver has a control so that they would be forthcoming if he ordered it.

45. The doctrine of recent possession.—If a person is found in possession of property recently stolen, there is a strong presumption that he stole it or received or retained it with knowledge that it was stolen. The burden of proving guilty knowledge awlays remains upon the prosecution, and upon the prosecution establishing that the accused was in possession of recently stoeln property, a court-martial may, in the absence of any explanation by the accused of the way in which the property came into his possession, which might reasonably be true, find him guilty; but if an explanation is given which the court-martial think might

(u) I. P. C., s. 403.
(v) *Ibid*, Explanation 2.
(w) I. P. C., s. 411.
(x) I. P. C., s. 410.

reasonably be true, and which is consistent with innocence, although they are not convinced of its truth, the accused is entitled to be acquitted, inasmuch as the prosecution has failed to discharge the duty cast upon it of satisfying the court beyond reasonable doubt of the guilt of the accused.

46. Cheating.—"Cheating" is defined in s. 415 of the Indian Penal Code. A person is said to cheat who induces another person by deception to part with property or to consent to the retention of property by another person. The object of the offender must be fraudulent or dishonest.

Another class of "cheating" is where a person intentionally deceives a person in order to induce the latter to act to his detriment.

It is important to distinguish between a transfer of "possession" only, and a transfer of "property" in the goods taken; if A by false pretences induces B to give him possession only of an article, and then without B's consent appropriates it to himself, this is "theft"; but if he so induces B to transfer to him not only the possession of, but also the property in, the article, this is "cheating".

The deception may be made in any way, either by words, by writing, or by conduct, and a promise as to future conduct not intended to be kept may amount to cheating.

The property must be obtained either directly or indirectly by the deception; that is to say, if would not have been obtained but for the deception. If the person from whom the property is obtained is not deceived, the property is not obtained by the deception, but in such a case the accused may be convicted of attempting to cheat.

The following are examples of "cheating".—

(1) The giving of a cheque in exchange for goods knowing that the cheque will not be met on presentation;

(2) Cheating by personation; *e.g.*, obtaining goods on credit from a tradesman by falsely pretending to be an officer;

(3) Obtaining money by cheating at cards, etc. :

(4) Obtaining a meal at a restaurant knowing that he was unable to pay for it;

(5) Obtaining a loan by falsely pretending that he will repay it;

(6) Selling by false weights;

(7) Obtaining a receipt by deceiving a person into the belief that payment had been made for goods supplied.

47. Extortion.—It is an offence to extort or attempt to extort any property or valuable security from a person by threatening to injure that person or any other person.(*y*) "Injury" means harm illegally caused to a person in body, mind, reputation or property.

The maximum punishment for extortion, if not aggravated by the circumstances mentioned below, is rigorous imprisonment for three years and fine.(*z*) If a person is put in fear of death or of grievous hurt, or if the threat is to accuse a person of having committed or attempted to commit an offence punishable with death, transportation for life, or imprisonment for ten years, the Code provides for a more severe punishment.(*a*)

(y) I. P. C., s. 383.
(z) I. P. C., s. 384.
(a) I. P. C., ss. 385—389.

48. Robbery.—The offence of "robbery" is defined in s. 390 of the Indian Penal Code. It is an aggravated form of theft or extortion from the person accompanied by violence or threats of immediate violence. The maximum punishment in ordinary cases is rigorous imprisonment for ten years and fine, but the Code provides for a more severe punishment if the robbery is committed on the highway between sunset and sunrise or if hurt is caused.(*b*)

The violence or threats must be intentionally used for the purpose of overcoming or preventing resistance, or of obtaining the thing stolen or extorted.

Dacoity.—If the robbery is committed by five or more persons, the offence is called "dacoity" and is punishable with transportation for life.(*c*)

49. Mischief.—Numerous offences come under the category of mischief, which is defined in s. 425 of Indian Penal Code. The essence of the offence is injury to the property of another. Such acts are offences if done with intent to cause, or with knowledge that they are likely to cause, wrongful loss or damage.

The punishment generally varies according to the amount of the loss or damage, but certain aggravated instances of mischief are specially provided for in the Code; *e.g.*, damaging irrigation works, roads, bridges, etc., causing inundations, obstructing public drainage, and diverting water; damaging or destroying buildings, etc., by fire or explosives; and killing or maiming certain animals.(*d*)

(viii) *Criminal Trespass*

50. Criminal trespass.—Whoever enters into or upon property in the possession of another, or having lawfully entered into or upon such property unlawfully remains there, with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, is said to commit "criminal trespass". (*e*)

51. House-breaking, etc.—The aggravated kinds of criminal trespass contained in the Indian Penal Code are—

(1) House-trespass.(*f*)

(2) Lurking house-trespass.(*g*)

(3) Lurking house-trespass by night.(*h*)

(4) House-breaking.(*i*)

(5) House-breaking by night.(*j*)

A person who commits house-trespass is said to commit "house-breaking" if he effects his entrance into the house or quits the house in any of the ways mentioned in s. 445 of the Indian Penal Code.

A "house" means any building, tent or vessel used as a human dwelling, or any building used as a place of worship, or as a place for the custody of property.

Night means after sunset and before sunrise.

(b) I. P. C., ss. 392, 394.
(c) I. P. C., ss. 391, 395.
(d) I. P. C., ss. 426—440.
(e) I. P. C., s. 441.
(f) I. P. C., s. 442.
(g) I. P. C., s. 443.
(h) I. P. C., s. 444.
(i) I. P. C., s. 445.
(j) I. P. C., s. 446.

The maximum punishment for these offences varies according to the nature of the offence committed or intended, *e.g.*, house-breaking by night in order to commit an offence punishable with imprisonment may be punished with rigorous imprisonment for five years and fine, but if the offence intended is theft, the maximum punishment is fourteen years; and if grievous hurt is caused or intended, the offender is liable to be punished with transportation for life.(*k*)

(ix) *Miscellaneous offences*

52. Criminal conspiracy.—Criminal conspiracy consists in the agreement of two or more persons to do an illegal act or to do a legal act by illegal means.(*l*) The more intention to do such an act is not a conspiracy. An agreement to commit an offence, even if the offence is not afterwards committed, is a criminal conspiracy, but if the agreement is to do a legal act by illegal means, the agreement does not amount to a criminal conspiracy, unless some overt act is done by one of the accused in pursuance of the agreement.

53. Offences against the State.—The only offences against the State which need here be mentioned are :—

(1) Waging war against the Soverign,(*m*) *e.g.*, by joining in an insurrection.

(2) Conspiring to wage war against the Sovereign, or to overawe the Government by means of criminal force.(*n*)

(3) Sedition.(*o*) This offence consists in exciting or attempting to excite disaffection towards the Sovereign or the Crown Representative or Government established by law in British India or British Burma.

54. Unlawful assembly.—An assembly of five or more persons is unlawful if the common object of the persons composing that assembly is one of the five objects mentioned in s. 141 of the Indian Penal Code.

An assembly, which was not unlawful when it assembled, may become unlawful by the subsequent acts of its members; but an illegal act of one or two members, not acquiesced in by the others, does not change the character of the assembly.

Any person who, being aware of facts which render an assembly an unlawful assembly, intentionally joins, or continues in, that assembly, is liable to be punished with rigorous imprisonment for six months and fine; if armed with a deadly weapon the maximum punishment is two years' rigorous imprisonment.(*p*)

Rioting.—If force or violence is used by any member of an unlawful assembly, in prosecution of the common object of that assembly, every member of the assembly is guilty of "rioting" and liable to be punished with rigorous imprisonment for two years and with fine.(*q*)

55. Forgery.—Forgery is making a false document or part of a document, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may. be committed.(*r*)

(k) I. P. C., ss. 447—462.
(l) I. P. C., s. 120 A.
(m) I. P. C., s. 121.
(n) I. P. C., s. 121 A.
(o) I. P. C., s. 124 A.
(p) I. P. C., ss. 142, 143 and 144.
(q) I. P. C., ss. 146 and 147.
(r) I. P. C., s. 463.

A person makes a false document who (1) dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, with the intention of causing it to be believed that the document or a part of it was made, etc., by or by the authority of a person who did not make it or authorise its making; or (2) who dishonestly or fraudulently alters a document in any material part without lawful authority after it had been made by himself or any other person; or (3) who dishonestly or fraudulently causes a person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind, intoxication or deception, does not know the contents of the document or the nature of the alteration.(*s*)

A man's signature of his own name, if the intention is that it should pass as the signature of someone else(*t*) and the making a false document in the name of a fictitious person or in the name of a deceased person, may amount to a forgery.(*u*)

The maximum punishment for forgery under section 465 of the Indian Penal Code is rigorous imprisonment for two years and fine, but the Code provides a severer punishment for the forgery of certain documents such as court records, public registers, birth and death certificates, wills, valuable securities and receipts for the payment of money, etc. etc.(*v*)

Uttering forged documents.—Whoever fraudulently or dishonestly uses as genuine any document which he knows, or has reason to believe, to be a forged document, may be awarded the same punishment as if he had forged the document.(*w*)

(*s*) I. P. C., s. 464.
(*t*) I. P. C., s. 464, Explanation 1.
(*u*) I. P. C., s. 464, Explanation 2.
(*v*) I. P. C., ss. 466, 467.
(*w*) I. P. C., s. 471.

Description of offence.	Section of Indian Penal Code	Punishment
Abetment—		
of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	109	The same punishment as for the offence abetted.
of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	115	Imprisonment of either description for 7 years, or less, and fine (*a*) (*b*)
ditto, if an act which causes harm be done in consequence of the abetment.	115	Imprisonment of either description for 14 years, or less, and fine. (*a*) (*b*)
of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	116	Imprisonment which may extend to one quarter of the longest term, and of any description provided for the offence, or fine, as for the offence, or both.
of suicide, see 'Suicide'		
Adultery	497	Imprisonment of either description for 5 years, or less, or fine, or both.
See also "Enticing, etc., a married woman."		
Affray—		
Committing an affray	160	Imprisonment of either description for 1 month, or less, or fine of 100 rupees, or less, or both.
Apprehension—		
Resistance or obstruction by a person to his lawful apprehension, or escape by a person from lawful custody or attempt at such escape.	224	Imprisonment of either description for 2 years, or less, or fine, or both.
Resistance or obstruction to the lawful apprehension of another or rescuing or attempting to rescue him from lawful custody.	225	Imprisonment of either description for 2 years, or less, or fine, or both.
ditto, if the person is charged with an offence punishable with transportation for life, or imprisonment for 10 years.	225	Imprisonment of either description for 3 years, or less, and fine. (*a*)
Resistance if the person is charged with a capital offence . .	225	Imprisonment of either description for 7 years, or less, and fine. (*a*) (*b*)
ditto, if the person is sentenced to transportation for life, or to transportation, penal servitude, or imprisonment for 10 years, or upwards.	225	Ditto ditto. (*a*) (*b*)
ditto, if the person is under sentence of death	225	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)

Table of Offences and Punishments.—contd.

Description of offence	Section of Indian Penal Code	Punishment
Assault and Criminal Force—		
Assault or use of criminal force—		
(*a*) to a public servant in discharge of his duty or to deter him from discharge of his duty.	353	Imprisonment of either description for 2 years, or less, or fine, or both.
(*b*) to a woman with intent to outrage her modesty	354	Ditto ditto
(*c*) to any person with intent to dishonour him, otherwise than on grave and sudden provocation.	355	Ditto ditto
(*d*) in attempt to commit theft of property worn or carried by a person.	356	Ditto ditto
(*e*) in attempt wrongfully to confine a person	357	Imprisonment of either description for 1 year, or less, or fine of 1,000 rupees, or less, or both.
(*f*) in all other cases, in the absence of grave and sudden provocation .	352	Imprisonment of either description for 3 months, or less, or fine of 500 rupees, or less, or both.
Assault or use of criminal force on grave and sudden provocation .	358	Simple imprisonment for 1 month, or less, or fine of 200 rupees, or less, or both.
Attempts—		
Attempting to commit, or cause to be committed, an offence, punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	511	Transportation or imprisonment not exceeding half of the longest term, and of any description, provided for the offence, or fine, as for the offence, or both. (*N.B.—Transportation for life is, for this purpose, reckoned as equivalent to transportation for* 20 *years.*)
Attempt to commit murder. See "Murder".		
Attempt to commit culpable homicide. See "Culpable homicide."		
Attempt to commit suicide. See "Suicide".		
Breach of Trust. See "Criminal Breach of Trust."		
Cheating—		
Cheating	417	Imprisonment of either description for 1 year, or less, or fine, or both.

Cheating by personation	419	Imprisonment of either description for 3 years, or less, or fine, or both.
Confinement. See "Wrongful restraint, etc."		
Courts of Justice, offences relating to. See "False evidence" and "Public Servants, etc."		
Criminal Breach of Trust—		
(*a*) by a carrier, wharfinger or warehouse-keeper	407	Imprisonment of either description for 7 years, or less, and fine (*a*) (*b*)
(*b*) by a clerk or servant	408	Ditto ditto. (*a*) (*b*)
(*c*) by a public servant, or by a banker, merchant or agent	409	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
(*d*) in all other cases	406	Imprisonment of either description for 3 years, or less, or fine, or both.
Criminal Force—		
See "Assault and Criminal Force"		
Criminal Intimidation—		
Circulating statements, rumours or reports with intent to cause a soldier, sailor or airman to mutiny or fail in his duty.	505	Imprisonment of either description for 2 years, or less, or fine, or both.
Criminal Intimidation	506	Ditto ditto
Ditto, if threat be to cause death, grievous hurt or the destruction of property by fire, or to cause an offence punishable with death or transportation or imprisonment up to 7 years, or to impute unchastity to a woman.	506	Imprisonment of either description for 7 years, or less, or fine, or both. (*b*)
Criminal Trespass	447	Imprisonment of either description for 3 months, or less, or fine of 500 rupees, or less, or both.
Culpable homicide not amounting to murder—		
if act by which death is caused is done with intention of causing death, or such bodily injury as is likely to cause death.	304	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
if act is done with knowledge that it is likely to cause death, but without any intention to cause death, or such bodily injury as is likely to cause death.	304	Imprisonment for either description for 10 years, or less or fine or both. (*b*)

Table of Offences and Punishments.—contd.

Description of offence	Section of Indian Penal Code	Punishment
Culpable homicide not amounting to murder—*contd.*		
Attempt to commit culpable homicide	308	Imprisonment of either description for 3 years, or less, or fine, or both.
Ditto, if the act causes hurt to any person	308	Imprisonment of either description for 7 years, or less, or fine, or both. (*b*)
Dacoity	395	Transportation for life, or rigorous imprisonment for 10 years, or less, and fine. (*a*) (*b*)
Dangerous Acts—		
Causing death by rash or negligent act	304A	Imprisonment of either description for 2 years, or less, or fine, or both.
Doing an act so rashly or negligently as to endanger human life or the personal safety of others.	336	Imprisonment of either description for 3 months, or less, or fine of 250 rupees, or less, or both.
Ditto, if hurt is caused	337	Imprisonment of either description for 6 months, or less, or fine of 500 rupees, or less, or both.
Ditto, if grievous hurt is caused	338	Imprisonment of either description for 2 years, or less, or fine of 1,000 rupees, or less, or both.
Defamation	500	Simple imprisonment for 2 years, or less, or fine, or both.
Dishonest misappropriation—		
See "Moveable property."		
Extortion—		
Extortion	384	Imprisonment of either description for 3 years, or less, or fine or both.
Extortion by putting a person in fear of death or grievous hurt to himself or another.	386	Imprisonment of either description for 10 years, and fine. (*a*) (*b*).

False Evidence—		
Giving or fabricating false evidence in a judicial proceeding . .	193	Imprisonment of either description for 7 years, or less, and fine. (*a*) (*b*)
Giving or fabricating false evidence with intent to cause any per on to be convicted of a capital offence.	194	Transportation for life, or rigorous imprisonment for 10 years, or less, and fine. (*a*) (*b*)
Ditto, if innocent person be thereby convicted and executed . .	194	Death, or as above. (*a*) (*b*)
Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for 7 years or upwards.	195	The same as for the offence.
Food and Drink, offence relating to—		
Adultering food or drink intended for sale, so as to make the same noxious.	272	Imprisonment of either description for 6 months, or less, or fine of 1,000 rupees, or less, or both.
Selling any food or drink as such, knowing the same to be noxious .	273	Ditto ditto
Forgery—		
Forgery	465	Imprisonment of either description for 2 years, or less, or fine, or both.
Ditto, if document forged purports to be a will, valuable security or acquittance.	467	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
Forgery for the purpose of cheating	468	Imprisonment of either description for 7 years, and fine. (*a*) (*b*)
Fraudulently or dishonestly using as genuine a forged document which is known to be forged.	471	Punishment for forgery of such document.
Grievous hurt—		
Voluntarily causing grievous hurt (except on grave and sudden provocation).	325	Imprisonment of either description for 7 years, or less, and fine. (*a*)(*b*)
Ditto, by dangerous weapons or means	326	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
Voluntarily causing grievous hurt for the purpose of extorting property or constraining to an illegal act.	329	Ditto ditto. (*a*) (*b*)
Voluntarily causing grievous hurt for the purpose of extorting confession or compelling restoration of property.	331	Imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)

Table of Offences and Punishments—contd.

Description of offence	Section of Indian Penal Code	Punishment
Grievous hurt—*Contd.*		
Voluntarily causing grievous hurt to public servant in discharge of his duty, or to deter him from his duty.	333	Imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
Voluntarily causing grievous hurt on grave and sudden provocation	335	Imprisonment of either description for 4 years or less, or fine of 2,000 rupees, or less, or both.
See also "Dangerous Acts."		
Harbouring and screening offenders—		
Harbouring an offender, if the offence be capital	212	Imprisonment of either description for 5 years, or less, and fine. (*a*)
Ditto, if the offence be punishable with transportation for life or with imprisonment for 10 years.	212	Imprisonment of either description for 3 years, or less, and fine. (*a*)
Ditto, if the offence be punishable with imprisonment for 1 year and not for 10 years.	212	Imprisonment for a quarter of the longest term, and of the description, provided for the offence or fine, or both.
Taking or offering gift (or restoration of property) in consideration of screening an offender, if the offence be capital.	213, 214	Imprisonment of either description for 7 years, or less, and fine. (*a*) (*b*)
Ditto, if the offence be punishable with transportation for life or with imprisonment for 10 years.	213, 214	Imprisonment of either description for 3 years, or less, and fine, (*a*).
Ditto, if the offence be punishable with imprisonment for less than 10 years.	213, 214	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.
Harbouring an offender who has escaped from custody or whose apprehension has been ordered, if the offence be capital.	216	Imprisonment of either description for 7 years, or less, and fine. (*a*) (*b*)
Ditto, if the offence be punishable with transportation for life or with imprisonment for 10 years.	216	Imprisonment of either description for 3 years, or less, with or without fine.
Ditto, if the offence be punishable with imprisonment for one year and not for 10 years.	216	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.

House-breaking, etc.—		
House-breaking or lurking house-trespass	453	Imprisonment of either description for 2 years, or less, and fine. (*a*)
Ditto, in order to the commission of an offence punishable with imprisonment.	454	Imprisonment of either description for 3 years, or less, and fine. (*a*)
If the offence is theft	454	Imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
House-breaking or lurking house-trespass, after preparation made for hurt, assault, or wrongful restraint.	455	Ditto — ditto. (*a*) (*b*)
House-breaking by night, or lurking house-trespass by night	456	Imprisonment of either description for 3 years, or less, and fine. (*a*)
Ditto, in order to the commission of an offence punishable with imprisonment.	457	Imprisonment of either description for 5 years, or less, and fine. (*a*).
If the offence is theft	457	Imprisonment of either description for 14 years, or less, and fine. (*a*) (*b*)
House-breaking by night, or lurking house-trespass by night, after preparation made for hurt, assault, or wrongful restraint.	458	Ditto — ditto. (*a*) (*b*)
Grievous hurt caused or attempted whilst committing house-breaking or lurking house-trespass.	459	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
House-trespass—		
House-trespass	448	Imprisonment of either description for 1 year, or less, or fine of 1,000 rupees, or less, or both.
House-trespass in order to the commission of an offence punishable with death.	449	Transportation for life, or rigorous imprisonment for 10 years, or less, and fine. (*a*) (*b*)
House-trespass if the offence be punishable with transportation for life.	450	Imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
House-trespass if the offence be punishable with imprisonment	451	Imprisonment of either description for 2 years, or less, and fine. (*a*)
If the offence is theft	451	Imprisonmet of either description for 7 years, or less and fine. (*a*)(*b*)
House-trespass after preparation made for hurt, assault, or wrongful restraint.	452	Ditto — ditto. (*a*) (*b*)
See also "Lurking house-trespass" under "House-breaking, etc."		

Table of Offences and Punishments—contd.

Description of offence	Section of Indian Penal Code	Punishment
Hurt—		
Voluntarily causing hurt (except on grave and sudden provocation). .	323	Imprisonment of either description for 1 year, or less, and fine of 1,000 rupees, or less, or both.
Ditto, by dangerous weapons, or means	324	Imprisonment of either description for 3 years, or less, or fine, or both.
Voluntarily causing hurt for the purpose of extorting property or constraining to an illegal act.	327	Imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
Voluntarily causing hurt for the purpose of extorting confession, or compelling restoration of property.	330	Imprisonment of either description for 7 years, or less, and fine. (*a*) (*b*)
Voluntarily causing hurt to a public servant in discharge of his duty, or to deter him from his duty.	332	Imprisonment of either description for 3 years, or less, or fine or both.
Voluntarily causing hurt on grave and sudden provocation . .	334	Imprisonment of either description for 1 month, or less, or fine of 500 rupees, or less, or both.
Administering poison or intoxicating drug with intent to cause hurt or commit an offence.	328	Imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
See also "Grievous hurt."		
Insult—		
Insult intended to provoke a breach of the peace . . .	504	Imprisonment of either description for 2 years, or less, or fine or both.
Intoxication—		
Misconduct by intoxicated person in public or in any place which it is trespass to enter, so as to cause annoyance.	510	Simple imprisonment for 24 hours, or less, or fine of 10 rupees, or less or both.
Lurking—house-trespass—		
See "House-breaking, etc."		

Mischief—(*i.e.*, wrongful damage to property; see Indian Penal Code 425, for full definition).		
Mischief	426	Imprisonment of either descpition for 3 months, or less, or fine, or both.
Mischief and thereby causing damage to the amount of 50 rupees or upwards.	427	Imprisonment of either description for 2 years, or less, or fine, or both.
Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	428	Ditto. Ditto.
Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof or any other animal of the value of 50 rupees or upwards.	429	Imprisonment of either description for 5 years, or less, or fine, or both.
Mischief by fire or explosive substance with intent to cause, or knowledge that it is likely to cause, damage to the amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.	435	Imprisonment of either description for 7 years, or less, and fine. (*a*) (*b*).
Mischief by fire or explosive substance with intent to cause, or knowledge that it is likely to cause the destruction of a building used as a place of worship, a human dwelling, or a place for the custody or property.	436	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
Moveable property—		
Dishonest misappropriation of moveable property, or conversion of such property to one's own use.	403	Imprisonment of either description for 2 years, or less, or fine or both.
Murder—		
Murder	302	Death, or transportation for life, and fine. (Either death or transportation for life must be awarded, fine may be added).
Murder by a person under sentence of transportation for life .	303	Death.
Attempt to murder	307	Imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
If hurt is caused	307	Transportation for life, or as above. (*a*) (*b*).
By life-convict, if hurt is caused	307	Death, or as above. (*a*) (*b*).
Negligent Acts, See "Dangerous Acts."		

Table of Offences and Punishments—contd.

Description of offence	Section of Indian Penal Code.	Punishment
	Section of Indian Official Secrets Act, 1923.	
Official Secrets Act, offences under—		
Spying in relation to any work of defence, arsenal, etc.	3(1)	Imprisonment of either description for 14 years.
Spying, in other cases	3(1)	Imprisonment of either description for 3 years.
Wrongful communication, etc., of information	5	Imprisonment of either description for 2 years, or fine, or both.
Unauthorised use of uniforms, falsification of reports, forgery, personation, and false documents.	6	Ditto ditto
Interfering with officers of the police or members of His Majesty's Forces, in relation to prohibited places, as defined in section 2(8) of the Indian Official Secrets Act, 1923.	7	Ditto ditto
Failing to give information as to commission of offences	8	Ditto ditto
Harbouring spies	10	Imprisonment of either description for 1 year, or fine or both.
Personation—		
Personation by cheating. See "Cheating."		
Public Servants and Courts, offences relating to—		
Not obeying a legal order to attend in a Court of Justice	174	Simple imprisonment for 6 months, or less, or fine of 1,000 rupees or less, or both.
Intentionally omitting to produce a document, which he is legally bound to produce to a Court of justice.	175	Ditto ditto
Refusing oath when duly required to take oath by a public servant.	178	**Ditto ditto**

Being legally bound to state truth and refusing to answer questions.	179	Ditto ditto
Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	228	Ditto ditto
See also "Apprehension," "Assault and Criminal Force," "False Evidence," "Grievous Hurt" and "Hurt".		
Rape	376	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*) (*b*)
Rash or Negligent Acts. See "Dangerous Acts."		
Receiving. See "Stolen Property".		
Rescue. See "Apprehension".		
Restraint. See "Wrongful restraint".		
Rioting—		
Rioting	147	Imprisonment of either description for 2 years, or less, or fine, or both.
Rioting armed with a deadly weapon	148	Imprisonment of either description for 3 years, or less, or fine or both.
Robbery—		
Robbery	392	Rigorous imprisonment for 10 years, or less, and fine. (*a*)(*b*)
Robbery on the highway between sunset and sunrise	392	Rigorous imprisonment for 14 years, or less, and fine. (*a*)(*b*)
Attempt to commit robbery	393	Rigorous imprisonment for 7 years, or less, and fine. (*a*)(*b*)
Sodomy—		
See "Unnatural offences."		
State, Offences against the—		
Waging or attempting to wage war, or abetting the waging of war against the King.	121	Death or transportation for life, and fine. (Either death or transportation for life must be awarded).
Conspiring to commit offences punishable under section 121 of the Indian Penal Code, or to deprive the King of the Sovereignty of British India, British Burma or any part thereof, or to overawe the Central Government or any Provincial Government or the Government of Burma.	121A	Transportation for life, for any shorter term, or imprisonment of either description for 10 years, or less, and fine. (*a*)

Table of Offences and Punishments—contd.

Description of offence	Section of Indian Penal Code	Punishment
State, Offences against the—*Contd.*		
Collecting men, arms or ammunition or otherwise preparing to wage war, with intent to wage, or be prepared to wage, war against the King.	122	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (*a*)(*b*)
Concealing the existence of a design to wage war against the King, intending thereby to facilitate the waging of such war or knowing it to be likely that it will thereby be facilitated.	123	Imprisonment of either description for 10 years, or less, and fine. (*a*)(*b*)
Sedition (for full description of this offence see Indian Penal Code, 124A).	124A	Transportation for life or any shorter term, and fine, or imprisonment of either description for 3 years, or less, and fine, or both.
Stolen property—		
Dishonestly receiving or retaining stolen property knowing or having reason to believe it to be stolen.	411	Imprisonment of either description for 3 years, or less, or fine, or both.
Assisting in concealment or disposal of stolen property, knowing or having reason to believe it to be stolen.	414	Ditto ditto
Suicide—		
Abetment of suicide committed by a person under 18 years of age or insane or delirious person, or an idiot, or an intoxicated person.	305	Death, or transportation for life, or imprisonment for 10 years, or less, and fine. (*a*)(*b*)
Abetting the commission of suicide, if suicide committed . .	306	Imprisonment of either description for 10 years, or less, and fine. (*a*)(*b*)
Attempt to commit suicide, if act done towards such commission. .	309	Simple imprisonment for one year, or less, or fine, or both.
Theft—		
Theft	379	Imprisonment of either description for 3 years, or less, or fine, or both.
Theft in a building, tent or vessel used as a human dwelling or for the custody of property.	380	Imprisonment of either description for 7 years, or less, and fine. (*a*)(*b*)
Theft by a clerk or servant or property in the possession of his Master or employer.	381	Ditto ditto (*a*)(*b*)

Theft—*contd.*		
Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing of such theft, or to retiring after committing it, or to retaining prpoerty taken by it.	382	Rigorous imprisonment for 10 years, or less, and fine. (*a*) (*b*)
Unlawful assemblies—		
Being a member of an unlawful assembly	143	Imprisonment of either description for 6 months, or less, or fine, or both.
Joining an unlawful aessmbly armed with a deadly weapon . .	144	Imprisonment of either description for 2 years, or less, or fine, or both.
Joining or continuing in an unlawful assembly knowing that it has been commanded to disperse.	145	Ditto ditto
Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	151	Imprisonment of either description for 6 months, or less, or fine, or both.
Unnatural offences	377	Transportation for life, or imprisonment of either description for 10 years or less, and fine. (*a*)(*b*)
Weights and measures, Offences relating to—		
Fraudulent use of false instrument for weighing	264	Imprisonment of either description for 1 year, or less, or fine, or both.
Fraudulent use of false weight or measure	265	Ditto ditto
Being in possession of false instruments for weighing, weights, or measures in tending them for fraudulent use.	266	Ditto ditto
Making or selling false instruments for weighing, weights, or measures, for fraudulent use.	267	Ditto ditto
Women, Offences relating to—		
Enticing or taking away or detaining a married women with intent that she may have illicit intercourse with any person.	498	Imprisonment of either description for 2 years, or less, or fine, or both.
Uttering any word, making any sound or gesture or exhibiting any object intending thereby to insult the modesty of a woman.	509	Simple imprisonment for 1 year, or less, or fine, or both.
Intruding upon the privacy of a woman, intending thereby to insult her modesty.	509	Ditto ditto
See also "Adultery" and "Rape."		

Table of Offences and Punishments—contd.

Description of offence	Section of Indian Penal Code	Punishment
Wrongful restraint and confinement—		
Wrongfully restraining any person	341	Simple imprisonment for 1 month, or less, or fine of 500 rupees, or less, or both.
Wrongfully confining any person	342	Imprisonment of either description for 1 year, or less, or fine of 1,000 rupees, or less, or both.

NOTES.—(*a*) Fine alone cannot be awarded for these offences. There must in addition be *some* award of imprisonment, or of transportation when the latter is admissible.

(*b*) The provisions of Indian Penal Code, secton 59 apply these offences.

CHAPTER VII.

DUTIES IN AID OF THE CIVIL POWER.

NOTE.—As regards martial law, see para. 7 below.

1. Unlawful assembly, riot and rebellion.—An assembly which through the action of those composing it is likely to cause a disturbance of the public peace is an unlawful assembly. As soon as an act of violence is committed it becomes a riot; while, if the riot is committed with the intention of waging war against the King, it becomes an insurrection or rebellion.

2. Relations of Civil and Military Authorities.—An officer called on to act in case of sudden tumult will seldom have any knowledge of the intention of the mob. For this reason, and to protect him from the serious consequences of a failure to appreciate the situation correctly, he is directed to take his instructions from a magistrate, whenever possible, and, in the absence of a magistrate, to act only when the public security is manifestly endangered. The obligation lies upon the magistrate, when he is present or within reach, to use all the ordinary means at his disposal to preserve public order. If further aid is required, he is empowered to call for military assistance, and the officer to whom the requisition is addressed will act as directed in this Chapter. His action must be limited to the dispersal of the assembly, and, subject to the orders of the magistrate, to the arrest and detention, but not the punishment , of the rioters. He must, moreover, use as little force as is consistent with these objects. If he is compelled to act in the absence of the magistrate, and in anticipation of a requisition for troops, he should be even more careful to use no more force than is absolutely necessary.

3. Powers and duties of Civil Authorities.—In British India the civil authorities have power, under the ordinary law, to disperse, unlawful assemblies and suppress rioting and disturbance. If their force is insufficient for the purpose, the civil authorities are empowered to call for military assistance. The Code of Criminal Procedure, after providing for the dispersal, by means of the police and ordinary citizens called in to their aid, of unlawful assemblies likely to cause a disturbance to the public peace, continues as follows :—

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present, may cause it to be dispersed by military force.

130. (1) When a Magistrate determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in His Majesty's Army (*a*) or of any volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

(2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

Where such a course is feasible the requisition should be given in writing, but it is clear that this will often be impossible.

(a) Army includes Auxiliary and Territorial forces (See Auxiliary Force Act, s. 32, and Territorial Force Act, s. 15).

Military assistance is, it will be seen, not to be called for unless the civil force is inadequate (of this the civil officer is the judge) but when called for must be accorded. The strength and composition of the force, the amount of ammunition to be taken and the manner of carrying out the operations, are matters for the decision of the military authorities alone.(*b*) The degree of force which may lawfully be used depends on the nature of the occasion, for the force used must always be strictly limited by the necessity of the case and proportioned to the end to be attained, which is the dispersal of the assembly and the execution of such orders as the Magistrate may pass in respect of the arrest and detention of its members. His Majesty's Government have emphatically laid it down that the primary factor of policy whenever circumstances unfortunately necessitate the suppression of civil disorder by military force within the British Empire is the use of the minimum amount of force necessary to secure the object in view.

4. Magistrate not available.—It may, however, happen that a serious situation arises when there is no magistrate within reach. This is provided for in the next section of the Code.

> 131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of His Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

This section confers powers to act without the presence of a magistrate only on commissioned officers of His Majesty's Army and then only when the emergency is so serious that the public security is manifestly endangered and it is not possible to communicate with a magistrate. As soon as it becomes possible to communicate with a magistrate, the officer must do so, and must obey his instructions as to stopping or continuing his action. The principle laid down in the second sub-section of s. 130 applies also to action under this section.

Under s. 131 of the Code of Criminal Procedure, the power of dispersing an unlawful assembly in the absence of a magistrate can only be exercised by a commissioned officer. This power cannot be exercised by a non-commissioned officer. The lack of such power, however, in no way affects the right of a non-commissioned officer to take such action as may be necessary in the exercise of the right of private defence under the ordinary civil law to safeguard the lives of himself, the men under his command and other persons and to protect any property against robbery, mischief, criminal trespass, or fire.

5. Firing on Assembly.—When an officer is required by a magistrate (as in para. 3 above) or determine (as in para. 4) to disperse an assembly by force, he will, if his detachment is not already organised in platoons and sections and does not exceed 40 men, tell it off into four sections. If it exceeds 40 men, he will tell it off into more sections than four. He will, before taking action, adopt the most effectual measures possible to explain to the people that if necessary fire will be opened and that if firing becomes necessary the fire of the troops will be effective. If he is of opinion that it is necessary to fire, but that the fire of a few men will attain the object of dispersing the assembly, he will personally give the command to a few specified men to fire. If a greater

(*b*) See R. A. I.

effort be required, he will personally give the command to one of the sections to fire. He will, when telling off the sections, clearly indicate to the troops the officer or non-commissioned officer who is to order each section to fire, should it be necessary for more sections than one to fire at a time; and no order to a man or section to fire will be given by any person except himself or the officer or non-commissioned officer so indicated. Care must be taken not to fire on persons separated from the crowd who do not appear to be acting with it or inciting it, or over the heads of the latter. The firing must be carried out with steadiness and be stopped the moment it becomes unnecessary.(c) Firing with blank is borbidden. The fire, if firing is necessary, must be effective. Firing on specified ring-leaders may sometimes be the most effective way of dispersing a crowd, and will be justified if it is necessary and likely to obviate greater blood-shed. Machine guns should not be employed to disperse rioters if the object to be attained can be secured without recourse to this weapon, and if so employed, the fire should be most carefully controlled.

6. Protection from prosecution.—The interests of officers, soldiers and others are protected by s. 132 of the Code of Criminal Procedure, which is as follows :—

> 132. No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any criminal Court, except with the sanction of the Central Government; and—
>
> (a) no Magistrate or police officer acting under this Chapter in good faith,
>
> (b) no officer acting under section 131 in good faith,
>
> (c) no person doing any act in good faith, in compliance with a requisition under section 128 or section 130,
>
> (d) no inferior officer, or soldier, or volunteer doing any act in obedience to any order which he was bound to obey.
>
> shall be deemed to have thereby committed an offence.

7. Martial law.—So long as the disturbances amount to no more than a riot, the measures contemplated in this Chapter may be expected to suffice to restore order. Since the crowd is not acting in general defiance of the Government, the danger is, as a rule, local and disappears with the dispersal of the rioters and the arrest of the ringleaders. But where the disturbances are recurrent, widespread, concerted and directed against the constituted authorities it becomes the duty of the executive, in exercising the common law right of repelling force by force, to assume such exceptional powers and to take such exceptional measures as may be necessary for the purpose of restoring order.

The state of things thus set up is generally known as "Martial Law". Further information on this subject will be found in Chapter I (para. 7) of the Manual of Military Law and in the Instructions relating to Martial Law which have been issued by Government to all concerned.

(c) See R. A. I. and K. R. 1289.

CHAPTER VIII

MISCELLANEOUS

(i) *Military Privileges*

1. Under Chapter XIII of the Indian Army Act persons subject to that Act enjoy certain privileges in their relations to civil courts in India and the law administered by these courts. In addition to these privileges certain others have been conferred upon these persons by various Acts of Parliament and statutes of the Indian and local legislatures. The most important of these privileges are :—

(1) **Pay protected.**—By s. 136 of the Army Act the pay of an officer or soldier of the regular forces (which includes the Indian Army) is protected from any deductions other than those authorised by Act of Parliament, Royal Warrant, or Act of the Governor General in Council. As explained elsewhere, penal deductions are, in the Indian Army, legalised by the Indian Army Act, and other deductions by Royal Warrant(a), the exact amounts to be deducted, within the limits thus legalised, being settled by regulations.

(2) **Pension Protected.**—All Government pensions (including military pensions are protected from attachment in the execution of the decrees of civil courts.(b)

(3) **Civil suits.**—An officer or soldier, actually serving in a military capacity, who is a party to a suit and cannot obtain leave of absence may authorise any person to sue or defend in his stead. This authority must be in writing and be signed in the presence of his commanding officer.(c)

(4) **Exemption from court-fees in certain cases.**—A power of attorney to institute or defend a suit when executed by an officer, warrant officer, non-commissioned officer or private, is exempt from fees under the Court Fees Act.(d)

(5) **Special protection in respect of civil and revenue litigation whilst serving under war conditions.**—All persons subject to the Indian Army Act whilst serving under war conditions(e) are specially protected in respect of civil and revenue litigation under the provisions of the Indian Soldiers (Litigation) Act, 1925, which is printed in full in Part IV of this Manual.

(6) **Receipts for pay need not be stamped.**—Receipts for pay or allowances of non-commissioned officers or soldiers, when serving in such capacity, need not be stamped.(f)

(7) **Exemption from tolls when on duty.**—All officers and soldiers of the regular forces on duty or on the march, as well as their authorised followers, families (including the families of such followers), horses, baggage, and transport are exempt from all tolls, except certain tolls

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(a) See the Preamble to Pay and Allowance Regulations, Part I.
(b) Pensions Act, 1871, s. 11; Code of Civil Procedure, 1908, s. 60 proviso (*g*).
(c) Lode of Civil Procedure, 1908, Order XXVIII.
(d) Court Fees Act, 1870, s. 19.
(e) Indian Soldiers Litigation) Act, s. 3.
(f) Indian Stamp Act, 1899, Schedule I.

for the transit of barges, etc., along canals.(g) This exemption extends to the Indian State Forces (see para. 11 below), their followers, horses and baggage, but not to their families or the families of their followers. It also extends to reservists on being called up for, or when returning to their homes after, training or service, and to their horses and baggage.

(ii) *Indian Army Reserve*

2. Indian Reserve Forces Act, 1888.—In addition to the soldiers and others in permanent employment, a reserve for the Indian Army is maintained under the authority of the Indian Reserve Forces Act, 1888(h). This Act, as amended by the Indian Reserve Forces (Amendment) Act, provides for two classes of reserve, *viz.*, the Regular Reserve and the Supplementary Reserve. The Supplementary Reserve furnishes a reserve of tradesmen, and its object is to complete on mobilization the requirements of certain arms and branches of the Indian Army, not provided for, or only partially provided for, by the Regular Reserve. Reservists of both classes are liable to serve beyond the limits of British India.

3. Obligations of the reservist.—A reservist is required to appear for training or muster according to the regulations of his branch, and when called up for service; at other times he pursues his ordinary civil avocations, but must keep his commanding officer informed of his address, and cannot leave India without permission. In return for these obligations a reservist receives pay at a lower rate than is issued to the soldier or other enrolled person whose services are permanently utilized. The reservist is subject to military law at all times, and can therefore be tried by court-martial for any military offence committed by him; he is also subject to the jurisdiction of the ordinary criminal courts for certain military offences specified in s. 6 of the Indian Reserve Forces Act.

4. Composition of the reserve.—The reserve is composed, for the most part, of men transferred to it from the colours, either in accordance with the terms of their enrolment or at their own request. (For further information with regard to persons for whom service in the reserve is a condition of enrolment and to those for whom transfer to the reserve is voluntary. R. A. I. should be consulted.) Men transferred at their own request serve on the conditions contained in their original enrolments, subject to certain modifications therein agreed to by them on their transfer to the reserve. In the Supplementary Reserve and in certain corps, however (*e.g.*, Royal Indian Army Service Corps) direct enrolments into the reserve are permitted.

Commissions as Risaldars or Jemadars in the Reserve of the Royal Indian Army Service Corps may be granted to Indian gentlemen of influence, and gentlemen possessing the requisite medical and other qualifications may be granted commissions as Jemadars or higher commissioned rank, or may be appointed as warrant officers, in the Indian Medical Department, Sub-Assistant Surgeon Reserve.

(iii) *The Indian Territorial Force*

5. Indian Territorial Force.—An Indian Territorial Force has been formed under the authority of the Indian Territorial Force Act, 1920.(i) It consists of provincial, urban and university corps or units, which are constituted by the Central Government under s. 4 of the Act.

(g) Indian Tolls (Army) Act, 1901, s. 3; also A. A., s. 143.
(h) Act IV of 1888. See Part IV of this Manual.
(i) Act XLVIII of 1920. See Part IV of this Manual.

6. Officers.—There are the following classes of officers in the Indian Territorial Force:—

(a) senior officers, holding commissions, with British designation of rank, and

(b) junior officers, holding commissions, with Indian designation of rank.

An officer is deemed to be enrolled in the force for so long as he holds a commission. When doing military duty, senior officers are subject to the Army Act, and junior officers to the Indian Army Act, and a junior officer is further liable to be punished by a criminal court or by his commanding officer with fine which may extend to fifty rupees.

7. Enrolment.—A European British subject cannot be enrolled in any corps or unit other than a university corps. Any other British subject or any subject of a State in India may offer himself for enrolment in any corps or unit constituted for the province or town or group of towns within which he resides.

8. Liability to perform military service.—Every member of the force over eighteen years of age (other than a person enrolled in a university corps) is liable to perform military service when called out in support of the civil power or to provide essential guards, when the portion of the Indian Territorial Force to which he belongs has been embodied in an emergency, or when attached at his own request to any regular forces. A member of a provincial corps or unit can, however, only be required to perform military service beyond the limits of India under a general or special order of the Central Government, and a member of an urban corps or unit cannot be required to perform military service beyond the limits of the province in which his corps or unit is located.

Rules made under the Act prescribed the training to be undergone by persons subject to the Act and provide for the embodiment of corps and units for that purpose.

9. Subjection to military law of non-commissioned officers and men.—Every non-commissioned officer and man of the Indian Territorial Force is subject to the Indian Army Act when called out or embodied for military service or when attached to or acting as part of, or with, any regular force.

Non-commissioned officers and men of an urban corps or unit, when undergoing military training without having been embodied for that purpose, and non-commissioned officers and men of a university corps when undergoing training, are subject only to such disciplinary and other rules as may be prescribed. Other non-commissioned officers and men, when embodied for or otherwise undergoing military training, are subject to the Indian Army Act with such modifications as may be necessary.

(iv) *Other Forces existing in India*

10. Military police, militia, Frontier Constabulary and Levies.—In addition to the Indian Regular Army, its Reserve, the Territorial Force and the Auxiliary Force(j) which last (being governed by the Army Act when subject to military law) is outside the scope of this work, the Indian Government maintains a number of military or semi-military bodies under various names, *e.g.*, military police, militia, frontier constabulary and levies. The discipline of these is generally

(j) Auxiliary Force Act, 1920, s. 21.

provided for by a special enactment,(k) but in some cases(l) the military code of the Indian Army has been applied to such forces by notifications under s. 5 of the Indian Army Act or the corresponding article of the Indian Articles of War, now repealed. The application of the Indian Army Act to bodies of military police (including the Assam Rifles), frontier militia, frontier constabulary, or levies maintained by Government, in any of the circumstances mentioned in S. 2(1)(*c*), Indian Army Act, other than the circumstance of active service in conjunction with a portion of His Majesty's forces would be very exceptional. The enactments by which such bodies are ordinarily governed would practically always suffice for their government in such circumstances, *i.e.*, other than active service, and the Indian Army Act should not be applied to them by reasons of s. 2 (*1*) (*c*) of that Act without the special orders of the Government of India.

If, however, the law under which any of these bodies is governed does not exclude the application of the Indian Army Act, and if the Indian Army Act has not been applied in whole or in part or with modifications to any such body under s. 5 of that Act, that Act may, by reason of s. 2(*1*) (*c*) and without the special orders of the Government of India, be applied in its entirety to it when serving with regular troops on active service. In such circumstances it will be necessary for the officer commanding the force on active service to direct, in pursuance of s. 3(*1*) of the Act and of Defence Department Notification No. 685, dated 27 May 1939, that officers, warrant officers and non-commissioned officers of such body shall be subject to the Indian Army Act as Indian Commissioned Officers, Viceroy Commissioned Officers, Warrant Officers and non-commissioned officers, respectively. Before enforcing in such circumstances the provisions of the Indian Army Act against any member of such body the officer commanding the force on active service should in the case of frontier militia, frontier constabulary (North-West Frontier Province) or levies, consult the Political Officer, if any, with the force, and in the case of military police (including the Assam Rifles) the senior officer of military police.

The Indian Government also maintains an Indian Navy and an Indian Air Force, which however are outside the scope of this work.(m)

11. Indian State Forces.—Lastly there are the Indian State Forces. These are bodies of troops maintained by the rulers of various States in India with a view to their active co-operation with the regular forces of the Crown in the defence of the Empire. The Imperial Government assists the States concerned with advice as to the instruction of these troops, a staff of military advisers being maintained for the purpose, but their command and discipline are in peace time entirely in the hands of their own rulers, and they are not subject to the military code of the Indian Army (as such), being in fact the troops of allied States and subject only to their own codes of military law.

12. Arrangement for the discipline of the Indian State Forces.—In order to ensure the effective control and discipline of units of Indian States Forces when employed with His Majesty's Forces, it is necessary that the State concerned should issue a notification placing their State Forces, whether on ordinary or on active service, under the orders of the officer commanding the force or formation with which they are employed and providing that the members of their Forces who hold titular rank corresponding to any rank held by King's

(k) *e.g.*, the North-West Frontier Constabulary Act, 1915, and the Assam Rifles Act, 1920.

(l) *e.g.*, the Malwa and Mewar Bhil Corps and the Mina Corps. See Notifications in Part V of this Manual.

(m) But see I. A. A., ss. 7 (*2*) and 7 (*5*).

Commissioned officers of His Majesty's Forces shall be subject to the provisions, *mutatis mutandis*, of the Army Act and all rules and orders made thereunder, and that all other members of their Forces shall be subject to the provisions, *mutatis mutandis*, of the Indian Army Act and all the rules and orders made thereunder; provided :

(a) That in the case of a court-martial for the trial of an accused person belonging to a State Force, one member at least of the court shall, where practicable, belong to that State Force.

(b) That references in respect of any sentence or punishment required to be made under or in pursuance of the Army Act or the Indian Army Act, rules and orders, to His Majesty the King or to the Army Council in the case of the former, or to the Governor General of India in Council in the case of the latter, shall be made to the Ruler concerned, who may, on such reference being made, exercise such powers as might under the said Acts, rules or orders, have been exercised by His Majesty the King, the Army Council or the Governor General in Council.

(c) That, in the case of the Army Act, sentences of penal servitude or imprisonment shall be carried out under the orders of the Ruler of the State concerned.

(d) That the due application and enforcement of the aforementioned provisions, either of the Army Act or of the Indian Army Act and of the rules and orders made under those Acts in respect of the State Forces, shall be carried out under the authority of the Officer Commanding the *Force*, or formation, or other command to which they are attached or, when such a State Force or portion thereof is proceeding to join any Force or Formation of His Majesty's Forces, under the authority of the Officer Commanding the military area, through which they are passing.

(v) *Civil Officers and subordinates. Temporary subjection to the Indian Army Act and Relative Status*

13. Manner in which subject to Indian Military Law.—The notification under s. 3 of the Indian Army Act regarding the manner in which civil officials and subordinates, when subject to that Act by reason of clause(*c*) of s. 2(*1*), shall be so subject, is given in Part V. At present there is only one notification of the Central Government in force—Defence Department Notification No. 685, dated 27th May 1939—under which civilian Government servants are classified as Indian commissioned officers, warrant officers and non-commissioned officers according to the total monthly emoluments. Civilians, other than Government servants, who may become subject to the Act under clause (*c*) of s. 2 (*1*) may be similarly classified by the Officer Commanding the Force which they accompany. Civilians whose relative status is not defined, or whose total monthly emoluments are less than Rs. 30 are, by reason of s. 3 (2) of the Act, subject thereto as if they were of a rank inferior to that of a non-commissioned officer.

14. Temporary objection to Indian Military Law.—The fact civilians in Government service have become subject to the Act by reason of clause (*c*) of s. 2(*1*) does not preclude their being dealt with departmentally under their civil disciplinary rgulations, but, if they are dealt with under military law, the procedure must be in accordance with the Indian Army Act, and Rules thereunder,

and they will be treated as Indian commissioned officers, Viceroy's commissioned officers, warrant officers, non-commissioned officers or as persons of a rank inferior to that of non-commissioned officer, in accordance with their relative military status.

15. Relative Status.—As explained in para. 2 of Chapter II, the status conferred under s. 3 of the Act is personal and does not give power of command over others. For instance, a civilian classified as a Viceroy's commissioned officer is not the 'supeior officer', within the meaning of the Act, of a sepoy. Relative status does not entitle the person to whom it has been granted to be called 'Indian commissioned office', 'Viceroy's commissioned officer', etc.

PART II

THE INDIAN ARMY ACT
(ACT VIII OF 1911)

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REPEAL OF ENACTMENTS

ACT VIII OF 1911

AN Act to consolidate and amend the law relating to the Government of the Regular Army

[As modified up to .....1950.]

WHEREAS it is expedient to consolidate and amend the law relating to the government of the Indian commissioned officers, Junior commissioned officers, soldiers and other persons in the Regular Army; it is hereby enacted as follows :—

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(*1*) This Act may be called the Indian Army Act, 1911.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, direct in this behalf.

NOTE

The Act came into force on January 1st, 1912. See A. D. Notification No. 909, dated 3rd November 1911, in Part V.

Application of Act

2. Persons subject to Act.—(*1*) The following persons shall be subject to this Act, namely :—

(a) Indian commissioned officers, Junior commissioned officers and warrant officers :

Provided that a person holding a commission in the Army in India Reserve of Officers shall be so subject only when ordered on any duty or service for which he is liable as a member of such reserve force.

(b) persons enrolled under this Act ;

(c) persons not otherwise subject to military law, who, on active service, in camp, on the march, or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, the Regular Army.

(*2*) Every person subject to this Act under sub-section (*1*), clause (a) or (b), shall remain so subject until duly retired, discharged, cashiered, removed, or dismissed from the service :

Provided that an officer of the Regular Army retired therefrom and appointed to the Indian Regular Reserve of Officers shall again become so subject, when ordered on any duty or service for which he is liable as a member of such reserve force.

NOTE

1. *Sub-sec.* (*1*).—For the definition of *Indian commissioned officer, Junior commissioned officer and warrant officer*, see ss. 7 (*2*), (*2A*) and (*3*).

Persons enrolled.—See ss. 8 and 9. All persons subject to this Act under s. 2 (*1*) (*a*) or (*1*) are so subject at all times and wherever serving. See Part I, Ch. I, para. 8.

Persons not otherwise subject to military law.—See Part I, Ch. I, para. 10 and Ch. VIII, paras. 11, 12, and 13, and also with reference to military police, militia, frontier constabulary and levies, Ch. VIII, para. 10.

Frontier post.—For places declared to be frontier posts under s. 2 (*1*) (c) and s. 22 (*1*), see A. D. notification No. 281, dated 13th May 1933, in Part V.

2. *Sub-sec.* (*2*), *Duly retired, discharged, etc.*—See Ch. III of the Act and Rules 12 and 13, and for cashiering or dismissal as a court-martial sentence, see s. 43 and Rule 154 (A). If a sentence of dismissal is combined with a suspended sentence of transportation or imprisonment, the dismissal does not take effect until so ordered by a superior military authority; see s. 9 of the Indian Army (Suspension of Sentences) Act in Part III.

3. Special provision as to rank in certain cases.—(*1*) The Central Government may, by notification, direct that any persons or class of persons subject to this Act under section 2, sub-section (*1*), clause (c), shall be so subject as Indian commissioned officers, Junior commissioned officers, warrant officers or non-commissioned officers, and may authorize any officer to give a like direction with respect to any such person and to cancel such direction.

(*2*) All persons subject to this Act other than officers, warrant officers and non-commissioned officers shall, if they are not persons in respect of whom a notification or direction under sub-section (*1*) is in force, be deemed to be of a rank inferior to that of a non-commissioned officer.

NOTE

1. For notifications under this section, see Part V.

2. For further information on the subject of the temporary sub-section to the Act of civil officers and subordinates, see Part I, Ch. II, para. 2 and Ch. VIII, paras. 13, 14 and 15.

Under s. 7 (*8*) the officer commanding an army, army corps, division and brigade out of India and not subject to the authority of the Central Government may, when on active service, exercise the powers under the Act of an officer commanding an army, army corps, etc.

4. Commanding officer of persons subject to military law under section 2, sub-section (*1*) clause (c).—Every person subject to this Act under section 2, sub-section (1), clause (c), shall, for the purposes of this Act, be deemed to be under the commanding officer of the corps, department or detachment (if any) to which he is attached, and if he is not attached to any corps, department or detachment, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force:

Provided that an officer commanding a force shall not place a person under the command of an officer of official rank inferior to that of such person if there is present at the place where such person is any officer of higher rank under whose command he can be placed.

5. Powers to apply Act to certain forces under the Government of India.—(*1*) The Central Government may, by notification, apply with or without modifications, all or any of the provisions of this Act to any force raised and maintained in India under the authority of the Central Government including any force maintained by a Part B State.

(1-A) On such notification being made, any provisions of this Act so applied shall have effect in respect of persons belonging to any such force as they have effect in respect of persons subject to this Act holding in the Regular Army the same rank as the aforesaid persons hold for the time being in the force to which this Act is so applied, and shall have effect in respect of persons who are employed by, or are in the service of, or are followers of, or accompany any portion of any such force as they have effect in respect of persons subject to this Act under section 2, sub-section (1), clause (c).

(2) While any of the provisions of this Act apply to any such force, the Central Government may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of that force and may suspend the operation of any other enactment for the time being applicable to that force.

NOTE

Certain provisions of the I. A. A. have been applied to the Malwa and Mewar Bhil Corps and the Mina Corps. See Notifications in Part V.

6. Officers to exercise powers in certain cases.—(*1*) Whenever persons subject to this Act are serving—

(a) out of India under an officer not subject to the authority of the Central Government: or

(b) in India under an officer commanding any military organisation not in this section specifically named, and being, in the opinion of the Central Government, not less than a brigade,

the Central Government may prescribe the officer by whom the powers which, under this Act, may be exercised by officers commanding armies, army corps, divisions and brigades, shall, as regards such persons, be exercised.

(*2*) The Central Government, may confer such powers either absolutely, or subject to such restrictions, reservations, exceptions and conditions as they may think fit.

NOTE

1. "Army", "army corps", "division" and "brigade" are defined in s. 7 (*8*). Under s. 7 (*8*), the officer commanding an army, army corps, division and brigade out of India and not subject to the authority of the Central Government may, when on active service, exercise the powers under the Act of an officer commanding an army, army corps, etc.

2. A. D. Notification No. 274, dated the 20th February 1925, as amended by A. D. Notifications No. 139, dated the 4th February 1928, No. 689, dated the 12th May 1928, No. 787, dated the 15th June 1929, D. D. Notification No. 247, dated 3rd April 1937 and D. D. Notification No. 159, dated 11th February 1939, is framed under this section and confers (subject to certain limitations as to dismissal and discharge) the powers of an officer commanding a division upon:—

The Officer Commanding the British Forces in Iraq;

The Officer Commanding the British Troops in China;

The Officer Commanding in Malaya;

The Officer Commanding the Forces at Aden;

The Officer Commanding the Military Forces in Burma;

and those of an officer commanding a brigade upon:—

The Officer in immediate command of the Military Forces in Iraq.

The Commander, Rangoon Area.

The Commander, Hong Kong Infantry Brigade and Kowloon Sub-Area.

For the Notification see Part V.

3. Various officers have been, or may be, from time to time granted powers under clause (*b*) of this sub-section, but as these powers are generally granted to meet temporary situations as they arise, the notifications granting them are not reproduced in Part V, with the exception of A. D. Notification No. 2163, dated the 29th October 1920, by which General Officers Commanding-in-Chief Commands and Officers Commanding Districts and Areas are granted the powers of an officer commanding an army corps, a division and a brigade respectively. The officers empowered will invariably be informed of the powers granted to them.

For what these powers are, see ss. 14, 19, 21, 23, 102, 103, 108, 112 and 126-B of the Act, and Rules 13, 156, 157, 164 (on active service only), 166 and 170.

6A. Relations between forces of Part B States and the Regular Army when acting together.—When any of the forces maintained by a Part B State are acting with, or are attached to, any body of the Regular Army, whether within or outside the State, then—

(a) all the provisions of this Act shall apply to such forces and the members thereof as if they formed part of that body of the Regular Army ;

(b) for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, any officer, sub-commissioned officer, warrant officer or non-commissioned officer of such forces shall, in relation to that body of the Regular Army have all such powers and be treated as if he were an Indian commissioned officer, Junior commissioned officer, warrant officer or non-commissioned officer, as the case may be, of the Regular Army ; and

(c) the relative rank of officers, sub-commissioned officers, warant officers and non-commissioned officers of such forces and of the Regular Army shall be such as may be determined by the Central Government or by such other authority as may be prescribed.

6B. (Repealed).

7. Definitions.—In this Act, unless there is something repugnant in the subject or context,—

(1) "British officer" means a person holding His Majesty's commission in His Majesty's Land Forces or in the Royal Marines or in the Territorial Army or in the Auxiliary Force, India or in the Burma Auxiliary Force, and includes, in relation to a person subject to this Act when serving under such conditions as may be prescribed, a person holding a commission in His Majesty's Naval Forces or Royal Air Force :

(2) "Indian commissioned officer" means a person commissioned, gazetted or in pay as an officer holding a commission in the Regular Army and includes, in relation to a person subject to this Act when serving under such conditions as may be prescribed, a person holding a commission in the Indian Navy or the Indian Air Force :

(2A) "Junior commissioned officer" means a person commissioned, gazetted or in pay as a Junior commissioned officer, in the Regular Army:

(3) "Warrant officer" means a person appointed, gazetted or in pay as a warrant officer in the Regular Army :

(4) "Non-commissioned officer" means a person attested under this Act holding a non-commissioned rank in the Regular Army, and includes an acting non-commissioned officer:

(5) "officer" means an Indian commissioned officer or a Junior commissioned officer, and includes a British officer, and, in relation to a person subject to this Act when serving under such conditions as may be prescribed, an officer of the Indian Navy or the Indian Air Force, but does not include a warrant officer, petty officer or non-commissioned officer:

(6) "Commanding officer", when used in any provision of this Act with reference to any separate portion of the Regular Army or to any department, means the British officer or Indian commissioned officer whose duty it is under the regulations of the army, or, in the absence of any such regulation, by the custom of the service, to discharge with respect to that portion of the forces or that department the functions of commanding officer in regard to matters of the description referred to in that provision :

(7) "Superior officer", when used in relation to a person subject to this Act, includes a warrant officer and a non-commissioned officer; and, as regards persons placed under his orders, an officer, warrant officer, petty officer or non-commissioned officer of the Indian Navy or the Indian Air Force or of any of His Majesty's Naval, Military or Air Forces :

(7A) "Regular Army" means the Indian commissioned officers, Junior commissioned officers, warrant officers, non-commissioned officers and other enrolled persons who, by their commission, warrant, terms of enrolment or otherwise, are liable to render continuously for a term military service to the Union in every part of the world or in specified parts of the world, and includes persons belonging to the Reserve Forces or the Territorial Army when called out on permanent service :

(8) "army", "army corps", "division" and "brigade" mean respectively an army, army corps, division or brigade which is under the command of an officer subject to the authority of the Central Government or, when on active service, an army, army corps, division or brigade under the command of an officer holding a commission in the Regular Army :

(9) "corps" means any separate body of persons subject to this Act or the Army Act which is prescribed as a corps for the purposes of all or any of the provisions of this Act :

(10) "independent brigade" means a brigade which does not form part of a division :

(11) "department" includes any division or branch of a department :

(12) "enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of a person subject to military law to act :

(*13*) "active service", as applied to a person subject to this Act, means the time during which such person is attached to, or forms part of, a force which is engaged in operations against an enemy, or is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country :

(*14*) "military custody" means the arrest or confinement of a person according to the usages of the service and includes air force custody :

(*15*) "military reward" includes any gratuity or annuity for long service or good conduct, any good conduct pay, good service pay or pension, and any other military pecuniary reward :

(*16*) "Court-martial" means a court-martial held under this Act :

(*17*) "criminal court" means a court of ordinary criminal justice in a Part A State or a Part C State, or established elsewhere by the authority of the Central Government :

(*18*) "civil offence" means an offence which, if committed in a Part A State or a Part C State, would be triable by a criminal court:

(*19*) "offence" means any act or omission punishable under this Act, and includes a civil offence as hereinbefore defined :

(*20*) "notification" means a notification published in the Gazette of India :

(*21*) "prescribed" means prescribed by rules made under this Act : and

(*22*) all words and expressions used herein and defined in the Indian Penal Code and not hereinbefore defined shall be deemed to have the meanings respectively attributed to them by that Code.

NOTE

1. For conditions prescribed under clause (*1*), see Rule 160.

2. *Clause* (*4*) *Attested.*—See ss. 11 and 12 and Rules 8 and 9. Only "attested" persons are eligible for non-commissioned rank.

3. *Clause* (*6*).—For an explanation of the term "commanding officer" for the purpose of awarding minor punishments, see R. A. I., and for the purpose of holding a summary court-martial, see notes to s. 64.

4. *Clause* (*8*).—See notes to s. 6.

5. *Clause* (*9*). *Prescribed.*—See Rule 161.

6. *Clause* (*13*).—The terms of this definition are apparently wider than the corresponding definition in the (British) Army Act in that it covers the period when a person is *on the line of march* to a country or place wholly or partly occupied by an enemy. It has, however, been ruled that troops may be on active service even before embarkation for the seat of war if the circumstances are such that they can reasonably be held to be attached to or to form part of a force such as is specified in A.A. s. 189 (See note to A.A. s. 189 in the War Office M.M.L.). The position is, therefore, practically the same under both Acts.

A person is "on the line of march" from the time he parades for the original march until he arrives at his ultimate destination.

7. *Clause* (*15*).—S. 43 (*h*) (*ii*) of the Act was repealed by the Indian Army (Amendment) Act, 1934. A "military reward" cannot now be forfeited as a court-martial sentence.

8. *Clause* (*22*).—The Indian Penal Code is reprinted in Part IV.

7A. Application of Act to existing personnel.—(*1*) All persons who, immediately before the commencement of the Constitution, were subject to this Act as then in force shall be deemed to be part of the Regular Army and shall be under the same obligations to serve the Union as they were under to serve His Majesty; and all such persons shall continue to be subject to this Act and all other Acts, Ordinances, Regulations and provisions relating to the Regular Army for the time being in force.

(*2*) Every person who, immediately before the commencement of the Constitution, was subject to this Act as then in force as an Indian commissioned officer, a Viceroy's commissioned officer or a warrant officer shall, as from such commencement, be deemed to have been commissioned or appointed as an Indian commissioned officer, a Junior commissioned officer or a warrant officer, as the case may be, in the Regular Army, and shall thereafter be subject to this Act accordingly.

(3) Every person who, immediately before the commencement of the Constitution, was subject to this Act as then in force as a person attested or enrolled in the Indian Land Forces shall be deemed to have been attested or enrolled, as the case may be in the Regular Army, and shall thereafter be subject to this Act accordingly.

CHAPTER II.

ENROLMENT AND ATTESTATION

Enrolment

8. Procedure before enrolling officer.—Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled; and shall put to him the questions set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.

NOTE

1. *Enrolling officer.*—See Rule 7.

2. The conditions of service are, in the forms of enrolment at present prescribed, embodied in the questions which are put to the person to be enrolled, and his acceptance of these conditions is duly recorded therein.

3. For list of classes to be enrolled, see R.A.I.

9. Enrolment.—If, after complying with the provisions of section 8, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if he perceives no impediment, he shall sign and shall also cease the person to sign the enrolment paper, and the person shall then be deemed to be enrolled.

10. Validity of Enrolment.—Every person who has for the space of three months been in the receipt of military pay as an enrolled person and been borne on the rolls of any corps or department shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of any irregularity or illegality in his enrolment or on any other ground whatsoever; and if any person, in receipt of military pay and borne on the rolls as aforesaid, claims his discharge before the expiry of three months from his enrolment no such irregularity or illegality or other ground shall, until he is discharged in pursuance of his claim, affect his position as an enrolled person under this Act or invalidate any proceedings, act or thing taken or done prior to his discharge.

Attestation

11. Persons to be attested.—The following persons shall be attested, namely :—

(a) all persons enrolled as combatants :

(b) all other enrolled persons prescribed by the Central Government.

NOTE

Attestation involves no further liabilities beyond those assumed at enrolment but confers upon the attested person certain privileges. It is reserved for combatants and such higher classes of non-combatants as Government considers deserving of being treated in a similar manner to combatants. See Rule 8. The discharge of an attested person can, as a rule, only be authorized by the higher military authorities, while that of an enrolled person who has not been attested (*e.g.*, recruits and followers) can be authorized by his commanding officer. See Rule 13. Only attested persons are eligible for non-commissioned rank.

12. Mode of attestation.—(*1*) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer in front of his corps or such portion thereof or such members of his department as may be present or by any other prescribed person.

(*2*) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will bear true faith and allegiance to the Constitution of India as by law established, and that he will serve in the Regular Army and go wherever he is ordered by air, land or sea, and that he will obey all commands of any officer set over him, even to the peril of his life.

(*3*) The fact of an enrolled person having taken the oath, or affirmation directed by this section to be taken shall be entered on his enrolment paper, and authenticated by the signature of the officer administering the oath or affirmation.

NOTE

The proper authority to attest a person subject to this Act is generally his immediate commanding officer who should do so in the ceremonial manner here indicated. For list of other "attesting officers", see Rule 9 (B). The oath or affirmation to be administered on attestation is set out in Rule 9 (A), the notes to which contain its translation into certain vernacular languages.

CHAPTER III

DISMISSAL AND DISCHARGE

13. Dismissal by Central Government and Commander-in-Chief.—(*1*) The Central Government may dismiss from the service any person subject to this Act.

(*2*) The Commander-in-Chief may dismiss from the service any person subject to this Act other than an Indian commissioned officer.

NOTE

1. For the date an order of dismissal under this section takes effect, see Rule 12, and for the date a sentence of cashiering or dismissal awarded by a court-martial takes effect, see Rule 154.

2. As to furnishing a Junior commissioned officer who is dismissed with a discharge certificate, see Rule 11.

14. Dimissal by officer commanding army, army corps, division, brigade, etc.—An officer commanding an army, army corps, division or brigade, or any prescribed officer, may dismiss from the service any person serving under his command other than an officer.

NOTE

1. For the date an order of dismissal under this section takes effect, see Rule 12, and for the date a sentence of dismissal awarded by a court-martial takes effect, see Rule 154.

2. As to furnishing a person who is dismissed with a discharge certificate, see s. 17 (in the case of an enrolled person) and Rule 11 (in the case of a warrant officer).

3. The difference between dismissal and discharge is that the former does, while the latter does not, imply culpability.

All persons sentenced to transportation (except persons sentenced by court-martial whose sentences are suspended) and such persons sentenced to imprisonment as it is not desired to retain in the service will, if not dismissed by the sentence of a court-martial, be dismissed under this section or under s. 13, commanding officers will use their discretion in applying for the dismissal and the higher authorities their discretion in ordering it. Such a dismissal should not be applied for, or at any rate should not be put into effect, until the convict or prisoner sentenced by court-martial has been committed to a civil prison (*cf.* Rule 154). In the case of a sentence passed by a civil court the application should, if the dismissal is desired, be made as soon as possible after the sentence passed by the civil court has become absolute either by an appeal not being preferred within the period allowed by law or by the appeal being dismissed. The period within which an appeal against a sentence of transportation, or imprisonment must be preferred is sixty days from the date of sentence, if the appeal is to a High Court and thirty days if it is to any other court (Indian Limitation Act, 1908, First Schedule, Nos. 154 and 155). In special cases, a prisoner whom it is not desired to retain in the service may be discharged instead of being dismissed.

Dismissal involves the forfeiture of claim to any pension or gratuity which may have been earned. *Discharge* does not involve such forfeiture. See Pension Regulations.

4. *Division or Brigade.*—Also District and Area.

Army Corps.—Also Command.

Prescribed officer.—See Rule 162, and A. D. Notification No. 1015 of 1929 in Part V.

15. (Section 15 repealed.)

16. Discharge.—The prescribed authority may, in conformity with any rules prescribed in this behalf, discharge from the service any person subject to this Act.

NOTE

1. As to *retirement and resignation of commission* of Indian commissioned officers, see Rule 13 (A) and R. A. I.

2. For authorities competent to authorise discharge, see Rule 13 and table annexed thereto. The discharge of a person who is under the conditions of his enrolment entitled to be discharged must be authorized and completed with all convenient speed (Rule 10) by the proper authorities (Rules 12 and 13). Until it has been so completed, the person remains subject to military law. Any unnecessary delay in completing his discharge would, however, give him good ground for complaint.

Applications for discharge will be made on I. A. F. Y.-1948.

3. As to furnishing a person who is discharged with a discharge certificate (I. A. F. Y.-1949), see s. 17 (in the case of an enrolled person) and Rule 11 (in the case of a Junior commissioned officer and a warrant officer). See also R. A. I.

4. For the date discharge takes effect, see Rule 12 and notes.

17. Certificate to person dismissed or discharged.—Every enrolled person who is dismissed or discharged from the service shall be furnished by his commanding officer with a certificate, in the English language and in the mother tongue of such person (when his mother tongue is not English), setting forth—

(a) the authority dismissing or discharging him ;

(b) the cause of his dismissal or discharge ;

(c) the full period of his service in the army.

NOTE

See also R. A. I.

18. Discharge, etc., out of India.—(*1*) Any person enrolled under this Act, who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to be discharged, is serving out of India, and requests to be sent to India, shall, before being discharged, be sent to India with all convenient speed.

(2) Any person enrolled under this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed :

Provided that, where any such person is sentenced to dismissal combined with any other punishment, such other punishment, or in the case of a sentence of transportation or imprisonment, a portion of such other punishment, may be inflicted before he is sent to India.

NOTE

1. For summary dismissals or summary discharges ordered or authorised at Imperial stations out of India, see A. D. Notification No. 274, dated the 20th February 1925, and notes on p. 686.

2 The proviso to sub-section (2) is permissive and must be read with ss. 107, 108 and 108A which provide for the infliction of sentences of transportation and imprisonment passed by courts-martial. The result is that, unless the sentence is one of imprisonment which can be undergone in military custody under s. 107 or in regard to which an order for its infliction or partial infliction in local civil custody has been made under s. 108, a prisoner cannot legally be kept abroad to undergo his imprisonment, but must be sent to a civil prison in India where it can be inflicted in accordance with this Act. Persons sentenced to transportation must be sent to such a prison but, until so sent, may be dealt with as if sentenced to rigorous imprisonment. See s. 108A.

On active service special arrangements for a military prison in the field are, where necessary, made under the second proviso to s. 107. Persons sentenced to dismissal and imprisonment can legally be retained in such a prison to undergo the whole or any part of their terms of imprisonment before being sent to India under sub-section (2) of this section. Persons sentenced to transportation may be kept temporarily in such a military prison until transported. See s. 108A.

CHAPTER IV.

SUMMARY REDUCTION AND PUNISHMENTS OTHERWISE THAN BY ORDER OF COURT-MARTIAL.

19. Reduction of warrant officers and non-commissioned officers.—(*1*) The Commander-in-Chief, an officer commanding an army, army corps, division or brigade, or any prescribed officer, may reduce to a lower grade or to the ranks any warrant officer or any non-commissioned officer under his command :

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy.

(2) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent grade as a non-commissioned officer or, if he has no permanent grade above the ranks, to the ranks.

NOTE.

1. A warrant officer or N. C. O. can be reduced in rank under sub-section (*1*), but if the ground is some misconduct which is an offence against the Act, he should, as a rule, be put on trial before a court-martial.

As to reduction of a warrant officer or N. C. O. removed from an appointment, see R. A. I.

2. *Prescribed officer.*—See Rule 163, and A. D. Notification No. 1015 of 1929 in Part V.

3. This section must be read in conjunction with R. A. I. defining what are ranks. Lance and acting rank is a matter to be dealt with by the commanding officer, and not being a rank is legally not cognisable in the sentence of a court-martial. But an acting N. C. O. (*e.g.*, a lance-naik whether paid or unpaid), being a N. C. O. [s. 7 (*4*)], loses his acting or lance rank under s. 49 upon being sentenced to any of the punishments therein specified.

When an acting N. C. O. has been punished by court-martial for an offence and such appointment does not involve reduction or reversion, his commanding officer can revert him to his permanent grade, not as a further punishment, but because the proceedings show him to be unfit to hold his appointment.

4. *Commanding officer.*—See s. 7 (*6*) and R. A. I.

Army Corps.—Also Command.

Division or brigade.—Also District and Area.

20. Minor punishments.—(*1*) The Commander-in-Chief may, subject to the control of the Central Government, specify the minor punishments to which persons subject to this Act shall be liable without the intervention of a court-martial, and the officer or officers by whom, and the extent to which, such minor punishments may be awarded.

(*2*) Imprisonment in military custody and, in the case of persons subject to this Act on active service, any prescribed field punishment may be specified as minor punishments, provided that—

(a) the term of such imprisonment or field punishment shall not exceed twenty-eight days ; and

(b) it shall not be awarded to any person of or above the rank of non-commissioned officer, or who, when he committed the offence in respect of which it is awarded, was of or above such rank.

NOTE

1. The minor punishments which have been specified under this section are set out in R. A. I. They are as follows:—

(*a*) An officer having power not less than a district or equivalent commander, or an officer empowered to convene a general court-martial can award—

In the case of an Indian commissioned officer below the rank of Lieutenant-Colonel:—

Forfeiture of seniority or service for the purpose of promotion for a period not exceeding twelve months (subject to the right of the accused, previous to the award, to elect to be tried by court-martial).

Severe reprimand or reprimand.

Stoppages.—As authorised by s. 50 (*1*) (*b*) of this Act.

In the case of a Viceroy's commissioned officer:—

Forfeiture of seniority or service for the purpose of promotion for a period not exceeding twelve months (subject to the right of the accused, previous to the award, to elect to be tried by court-martial).

Severe reprimand or reprimand.

(*aa*) A Commander of Brigade, Independent Area, Area, L. of C. Sub-Area, Base Sub-Area, Sub-Area of the rank of Brigadier, a C. C. R. A. Corps, C. R. A. Division and Director, G. H. Q. (India), 2nd Echelon of the same rank can award—

In the case of an Indian commissioned officer below the rank of field officer:—

Severe reprimand or reprimand.

Stoppages.—As authorised by s. 50 (1) (b) of this Act.

In the case of a Viceroy's commissioned officer:—

Severe reprimand or reprimand.

(*b*) An officer having power not less than an officer commanding a brigade or an officer empowered to confirm the finding and sentence of a court-martial held for the trial of a warrant officer can award—

In the case of any warrant officer:—

Forfeiture of seniority, or where the warrant officer's promotion depends upon length of service, of service for the purpose of promotion, for a period not exceeding 12 months (subject to the right of the accused, previous to the award, to elect to be tried by court-martial).

Severe reprimand or reprimand.

(c) A commanding officer can award—

In the case of a Viceroy's commissioned officer and warrant officer:—

Stoppages.—As authorised by s. 59 (*2*) (*f*) of this Act.

In the case of a non-commissioned officer (including acting or lance non-commissioned officer):—

Extra Guards and picquets.

Deprivation of acting rank or of a position of the nature of an appointment.

Deprivation of corps, etc., pay or disrating.

Deprivation of working pay.

Fine.—To those whose total monthly emoluments exceed Rs. 55 in the case of Havildar or equivalent rank, Rs. 50 in the case of Naik or equivalent rank, Rs. 35 in the case of Lance Naik or equivalent rank. Up to one half of one month's pay or Rs. 100 whichever is the less.

Forfeiture of a rate of good service pay.

Severe reprimand or reprimand.

Stoppages.

In the case of other enrolled persons:—

Imprisonment (rigorous or simple).—Up to 28 days. If rigorous imprisonment is awarded, any portion of the imprisonment not exceeding 7 days may be with solitary confinement.

A commanding officer below the rank of field officer is restricted to an award of 7 days imprisonment, unless authorised by name by the district commander. A depot commander can award up to 14 days

Confinement to the lines.—Up to 28 days.

Extra guards and picquets.—For minor offences on those duties.

Extra duties and working parties.—Non-combatants only in accordance with their duties and occupation.

Deprivation of a position in the nature of an appointment.

Deprivation of corps, etc., pay.—For any day on which an offence is committed or the offender may be disrated temporarily for a period not exceeding 28 days.

Deprivation of working pay.—For any day on which an offence connected with the work for which the pay is drawn is committed.

Forfeiture of a rate of good conduct pay.

Reservists can be awarded forfeiture of the whole or part of good conduct pay for a period of training for an offence committed during training.

Fine.—Reservists under training and non-combatants.—Up to 7 days' pay in any month.

Combatants and non-combatants whose total monthly emoluments exceed Rs. 35 in case of Sepoy or equivalent rank. Up to one half of one month's pay or Rs. 100 whichever is the less.

Stoppages.—As authorised by s. 50 (2) (*f*) of this Act.

Field punishments No. 1 or 2.—Up to 28 days (on active service only).

In the case of civilians in military employ subject to the Indian Army Act, excepting civil gazetted officers and persons whose total monthly emoluments (excluding compensatory allowances) exceed Rs. 500:—

Fine.—Up to one half of one month's pay or Rs. 100 whichever is the less.

R. A. I. lays down when more than one of the above punishments can be awarded.

For further details and for punishments awardable to regimental boys, see R. A. I.

(*d*) Subject to the above restrictions and conditions, and if authorised by his commanding officer—

(1) A Viceroy's commissioned officer commanding a detachment may award:—

Imprisonment (rigorous or simple).—Up to 7 days.

Confinement to the lines.—Up to 7 days.

Extra guards and picquets.—Up to three such duties for any one offence.

Field punishments No. 1 or 2.—Up to 7 days (on active service only).

(2) A squadron, battery or company commander and an adjutant can award:—

Confinement to the lines.—Up to 10 days.

Extra guards and picquets.—Up to three such duties for any one offence.

(3) Other British and Indian commissioned officers can award:—

Confinements to the lines.—Up to 7 days.

(4) Viceroy's commissioned officers can award:—

Confinement to the lines.—Up to 3 days.

(5) A departmental officer (*i.e.*, commissary, etc., or senior assistant surgeon) in independent charge, if not empowered to award imprisonment, can award:—

Fine.—To non-combatants, up to 4 days' pay in any month.

In the case of civilians in military employ subject to the Indian Army Act, excepting civil gazetted officers and persons whose total monthly emoluments (excluding compensatory allowances) exceed Rs. 500:—

Fine.—Up to one half of one month's pay or Rs. 100 whichever is the less.

(*e*) For minor breaches of prison discipline a prisoner, while undergoing rigorous imprisonment in military custody, can be awarded by his commanding officer:—

Reduction of diet.—Up to 3 days at a time.

Additional hard labour and punishment drill.—Not exceeding two hours daily up to 7 days at a time.

2. For the purposes of awarding minor punishments the term "commanding officer" is explained in R. A. I.

3. For the duties of a commanding officer as to investigation of a charge for an offence and disposal of the charge, see Rules 14, 15 and notes.

Every charge must be heard in the presence of the accused, except a charge against an Indian commissioned officer, as to which see Rule 17 (A) and note. Witnesses are not sworn or affirmed, but the accused must have full liberty to cross-examine, to call witnesses and to make any statement.

A commanding officer may dismiss the charge, and he should do so if, in his opinion, the evidence does not show that some offence under this Act has been committed, or if, in his discretion, he thinks that the charge ought not to be proceeded with, see Rule 15 (B).

4. Where a man has been convicted or acquitted of an offence by a court-martial or by a criminal court or summarily punished or the charge has been dismissed, he is not liable to be summarily punished or tried by court-martial for the same offence or for an offence which is substantially the same. If, for example, he has been acquitted or convicted of, or summarily punished for, absence without leave, and the absence amounted to desertion, he cannot be afterwards tried for desertion.

Nor can a man convicted by a court-martial of an offence be afterwards sentenced by this commanding officer to stoppages for damage caused by that offence.

A man is also not liable to be tried for an offence which has been pardoned or condoned by competent military authority, or which was committed more than three years before the date of his trial, unless the offence was mutiny, desertion or fraudulent enrolment. See ss. 66, 67 and Rule 43 and notes.

5. As to deductions from pay and allowances entailed by an award of imprisonment or field punishment or for absence without leave, see s. 50 (*2*) and Pay and Allowance Regulations.

6. A commanding officer cannot increase a punishment after he has once made his award, which is considered complete when the man has quitted his presence. But a commanding officer can at any time before the punishment has been completed mitigate or remit a minor punishment. As to entry of his award, see R. A. I.

Awards by a commanding officer which appear to be illegal or excessive can be reviewed by superior authority under R. A. I.

21. Collective fines.—Whenever any weapon or part of a weapon forming part of the equipment of a half squadron, battery, company or other similar unit is lost or stolen, the officer commanding the army, army corps, division or independent brigade to which such unit belongs may, after obtaining the report of a court of inquiry, impose a collective fine upon the Junior commissioned officers, warrant officers, non-commissioned officers and men of such unit, or upon so many of them as, in his judgment, should be held responsible for such loss or theft.

NOTE

1. This section authorises the imposition of a collective fine on a company or similar unit for the purpose of enforcing collective responsibility. Such a collective fine must be distinguished from a joint fine based on individual responsibility. The only authorised method of enforcing individual responsibility is trial, and in the event of conviction, punishment of the offender. The intention of the section is not to permit of the punishment by fine of men against whom there is suspicion but insufficient proof to warrant their conviction by court-martial.

2. The imposition of a collective fine under this section upon men of a unit is not a bar to trial by court-martial of any man of that unit, whose individual act or omission may have contributed to the loss.

3. The amount of the fine to be imposed is regulated by Rule 157 (A), and under Rule 157 (B) the fine must be assessed as a percentage on the pay of the individuals on whom it falls. See also s. 113 (*2*) (*b*). Fines cannot be imposed in respect of weapons or parts of weapons not enumerated in Rule 157.

4. *Army Corps, Division.*—Also Command and District.

22. Punishment of certain Indian followers.—(*1*) For any offence, in breach of good order, the commanding officer of any corps or detachment on active service, in camp, on the march, or at any frontier post specified by the Central Government by notification in this behalf at which troops are stationed, may punish any

Indian follower of such corps or detachment who is subject, to this Act under section 2, sub-section (1), clause (c)—

(a) if such follower is not a menial servant, with imprisonment for a term which may extend to thirty days, or with fine which may extend to fifty rupees :

(b) if such follower is a menial servant, with imprisonment for a term which may extend to seven days, or, if on active service, with corporal punishment not exceeding twelve strokes of a rattan.

(2) Imprisonment awarded under this section may be carried out in a military guard, or in a jail, as ordered by the said commanding officer; and the officer in charge of any jail shall, on the delivery to him of the person of the offender, with a warrant, under the hand of the said commanding officer, detain the offender according to the exigency of the warrant or until he is discharged by due course of law.

NOTE

1. See ss. 2, 3 and notes, and the table in Part V showing the manner of subjection to the Indian Army Act and relative rank of certain civil officers and subordinates when subject to the Act. A person who has been graded higher than that of follower by notification under s. 3 cannot be summarily punished under this section. For places declared to be frontier posts, see A. D. Notification No. 281, dated the 13th May 1933, in Part V.

2. *Sub-section* (2).—Form B in the Fourth Appendix to the Rules, with necessary modifications, may be used in the preparation of such a warrant.

PROVOST-MARSHALS

23. Appointment.—For the prompt and instant repression of irregularities and offences committed in the field or on the march, provost-marshals may be appointed by the Commander-in-Chief or an officer commanding an army, army corps, division or independent brigade or an officer commanding the forces in the field; and the powers and duties of such provost-marshals shall be regulated according to the established custom of war and the rules of the service.

NOTE

Army Corps, Division.—Also Command and District.

24. Duties and powers.—(1) The duties of a provost-marshal so appointed are to take charge of prisoners confined for offences of a general description, to preserve good order and discipline, and to prevent breaches of the same by persons belonging or attached to the army. He may at any time arrest and detain for trial any person subject to this Act who commits an offence and may also carry into effect any punishments to be inflicted in pursuance of the sentence of a court-martial.

(2) A provost-martial may punish with any punishment mentioned in section 22, sub-section (1), clause (b), any follower who is subject to this Act under section 2, sub-section (1), clause (c), and is a menial servant and who, on active service and in his view, or in the view of any of his assistants, commits any breach of good order and military discipline.

NOTE

A provost-marshal may be appointed in time of peace by any of the authorities specified is s. 23 (*e.g.*, for a force engaged in manoeuvres), but a provost-marshal so appointed has no powers of punishment. Corporal punishment under s. 24 (2) is only awardable on active service.

CHAPTER V

OFFENCES

Offences in respect of Military Service

25. Offences punishable with death.—Any person subject to this Act who commits any of the following offences, that is to say :—

(a) shamefully abandons or delivers up any garrison, fortress, post or guard committed to his charge, or which it is his duty to defend; or

(b) in presence of an enemy, shamefully casts away his arms or ammunition, or intentionally uses words or any other means to induce any person subject to military law to abstain from acting against the enemy, or to discourage such person from acting against the enemy, or misbehaves in such manner as to show cowardice ; or

(c) directly or indirectly holds correspondence with, or communicates intelligence to, the enemy, or any person in arms against the State, or who, coming to the knowledge of any such correspondence or communication, omits to discover it immediately to his commanding or other superior officer ; or

(d) treacherously makes known the watchword to any person not entitled to receive it ; or

(e) directly or indirectly assists or relieves with money, victuals or ammunition, or knowingly harbours or protects, any enemy or person in arms against the State ; or

(f) in time of war, or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency ; or

(g) being a sentry in time of war or alarm, or over any State prisoner, treasure, magazine or dockyard, sleeps upon his post, or quits it without being regularly relieved or without leave ; or

(h) in time of action, leaves his commanding officer or his post or party to go in search of plunder ; or

(i) in time of war, quits his guard, picquet, party or patrol without being regularly relieved or without leave ; or

(j) in time of war or during any military operation, uses criminal force to, or commits an assault on, any person bringing provisions or other necessaries to the camp or quarters of any forces of the Union, or forces a safeguard, or breaks into any house or any other place for plunder, or plunders, injures or destroys any field, garden or other property of any kind ; or

(k) on active service commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving;

shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

NOTE

1. *Subject to this Act.*—See s. 2, and Pt. 1, paras. 9 and 10.

2. *Clause (a). Shamefully abandons, etc.*—This offence can only be committed by the person in charge of the garrison, post, etc., and not by the subordinates under his command. The surrender of a place by an officer charged with its defence can only be

justified by the utmost necessity, such as want of provisions or water, the absence of hope of relief, and the certainty or extreme probability that no further efforts could prevent the place with its garrison, their arms and magazines, falling into the hands of the enemy. Unless the necessity is shown, the conclusion must be that the surrender or abandonment was shameful, and therefore an offence under this section. The word *post* includes any point or position (whether fortified or not) which a detachment may be ordered to hold; and the abandonment of a post would also include the abandonment of a siege if there were no circumstances to warrant such a measure. It has not the same meaning as in clauses (*g*) and (*h*), where it has reference to the position of an individual.

Particulars of a charge under this clause must detail some circumstances which make the abandonment in a military sense shameful.

3. *Clause* (*b*). *Enemy.*—See s. 7 (12). The term includes any person in arms against whom it is the duty of a person subject to military law to act. A soldier, therefore, who, when a comrade "runs amuck", shows cowardice by refraining from acting against him, is liable to trial under this clause.

4. *Shamefully casts away.*—The particulars of the charge must show the circumstances which make the act in a military sense shameful. The word "shamefully" is held to mean by a positive and disgraceful dereliction of duty, and not merely through negligence or misapprehension or error of judgment.

5. *Intentionally.*—The court may infer intention from the circumstances proved in evidence. A court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of events and human conduct. See Pt. I, Ch. V, para. 84.

6. *Persons subject to military law.*—This includes a person subject to the Army Act.

7. *Misbehaves.*—This means that the accused, from an unsoldier-like regard for his personal safety, in the presence of the enemy, failed in respect of some distinct and feasible duty imposed upon him by a specified order or regulation, or by the well-understood custom of the service, or by the requirements of the case, as applicable to the position in which he was placed at the time. Misbehaviour of any kind not evidencing cowardice cannot be charged under the last sentence of this clause.

8. *Clause* (*c*). *Communicates intelligence to.*—This clause includes the case of intelligence reaching the enemy indirectly through the capture or the re-publication (*e.g.*, by relatives or newspapers) of letters, sketches, photographs, etc. The general rule is that a person is responsible for the natural consequences of his acts, and everyone connected with the forces should recognise the grave danger of assisting the enemy by gossip, whether verbal or written, as to plans, prospects, operations, numbers, etc.

As to "injurious disclosures" generally, see the Indian Official Secrets Act, 1923, as set out on p. 456, *et seq.*

9. *Clause* (*d*). *Watchword* includes parole, countersign and pass-word.

Although treachery must be averred in a charge under this clause, the particulars of the charge need not detail the circumstances of the treachery. Upon proof that the accused made known the watchword to a person not entitled to receive it, the court will be at liberty to infer the treachery, unless the accused can show that he did not act treacherously. The particulars of the charge must aver that the person was not entitled to receive the watchword.

10. *Clause* (*e*). *Knowingly.*—Evidence should, if possible, be given that the accused knew the person harboured or protected to be an enemy or a person in arms against the State; but if the fact of the harbouring or protecting is proved, the court may infer knowledge from the circumstances.

11. *Clause* (*f*). *Spreads reports.*—The particulars of the charge must detail the reports alleged to have been spread, and should indicate how they were calculated to create alarm or despondency. It is not necessary to aver or prove that the reports were false, indeed the truth may increase the offence; nor it is necessary to show that any effect was actually produced by the reports spread; it would, however, seldom be expedient to try an officer or soldier under this section for reports which could not be shown to have had some effect. The offence may be committed either with reference to the troops with whom the offender is serving, or with reference to the inhabitants of the country.

12. *Clause* (*g*).—The same offence when committed by a sentry in circumstances which do not fall under this clause is triable under clause (*d*) of section 26. A sentry's "post" means the spot where he is left to the observance of his duties by the officer or

non-commissioned officer posting him, or any limits specially pointed out as his beat. The fact that a sentry was not regularly posted is immaterial if he is charged with an offence committed while on his post. When, however, he leaves his post and commits an offence, it is always necessary to prove that he had been regularly posted.

13. *Clause* (*h*). *Post.*—When used with respect to an individual, as in this clause and clause (*g*) above, means the position or place in which it may be the duty of a person to be, especially when under arms. In determining what, in any particular case is a post, the court will use their military knowledge (s. 89). The place in which the person was posted is material and should be stated in the charge.

14. *Clause* (*i*). *Without being regularly relieved or without leave.*—These words are of the nature of an exception, and the principle laid down in s. 105 of the Indian Evidence Act (see Ch. V, para. 83) applies. Therefore, though the charge must aver the absence of regular relief or leave, this need not be proved, and the fact of the accused person having quitted his guard, etc., being established, it will be for him to show that he was regularly relieved or had leave to quit his guard; nevertheless, any evidence bearing on this point which is known to the prosecutor should be adduced.

15. *Clause* (*j*).—For definitions of criminal force and assault, see Part IV and note to s. 27.

16. *Safeguard.*—A safeguard is a party of soldiers detached for the protection of some person or persons, or of a particular village, house, or other property. A single sentry posted from such party is still part of the safeguard, and it is as criminal to force him by breaking into the house or other property under his especial care as to force the whole party. A man posted solely to control traffic is not a "safeguard" for the purposes of this provision.

17. *Clause* (*k*).—This clause is only applicable when the offence is committed on active service. The charge must set out the specific acts of violence or the specific offence alleged to have been committed. Similar offences, when not committed on active service, should be charged under s. 41, if a court-martial has jurisdiction under this section, or dealt with by the civil power. See ss. 69, 70, and R. A. I.

26. Offences not punishable with death.—Any person subject to this Act who commits any of the following offences, that is to say :—

(a) strikes, or forces or attempts to force, any sentry ; or

(b) in time of peace, intentionally occasions a false alarm in camp, garrison or cantonment ; or

(c) being a sentry, or on guard, plunders or wilfully destroys or injures any property placed under his charge or under charge of his guard ; or

(d) being a sentry, in time of peace, sleeps upon his post, or quits it without being regularly relieved or without leave ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE

1. *Clause* (*b*). *Intentionally.*—See note 5 to s. 25.

2. *Cantonment.*—See note to s. 30.

3. *Post.*—See notes 12 and 13 to s. 25. A sentry found asleep even a short distance from his post should be charged with quitting his post, he cannot properly be charged with being asleep on his post, though he may be charged under s. 39 (*i*) with being asleep when on sentry duty.

Mutiny and Insubordination

27. Offences punishable with death.—Any person subject to this Act who commits any of the following offences, that is to say :—

(a) begins, excites, causes or conspires with any other persons to cause, or joins in any mutiny ; or

(b) being present at any mutiny, does not use his utmost endeavours to suppress the same ; or

(c) knowing or having reason to believe in the existence of any mutiny, or of any intention to mutiny, or of any conspiracy against the State, does not, without delay, give information thereof to his commanding or other superior officer ; or

(d) uses or attempts to use criminal force to, or commits an assault on, his superior officer, whether on or off duty, knowing or having reason to believe him to be such ; or

(e) disobeys the lawful command of his superior officer ;

shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

NOTE

1. *Clauses* (*a*)—(*c*).—The term "mutiny" implies collective insubordination or a combination of two or more persons to resist, or to induce others to resist, lawful military authority. In framing a charge of mutiny, the specific act or acts which are alleged to have constituted the offence should be stated. In clause (*c*) it will be noticed that the person who comes to know of an existing or intended mutiny will have performed his duty under this section if he gives information without delay either to his commanding officer or to any other superior officer. Such information would naturally be given to the immediate superior of the person, who would, in his turn, be bound to transmit it to higher authority.

2. Words in the plural include the singular (Section 13 General Clauses Act, 1897). Therefore a person can be charged under clause (*a*) with conspiring with one other person to cause a mutiny.

3. *Clause* (*d*).—For definitions of "criminal force" and "assault" see Part IV. The difference between the offences mentioned in this clause will be clear from the following examples:—

(*i*) A throws a stone at B. If the stone hits B. A has used criminal force, if it misses him, A has attempted to use criminal force.

(*ii*) A, during an altercation with B, picks up a stone in a threatening manner. If A intends, or knows it to be likely, that this will cause B to believe that A is about to throw the stone at him, A commits an assault on B.

4. *Superior officer.*—See s. 7 (7). A superior officer in plain clothes may be the subject of an offence under this clause, and it will depend on all the circumstances, judged from a military standpoint whether a court-martial should, or should not, hold that the offender knew or had reason to believe him to be his superior officer when he committed the offence.

5. *Clause* (*e*). *Lawful command.*—The command must be a specific command to an individual, *i.e.*, it must be capable of individual execution by the person to whom it is addressed, and justifiedbymilitary, as well as by civil, law and usage, *e.g.*, a command addressed by a superior officer to four men to "dismiss" is for the purposes of this clause a lawful military command to each of the four men so addressed. The command must relate to military duty that is to say disobedience to it must tend to impede, delay, or prevent a military proceeding. The disobedience must have reference to the time at which the command is to be obeyed. If the command be a lawful command, and demands a prompt and immediate compliance, hesitation or unnecessary delay in obeying it may be sufficient to constitute an offence under clause (*e*) of this section. A man who on being ordered to do a certain thing at some future time, uses words expressing an intention not to obey, and is immediately confined, does not commit an offences under this section. He should be charged under s. 28 (*a*) or 39 (*i*) according to the circumstances of the case. A neglect to carry out an order, due to misapprehension, or forgetfulness, does not constitute an offence under this section though non-compliance with an order through forgetfulness or negligence would be chargeable under s. 39 (*i*).

Disobedience to an order of a general nature, as for instance to a regimental order or a paragraph in regulations, is not chargeable under this section, but under section 39, clause (*h*) or (*i*), as the case may be.

OFFENCE

A "superior officer" whose command has been restricted, either by the terms of his commission or by regulations, cannot give a "lawful command" to a person who is, by the terms of such restrictions, placed outside his control.

Religious scruples, however *bona fide*, afford no justification for disobedience of commands which are clearly lawful as defined above.

A civilian cannot give a "lawful command" under this section to a soldier employed under him; but it may well be the soldier's duty as such to do the act indicated, and, if so, he may be punished for not doing it under s. 39 (*i*). The particulars of the charge should clearly show that the disobedience was prejudicial to good order and military discipline because the soldier had been placed under the orders of the civilian by a superior military authority.

28. Offences not punishable with death.—Any person subject to this Act who commits any of the following offences, that is to say:—

(a) is grossly insubordinate or insolent to his superior officer in the execution of his office; or

(b) refuses to superintend or assist in the making of any field-work or other military work of any description ordered to be made either in quarters or in the field; or

(c) impedes a provost-marshal or an assistant provost-marshal or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of a provost-marshal, or, when called on, refuses to assist, in the execution of his duty, the provost-marshal, assistant provost-marshal, or any such officer, non-commissioned officer or other person;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE

1. *Clause (a) Superior officer.*—See section 7 (*7*). The court will use their military knowledge (s. 89) in deciding whether the superior officer was, or was not, in the execution of his office.

The charge should specify the conduct or language alleged to be insubordinate.

As to insubordinate language used by an intoxicated man as a result of being confined, see note to s. 32.

2. *Clause (c). Provost-marshal.*—See ss. 23 and 24.

The court may exercise their military knowledge as to whether a person was a provost-marshal, assistant provost-marshal; or a person legally exercising authority under or on behalf of the provost-marshal; but it will be open to the accused to show that the person he is charged with impeding was not properly appointed provost-marshal or assistant provost-marshal, or was not legally exercising the above-mentioned authority.

Desertion, Fraudulent Enrolment and Absence without Leave

29. Desertion.—Any person subject to this Act who deserts or attempts to desert the service shall on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

NOTE

1. Desertion must be distinguished from absence without leave, as to which see section 30 (*d*).

The difference lies in the *intention* of the offender; in the latter case he intends to return, in the former he ordinarily intends never to return. He may, however, be guilty of desertion even when he intends to return if, by absenting himself he intended to avoid some important military service. A man may be a deserter although he re-enrols himself, and although, in the first instance, his absence was authorised. The intention of the offender must be inferred from the surrounding facts and the circumstances of the case. See notes to s. 25 above.

2. To establish an attempt to desert, some act which, if completed, would constitute desertion must be proved, *e.g.*, a soldier is arrested in the act of leaving the lines of his unit without authority, dressed in plain clothes and carrying his personal kit, when the circumstances indicate that he intends to desert. Mere preparation to desert, in unaccompanied by any such act, does not constitute an offence under this section. If there is evidence that the offender actually absented himself from the place where his duty required him to be and that he intended to desert, a charge for desertion, not for an attempt to desert, should be framed.

3 Under s. 86 a person charged with desertion may be found guilty of attempting to desert or of being absent without leave; and a person charged with an attempt to desert may be found guilty of being absent without leave.

4. As to forfeiture of service for pension or gratuity, which follows upon desertion, and regulations as to restoration of service so forfeited, see P. & A. Regulations, Pt. I and Pension Regulations. The period between desertion and apprehensions does not, under the prescribed conditions of enrolment, reckon as service towards discharge. Service rendered *previous to desertion*, though forfeited for purposes of pension or gratuity, reckons as service towards discharge.

As to a man who absents himself from his corps or department and enrols again, see s. 30 (*c*) and notes.

See also, as to deserters, ss. 114, 123 and 126.

30. Harbouring deserter, absence without leave etc.—Any person subject to this Act who commits any of the following offences, that is to say :—

(a) knowingly harbours any deserter, or who, knowing, or having reason to believe, that any other person has deserted, or that any deserter has been harboured by any other person, does not without delay give information thereof to his own or some other superior officer, or use his utmost endeavours to cause such deserter to be apprehended ; or

(b) knowing, or having reason to believe, that a person is a deserter, procures or attempts to procure the enrolment of such person ; or

(c) without having first obtained a regular discharge from the corps or department to which he belongs, enrols himself in the same or any other corps or department ; or

(d) absents himself without leave, or without sufficient cause overstays leave granted to him ; or

(e) being on leave of absence and having received information from proper authority that any corps or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay ; or

(f) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty ; or

(g) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer quits the parade or line of march ; or

(h) in time of peace, quits his guard, picquet or patrol without being regularly relieved or without leave ; or

(i) without proper authority is found two miles or upwards from camp ; or

(j) without proper authority is absent from his cantonment or lines after tattoo, or from camp after retreat-beating ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE

Clause (a). Knowingly.—See note 10 to s. 25.

2. *Clause* (*c*).—A person who leaves one corps or department and enrols himself in another does not *prima facie* commit the offence of deserting the service, though he irregularly and improperly exchanges one branch of that service for another. If, however, at the time of leaving his first corps or department, he had no intention of re-enrolling himself, and only did so as an afterthought, or if he absented himself to avoid a particular service, *e.g.*, service abroad, his offence is desertion, though a conviction on a charge framed under this section would also be legal. In deciding under which section a charge should be framed, the time which elapsed between the two acts will be an important element for consideration. In doubtful cases the charge should be framed under s. 30 (*c*).

If the offender is charged with desertion, he should be tried in his original corps or department. If he is charged with the offence specified in this clause he may be tried either in his original corps or department, or in that into which he has fraudulently enrolled himself, and if not dismissed by the court which tries him may be held to serve in either corps or department. As a rule he should be tried in that in which it is intended to retain him.

It will be noticed that the offence under this clause can be committed by a person who belongs to a corps or department and enrols himself again in the *same* corps or department.

This provision is inserted to meet the case of the larger corps and departments (*e.g.*, the Royal Indian Army Service Corps) where a man might otherwise leave one portion of the corps or department and enrol himself in another with impunity.

3. As to forfeiture of service towards pension or gratuity on conviction for this offence, see P. and A. Regulations, Part I, and Pension Regulations, where the conditions under which service so forfeited may be restored are also laid down.

4. *Clause* (*d*).—A person tried for desertion or attempted desertion may, under s. 86, be found guilty of absence without leave; but, if only charged with absence without leave, he cannot be convicted of desertion or attempted desertion.

5. When a person has been absent without leave for 60 clear days a court of inquiry will be assembled (s. 126).

6. If it is proved that a person subject to military law has overstayed his leave, it will be for him to show that he had sufficient cause (*e.g.*, sickness or the unexpected interruption of the ordinary means of transit) for doing so. If, however, any evidence as to the cause of his failure to return is known to the prosecutor, it should be adduced, leaving it to the court to decide as to the sufficiency of such cause.

7. As soon as an absentee is taken into custody (either civil custody or arrest), whether on surrender or apprehension, his absence ceases to be voluntary. If, however, he is merely ordered to rejoin his unit at once, his absence without leave continues until he so rejoins.

8. *Clauses* (*e*), (*f*), (*g*).—*Sufficient cause.*—See note 6 above.

9. *Clause* (*f*).—A man who is late for parade commits an offence under this clause, equally with one who is altogether absent.

10. *Clause* (*h*).—See note 14 to s. 25.

11. *Clauses* (*i*), (*j*).—These words are in the nature of an exception, and on it being proved that the accused was found beyond fixed limits or absent after fixed hours, it will rest on him to show that he had the proper authority. See note 14 to s. 25.

12. *"Cantonment"* here and elsewhere in the Indian Army Act is not restricted to those stations which have been declared to be "cantonments" for the purposes of the Cantonments Act, 1924 (II of 1924). Troops are considered to be in a cantonment for the purposes of this Act when they are quartered in any station or locality as a permanent, or semi-permanent, arrangement.

13. *"Camp"* includes a bivouac, and any quarters, shelter, or other place where troops are temporarily lodged.

Disgraceful Couduct

31. Disgraceful conduct.—Any person subject to this Act who commits any of the following offences, that is to say :—

(a) dishonestly misappropriates or converts to his own use any money, provisions, forage, arms, clothing ammunition, tools, instruments, equipments or military stores of any kind, the property of the Government, entrusted to him ; or

(d) dishonestly receives or retains any property in respect of which an offence under clause (a) has been committed, knowing or having reason to believe the same to have been dishonestly misappropriated or converted; or

(c) wilfully destroys or injures any property of the Government entrusted to him; or

(d) commits theft in respect of any property of the Government, or of any military mess, band or institution, or of any person subject to military law or serving with, or attached to, the army; or

(e) dishonestly receives or retains any such property as is specified in clause (d) knowing or having reason to believe it to be stolen; or

(f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person; or

(g) malingers or feigns or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or

(h) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person; or

(i) commits any offence of a cruel, indecent or unnatural kind, or attempts to commit any such offence and does any act towards its commission;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE

1. As to the submission of cases under this section to the Deputy or Assistant Judge Advocate General before the trial is ordered, see R. A. I.

2. *Clauses (a)—(e).*—If the property belongs to some person or institution not included in the categories contained in these paragraphs, the accused can only be charged under s. 31 (*f*) or s. 41 or dealt with by the civil power.

Clause (*a*) only applies to the property of the Government. The dishonest misappropriation or conversion, as distinguished from theft, of the property of a military mess, band or institution, or of a person subject to military law must, therefore, be dealt with as a civil offence or under s. 31 (*f*).

3. For definitions of the terms used in these clauses, see Part IV.

4. As to special findings admissible, on charges under this section, see s. 86.

5. *Clause (a).*—If no evidence is forthcoming as to the particular mode of misappropriation, the court may, in the absence of explanation from the accused, infer that the property was misappropriated from the fact of its not having been properly utilised or accounted for.

Each instance of misappropriation should be in a separate charge.

A mere error or irregularity in accounts, or a mistaken misapplication of money or goods does not constitute an offence under this section. There must be an intent to defraud on the part of the accused, either for the benefit of himself or some other person: and this must be particularly recollected in the case, for example, of a non-commissioned officer's accounts getting into confusion through the neglect or carelessness of superiors.

The value of the property alleged to have been misappropriated should be entered in the particulars of the charge and proved in evidence so that the court, if it convicts the accused, may add an award of stoppages to its sentence.

6. *Clause (d).*—Theft from a person subject to the (British) Army Act falls under this clause.

If the stolen property has been recovered, it should be produced in court and identified by its owner and by any other witnesses who mention it in their evidence. If it has not been recovered its value or approximate value should be entered in the particulars of the charge and proved in evidence so that the court, if it convicts the accused, may add an award of stoppages to its sentence.

7. *Clause (f). Intent to defraud.*—These words imply (1) deceit or an intention to deceive or in some cases mere secrecy, and (2) either actual or possible injury or an intent to expose some person either to actual injury or to a risk of possible injury by means of that deceit or secrecy. This intent is very seldom the only or the principal intention entertained by the fraudulent person, whose principal object is in nearly every case his own advantage. The "injurious deception" is usually intended only as a means to an end, though this does not prevent its being intentional. Both the first and second ingredients mentioned above must be present to constitute an "intent to defraud."

Wrongful loss or wrongful gain.—See s. 23 of the Indian Penal Code in Part IV.

8. *Clause (g).*—The particulars of the charge should show in what way the accused has malingered or delayed his cure, or what disease or infirmity he has feigned, produced or aggravated.

9. *To produce* disease is wilfully to cause genuine disease to develop, *e.g.*, by the infection of microbes or poisonous drugs. The involuntary production, aggravation, or prolongation of *delirium tremens* by intemperate habits, or of venereal disease by immoral conduct, does not render a person liable under this clause. Nor would a person incur liability under it who refuses to undergo a surgical operation.

As to concealment of venereal disease, see note to s. 39 (*h*).

A person cannot be punished for disobedience of an order to be vaccinated, or for refusing to be inoculated or to allow an anaesthetic to be administered.

10. To *malinger* is to pretend illness or infirmity which does not exist, in order to escape duty.

11. To *feign* disease or infirmity means that the accused person exhibits appearances resembling the genuine symptoms of disease or infirmity which, to his knowledge, are not due to such disease or infirmity, but have been produced artificially for purposes of deceit; *e.g.*, simulating fits or mental disease.

12. *Clause (h).*—In a case under this clause and clause (*g*) where "intent" must be proved, it would be sufficient to raise a presumption of intent if the act were shown to have been done wilfully and not accidentally.

For the definition of the term "voluntarily causes hurt" see ss. 319 and 321 of the Indian Penal Code in Part IV.

Offences of this nature, even when committed in the presence of an enemy, should be charged under this clause and not under clause (*b*) of s. 25

13. *Clause (i).—Does any act towards its commission.*—See note to s. 39A.

Intoxication

32. Intoxication.—Any person subject to this Act who is in a state of intoxication, whether on duty or not on duty, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE

1. Intoxication may be induced by opium or any similar drug, as well as by liquor. This section creates only one single offence, *viz.*, intoxication, and in all cases, whether the act was committed on duty or not on duty, the charge should be "intoxication." If the offence was committed on duty, or after the accused had been warned for duty, the fact that the offence was so committed and the nature of the duty should be specified in the particulars of the charge as the character of the offence, from a military point of view, and therefore its proper punishment is materially affected by the circumstance.

2. Nothing can justify a person subject to military law who uses or attempts to use criminal force to his superior, and great care must therefore be taken to avoid bringing intoxicated persons into contact with their superiors.

Mere abusive and violent language used by an intoxicated man, as the result of being taken into custody, should not be used as the ground for framing a charge under s. 28 (*a*). If a court-martial is considered necessary, the charge should be framed for intoxication, the language being treated as in the nature of riotous conduct only, and to that extent aggravating the offence.

Offences in relation to Persons in Custody

33. Offences punishable with death.—Any person subject to this Act who, without proper authority, releases any State prisoner, enemy or person taken in arms against the State, placed under his charge, or who negligently suffers any such prisoner, enemy or person to escape, shall, on conviction by court-material, be punished with death, or with such less punishment as is in this Act mentioned.

NOTE

1. *Without proper authority.*—See note 11 to s. 30. The court will use their military knowledge (s. 89) with respect to whether any authority alleged by accused to exist was or was not sufficient.

2. *Negligently.*—Negligence has been defined by high judicial authorities* as "the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do," and as "doing some act which a person of ordinary care and skill would not do under the circumstances".

3. As to other prisoners and persons in custody, see s. 34 (*b*).

34. Offences not punishable with death.—Any person subject to this Act who commits any of the following offences, that is to say:—

(a) being in command of a guard, picquet or patrol, refuses to receive any prisoner or person duly committed to his charge; or

(b) without proper authority releases any prisoner or person placed under his charge, or negligently suffers any such prisoner or person to escape; or

(c) being in military custody, leaves such custody before he is set at liberty by proper authority;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE

1. *Clause* (*b*).—See notes to s. 33.

2. *Clause* (*c*).—*Military custody.*—See s. 7 (*14*).

Offences in relation to Property

35. Offences in relation to property.—Any person subject to this Act who commits any of the following offences, that is to say:—

(a) commits extortion, or without proper authority exacts from any person carriage, porterage or provisions; or

(b) in time of peace, commits house-breaking for the purpose of plundering, or plunders, destroys or damages any field, garden or other property; or

(c) designedly or through neglect kills, injures, makes away with, ill-treats or loses his horse or any animal used in the public service; or

(d) makes away with, or is concerned in making away with, his arms, ammunition, equipments, instruments, tools, clothing or regimental necessaries; or

(e) losses by neglect anything mentioned in clause (d); or

(f) wilfully injures anything mentioned in clause (d) or any property belonging to the Government, or to any military mess, band or institution, or to any person subject to military law, or serving with, or attached to, the army; or

*Per Baron Alderson *Blyth* v. *Birmingham Waterworks* (1856). The second quotation is from the report of *Bridges* v. *North London Railway* (1874), L. R., 7 H. L., p. 198.

(g) sells, pawns, destroys or defaces any medal or decoration granted to him; shall, on conviction by court-martial, be punished with imprisonment, or with such less punishmnet as is in this Act mentioned.

NOTE

1. *Clause (a).—Extortion.*—See Indian Penal Code, s. 383, in Part IV.

Without proper authority.—See note 1 to s. 33.

2. *Clause (b).—House-breaking.*—See Indian Penal Code, s. 445, in Part IV.

Other property.—This must be *ejusdem generis, i.e.,* of the same kind, as a field or garden. As to plundering in time of war, see s. 25 (*j*).

3. *Clause (d).—Making away with.* Unless there is some positive act, such as pawning, selling or destruction, a charge for making away with should not be preferred, but a charge of losing should be preferred under clause (*e*).

4. *Clauses (d) and (e).—His.*—This word is to be noted. The articles in respect of which a charge under either of these clauses is laid must be part of the accused's own kit that he is bound to maintain or of his general military equipment whether supplied by Government or by an officially recognised fund (such as a band fund in a unit that maintains a band under the authority of army regulations), or must be articles, the property of the Government, in his charge and supplied to him for his personal use or issued to him personally for his use with the animal or vehicle in his charge.

5. A charge under clause (*d*) or (*e*), of making away with, or losing, etc., property not mentioned in those clauses, *e.g.,* mess property, would be bad, though if the act amounted to stealing or dishonest misapplication it would be punishable under s. 31 or s. 41, or if there was proof of any wilful act or neglect, the person might, in some circumstances, be charged with an offence under s. 39 (*i*).

6. *Clause (e).*—This is not intended to punish a man for a deficiency in his kit occasioned by accident or mere carelessness rather than by culpable neglect. On the other hand, the fact that a man has not got his arms, regimental necessaries, *etc.,* at a time when it was his duty to have them, is *prima facie* evidence of his having lost them by neglect, and the court may call on him to show that the loss was not occasioned by any fault on his part. Where a court of inquiry (as laid down in s. 126) has been held and has found a man to be deficient in certain articles, then upon his trial under clause (*c*) a certified copy of the record in the regimental books, on I. A. F. D.-918, showing that such articles were deficient is *prima facie evidence* that they were deficient and of their value if stated [s. 91A (*3*) (*4*)]. If no evidence except I. A. F. D. 918 is obtainable, the prosecution are justified in proceeding on that alone, and if no evidence is given on the part of the accused to disprove the facts stated therein, the court may convict. Where, however, the accused gives or produces evidence in contradiction of the declaration of the court of inquiry with regard to any of the articles in question, it will become necessary for the prosecution to produce other evidence in support of their case in so far as such articles are concerned—for which purpose the court might, if necessary, grant an adjournment under Rule 70. If for any reasonable cause, such as lapse of time since the deficiency arose, no witnesses are availabl to rebut the evidence produced by the accused, the court must use their discretion as to their finding in respect of the articles in question. In all cases whr I. A. F. D.-918 is not produced at the trial, evidence must be produced to show that at some previous specified date the accused has been in possession of the articles alleged to be deficient. In cases of desertion or absence without leave the form will usually show as missing some articles which the man in fact brings back with him. The court must not, of course, convict him in respect of articles so returned.

7. *Clause (f).*—In charges under this clause the prosecutor must adduce evidence which will either prove, or enable the court to infer, that the injury was not accidental. If the injury appears to be the result of neglect, it will be for the court to determine whether the neglect was wilful and *intended* to injure the arms, etc., or was mere carelessness. In the latter case no offence under this clause will have been committed.

8. As to stoppages and evidence of value, see note to s. 50 (*2*), Rule 20 (F) and note. Note as to the use of forms of charges, paras. (19), (20) on p. 349 and para. 2 (*g*) of memoranda on p. 403.

Offences in relation to False Documents and Statements

36. False accusations and offences in relation to documents.—Any person subject to this Act who commits any of the following offences, that is to say :—

(a) makes a false accusation against any person subject to military law, knowing such accusation to be false; or

(b) in making any complaint under section 117 or section 117A, knowingly makes any false statement affecting the character of any person subject to military law, or knowingly and wilfully suppresses any material fact; or

(c) obtains or attempts to obtain for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement; or

(d) knowingly furnishes a false return or report of the number or state of any men under his command or charge, or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge whether belonging to such men or to the Government or to any person in or attached to the army, or who, through design or culpable neglect, omits or refuses to make or send any return or report of the matters aforesaid;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE

Clause (*a*).—A mere false statement not involving an accusation (*e.g.*, a letter to a friend containing insinuations against a non-commissioned officer) is not within this clause.

37. False answers on enrolment.—Any person having become subject to this Act who is discovered to have made a wilfully false answer to any question set forth in the prescribed form of enrolement which has been put to him by the enrolling officer before whom he appears, for the purpose of being enrolled, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE

1. The original enrolment paper must be produced at the trial. See s. 91 and note.

2. If false answers are given to two or more questions in the enrolment paper, each false answer should be included in a separate charge.

Offences in relation to Courts-martial

38. Offences in relation to courts-martial.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) when duly summoned to attend as a witness before a court-martial, intentionally omits to attend, or refuses to be sworn or affirmed or to answer any question, or to produce or deliver up any book, document or other thing which he may have been duly warned and called upon to produce or deliver up; or

(b) intentionally offers any insult or causes any interruption or disturbance to, or uses any menacing or disrespectful word, sign or gesture, or is insubordinate or violent in the presence of, a court-material while sitting; or

(c) having been duly sworn or affirmed before any court-material or other military court competent to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE

1. There is, in this Act, no restriction, similar to that in the (British) Army Act, debarring a court-martial from trying any of the offences specified in this section when committed in respect of itself. In all cases reported by courts-martial under Rule 136, and in many other cases the members are, however, *individually* disqualified, under Rule 29, from sitting at the second trial, so that the result is practically the same. A commanding officer cannot, except with the sanction of superior authority, or in a grave emergency, try by summary court-martial an offence under this section committed against his own authority when sitting at another trial. See s. 74, proviso (*b*). If a person subject to the Indian Army Act is tried for any of the offences specified in clauses (*a*) and (*b*) of this section when committed in respect of a court-martial under the (British) Army Act the charge should be framed under s. 39 (*i*) as such a court is not a "court-martial" for the purposes of this Act. See s. 7 (*16*). The terms of clause (*c*) are, however, wide enough to cover the giving of false evidence before an Army Act court or before a court of inquiry sitting under either Act if such court has been empowered to administer an oath or affirmation. Statements at a summary of evidence cannot be given on oath. If, therefore, false evidence is given at a summary of evidence or not on oath or affirmation at a court of inquiry the charge should be framed under s. 39 (*i*).

2. See Rule 136 and notes, for manner of dealing with similar offences when committed by civilians or by persons subject to the Army Act.

3. A court-martial begins to sit from the time the members take their seats for the purposes of trial, even before they are sworn, and anything which would be a contempt after the court was sworn would be a contempt once the members have so taken their seats.

4. *Clause* (*c*).—The proceedings of the court-martial or court of inquiry before which the false evidence is alleged to have been given are not admissible as evidence that the accused gave the evidence as charged. The member of the court who recorded the proceedings, or some other person who heard the evidence given, must prove by oral evidence this fact and that the accused was duly sworn or affirmed. He may refer to the proceedings to refresh his memory. The proceedings of the Court are admissible to prove that the occasion on which the alleged false statement was given was a properly constituted court-martial or court of inquiry.

Miscellaneous Military Offences

39. Miscellaneous military offences.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) being an officer or warrant officer, behaves in a manner unbecoming his position and character; or

(b) strikes or otherwise ill-treats any person subject to this Act being his subordinate in rank or position; or

(c) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise malterated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority; or

(d) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person; or

(e) attempts to commit suicide and does any act towards the commission of such offence; or

(f) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bazar, carrying a sword, bludgeon or other offensive weapon ; or

(g) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service; or

(h) neglects to obey any general or garrison or other orders; or

(i) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE

1. *Clause* (*a*).—The unbecoming conduct may be of a military or social character.

As a rule a charge should not be preferred under this clause where the act or omission amounts to any one of the specific offences dealt with in ss. 25 to 38, 39 (*b*)—(*h*), 39A, and 40. The conduct is not brought within the scope of this clause by merely applying to it the statutory language; and a court is not warranted in convicting unless of the opinion that the conduct proved was unbecoming to the position and character of the officer or warrant officer charged, having regard to its nature and to the circumstances in which it took place.

2. This clause is not applicable to civilians with relative rank and subject to the Act under s. 2 (*1*) (*c*).

3. *Clause* (*d*).—*Intentionally.*—A person is presumed to intend the natural consequence of his acts and the court may infer intention from the circumstances. See note 5 to s. 25.

4. *Clause* (*e*).—A man should not be charged with attempted suicide unless the circumstances of the case make it clear that he seriously intended to take his life.

A medical officer should invariably attend the taking of the summary of evidence, and give oral evidence, which should include his opinion as to the state of mind of the accused at the time of the commission of the alleged offence.

5. *Clause* (*g*).—*Gratification.*—This term is not restricted to a pecuniary gratification or a gratification estimable in money. The offence is complete if the gratification is given with the intention indicated, and it is not necessary that the enrolment or other object should be actually procured. An attempt to obtain a gratification (*e.g.*, by asking for it) is punishable equally with the actual receipt of one. An attempt to give a gratification (*e.g.*, an offer of a bribe) is an abetment of the offence by way of instigation and is punishable under s. 40.

6. *Clause* (*h*).—The orders specified in this section are standing orders or orders having a continous operation, whether garrison or regimental, or of a like nature. Disobedience of a specific order in the nature of a command should be dealt with under s. 27(*e*), and non-compliance, through forgetfulness or negligence, with an order to do some specific act at a future time under clause (*i*) of this section. Ignorance of the order is no excuse, if the order is one which the accused ought in the ordinary course to know. But a misapprehension reasonably arising from want of clearness in the order is a ground for exculpation. The existence of the orders and the fact of the neglect must be proved. The order contravened, or a certified copy where such copy is admissible [see s. 91A. (*4*)]. must be produced on oath to the court and the court will make a record in the proceedings of its having been so produced. A written order cannot be proved by oral testimony. Evidence must also be given to show that the order was duly posted or brought to the notice of the accused, or that he was otherwise in a position to be acquainted with its contents. Disobedience of a regulation contained in King's Regulations or R. A. I., may be punished under clause (*i*) of this section, but if the regulation

is published as a regimental order, it acquires also the character of a regimental order, and disobedience to it may be punished under this clause.

Concealment of venereal disease is to be dealt with under this clause. See R. A. I.

7. *Clause (i).*—As a rule a charge should not be preferred under this clause where special provision for the offence is made elsewhere in the Act. In a proper case, however, an alternative charge may be added under this clause.

A charge under this clause must recite its actual words, *i.e.*, there must be charged an "act" or "omission" "prejudicial to good order and military discipline". But, of course, an act or omission is not brought within the scope of the section by merely applying to it the statutory language: and a court is not warranted in convicting unless of the opinion that the act, etc., proved was prejudicial *both* to good order *and* to military discipline, having regard to its nature and to the circumstances in which it took place.

8. "An omission" to be punishable under this clause must amount to neglect which is wilful or culpable. If wilful, *i.e.*, deliberate it is clearly blameworthy. If it is not wilful, it may or may not be blameworthy, and the court must consider the whole circumstances of the case and, in particular, the responsibility of the accused. A high degree of care can rightly be demanded of an officer or soldier who is in charge of a motor vehicle or public money or property, or who is handling firearms or explosives, where a slight degree of negligence may involve loss or danger to life; in such circumstances a small degree of negligence may be blameworthy. On the other hand, neglect which results from mere forgetfulness, error of judgment or inadvertence, in relation to a matter which does not rightly demand a very high degree of care, would not be judged blameworthy so as to justify conviction and punishment. The essential thing for the court to consider is whether in the whole circumstances of the case as they existed at the time of the offence the degree of neglect proved is such as, having regard to their military knowledge of the amount of care which ought to have been exercised, renders the neglect substantially blameworthy and deserving of punishment. See also note 2 to s. 33

9. The following are a few instances of offences not uncommonly charged under this clause:—

Negligent performance of duties connected with money or stores resulting in a deficiency and loss.

Being in improper possession of public property or of property belonging to a comrade (where there is no evidence of actual theft).

Improperly using Government car and petrol for private purposes.

Borrowing money from men under his command, gambling, and other cases of disobedience of regulations, which are not published as regimental orders (see note 6 above).

Negligently wounding or injuring self or others.

Improperly using or obtaining railway warrants.

Sending an anonymous letter to his commanding officer.

Neglect of duty when a sentry, on guard, etc.

Causing a disturbance in the lines.

Stating a falsehood to a superior officer.

Using criminal force to a comrade.

The Act recognises no such offence as "making a frivolous complaint"; but the repetition of baseless complaints may amount to an offence under this section: so too may a complaint so framed as to be offensive or indicative of insubordination, etc.

Attempts

39A. Attempts.—Whoever attempts to commit an offence punishable by this Act or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence may, where no express provision is made by this Act for the punishment of such attempt, be punished with the punishment provided in this Act for such offence.

NOTE

1. Attempts to commit the offences specified in the foregoing ss. 25 to 39 are, except where such attempts are specifically provided for (*e.g.*, an attempt to desert), triable under this section. Attempts to commit civil offences are not triable under this section, but are triable under s. 41.

2. *Acts towards the commission of the offence.*—There is a difference between the preparation antecedent to an offence and the actual attempt. To constitute an attempt to commit an offence there must be an intent to commit the offence, a commencement of the commission and an act done towards the commission.

Abetment

40. Abetment.—Every person subject to this Act who abets any offence punishable under this Act may be punished with the punishment provided in this Act for such offence.

NOTE

For definition of "abetment" see Indian Penal Code, s. 107, in Part IV.

A person subject to the Indian Army Act who abets a person subject to the Army Act (British) in doing a thing which would have been an offence under the former Act, had the person doing it been subject thereto, is not punishable under this section. Such cases will, however, generally fall within the terms of s. 39 (*i*).

Civil Offences

41. Civil offences committed within or outside India.—(1) Every person subject to this Act who whether within or outside India commits any civil offence shall be deemed to be guilty of an offence against military law, and, if charged therewith under this section, shall, subject to the provisions of this Act, be liable to be tried for the same by court-martial, and on conviction to be punished as follows, that is to say :—

(a) if the offence is one which would be punishable under the law of the States with death or with transportation, he shall be liable to suffer any punishment other than whipping assigned for the offence by the law of the States; and

(b) in other cases he shall be liable to suffer any punishment other than whipping assigned for the offence by the law of the States, or such punishment as might be awarded to him in pursuance of this Act in respect of an act prejudicial to good order and military discipline :

Provided that a person subject to this Act who at any place within the States and while not on active service, commits the offence of murder or culpable homicide not amounting to murder in relation to a person not subject to military law or the offence of rape, shall not be deemed to be guilty of an offence against military law and shall not be tried by a court-martial.

Explanation.—In this sub-section, the term "States" does not include Part B States.

(2) The powers of a court-martial to try and to punish any person under this section shall not be affected by reason of the fact that the civil offence with which such person is charged is also a military offence.

NOTE

1. See Ch. VI generally and the Indian Penal Code in Part IV as to civil offences; and as to the exercise of jurisdiction under this section, see ss. 69, 70 and R. A. I.

Subject to the restrictions in the proviso this section gives to a court-martial jurisdiction to try any person who, whilst subject to the Act, commits a civil offence, whether he commits such offence in British India or elsewhere.

The effect of the proviso to sub-section (1) is that when not on active service, the offences of murder and culpable homicide not amounting to murder against a civilian and the offence of rape cannot be tried by court-martial unless such offences have been committed (*a*) in a place beyond British India in which the Central Government or the Crown Representative does not exercise jurisdiction by virtue of the Government of India

Act, 1935 or of any order in Council under the Foreign Jurisdiction Act, 1890 or, (*b*) in a frontier post specified by the Central Government by notification under section 41 of the Indian Army Act.

As to reference to the Deputy or Assistant Judge Advocate General of the Command before trial, see R. A. I.; and as to reference to superior authority before trial by summary court-martial, see s. 74.

2. See specimen charge-sheets Nos. 92-99 pp. 372-373. See also s. 84 (*4*) and notes, providing that an accused person when tried by court-martial for a civil offence may be found guilty of certain other offences.

3. For definition of *active service*, see s. 7 (*13*).

4. For offences falling under clause (*a*) of sub-sec. (*1*), except only those offences for which an obligatory punishment is provided under the law of British India (*e.g.*, death or transportation for life for murder), a court-martial is, save as provided in sections 45 and 47 of the Act, restricted to punishments awardable under the ordinary law of British India, that is, it may award—

(*i*) the punishment other than whipping assigned to the offence by the ordinary law of British India; or

(*ii*) if the offender is under the rank of warrant officer and the offence was committed on active service, field punishment up to three months;

and may, either in lieu of, or in addition to, either of the above, award one or more of the punishments specified in section 47 of the Act.

For offences falling under clause (*b*) courts-martial may award—

(*i*) the punishment other than whipping assigned to the offence by the ordinary law of British India; or

(*ii*) imprisonment or such less punishment as is in this Act mentioned [section 39 (*i*)]; or

(*iii*) if the offender is under the rank of warrant officer and the offence was committed on active service, field punishment up to three months;

and may, either in lieu of, or in addition to, any of the above, award one or more of the punishments specified in section 47 of the Act.

Fines are awardable (as penalties authorised by the ordinary law) under both clauses of this sub-section.

5. 'British India' shall mean, as respects the period before the commencement of Part III of the Government of India Act, 1935, all territories and places within His Majesty's dominions which were for the time being governed by His Majesty through the Governor-General of India or through any Governor or officer subordinate to the Governor-General of India, and as respects any period after that date means all territories for the time being comprised within the Governors' Provinces and the Chief Commissioners' Provinces, except that a reference to British India in an Indian law passed or made before the commencement of Part III of the Government of India Act, 1935, shall not include a reference to Berar. (*General Clauses Act, 1897, section 3*).

The following Table, which is not exhaustive, will be a useful guide in determining whether any place is within or beyond British India. It is based on a series of decisions given in particular cases:—

Places in British India	Places out of British India
	Tochi*
Kohima	Mhow.
Haka.	Neemuch.
Nasirabad.	Baroda Cantt.
Ahmedabad. (Rajputana)	Sutna.
Satara.	Secunderabad.
Thal Chotiali.	Bangalore.
Hazara.*	Bori.
	Kurram.*

*Along the North-West Frontier Province the boundary of British India is the line known as the Administrative Border, which corresponds to the district boundaries shown

on the maps. Beyond this line and up to the Durand line the terrain is in India but not in British India. The following places, close to the administrative border, are situated as shown:—

Places in British India	Places out of British India
Bahadur khol (Kohat District).	
Bannu.	Ahmedwal.
Bostan.	Ali Masjid.
Chaman.	Alizai (Kurram).
Chaert.	Arawali (Kurram).
Dera Ismail Khan.	Asghara.
Draban.	Babar.
Fort Lockhart.	Chakdara.
Gulistan.	Chappri (Kurram).
Hangu.	Chitral.
Harnai.	Dalbandin.
Kalabagh.	Damdil.
Khirgi.	Dargai.
Kohat.	Domandi.
Lakki Marwat.	Drosh
Manzai (Dera Ismail Khan District.)	Fort Sandeman.
Mardan.	Ghurlamma (Waziristan)
Mari Indus.	Hindubag.
Nowshera.	Idak.
Peshawar.	Jamrud.
Pishin.	Jandola.
Risalpur.	Kapip.
Sangar.	Kila Saifulla.
Shelabagh.	Lakaband.
Tank.	Landi Khana.
Thal.	Landi Kotal.
Tor Khan.	Loralai.
	Malakand.
	Manikhwa.
	Mara Tangi.
	Mastung.
	Mir Ali Khel.
	Miranshah.
	Moghul Kot.
	Murgha.
	Nushki.
	Parachinar.
	Quetta.
	Razani.
	Razmak.
	Saidgi.
	Sarwekai.
	Shagai.
	Shewa.

Places in British India	Places out of British India
	Shinghar
	Sinjawi.
	Tal-in-Tochi.
	Zara.
	Zarozai.
British Baluchistan†	Administered areas of the Baluchistan Agency. †
	Bolarum.
	Aurangabad.
	Sikkim.
	Kashmir.
	Sehore.

†British Baluchistan is in British India, but leased territories such as Quetta, Nushki and Nasirabad (Baluchistan) and the remainder of Baluchistan are in India only, not in British India.

42. (Section 42 repealed.)

CHAPTER VI

PUNISHMENTS

43. Punishments may be inflicted in respect of offences committed by persons subject to this Act, and convicted by court-martial, according to the following scale, that is to say,—

(*a*) death;

(*b*) transporation for life or for any period not less than seven years;

(*c*) imprisonment either rigorous or simple for any term not exceeding fourteen years;

(*cc*) in the case of Indian commissioned officers, cashiering;

(*d*) dismissal from the service;

(*e*) [Clause (e) repealed].

(*f*) reduction, in the case of a warrant officer, to a lower grade or class or place in the list of his rank, or to the ranks; or in the case of a non-commissioned officer, to a lower grade or a lower rank or to the ranks:

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy;

(*g*) in the case of officers, warrant officers and non-commissioned officers, forfeiture in the prescribed manner of seniority of rank and service for the purpose of promotion;

(*gg*) in the case of officers, warrant officers and non-commissioned officers, reprimand or severe reprimand;

(*h*) forfeiture and stoppages as follows, namely:—

(*i*) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;

(*ii*) [Sub-clause (*ii*) repealed];

(*iii*) forfeiture, in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal;

(*iv*) stoppages of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good;

(*v*) on active service forfeiture of pay and allowances for a period not exceeding three months.

NOTE

1. See generally R. A. I. as to the principles to be observed by a summary court-martial in awarding sentence.

As to dismissal other than by sentence of court-martial, see ss. 13, 14, and as to summary reduction and minor punishments, see ss. 19, 20, 22, and R. A. I.

As to disposal of property produced before a court-martial or regarding which an offence has been committed, see ss. 126A and 126B.

2. As to jurisdiction and powers of general, summary general, district and summary courts-martial, see ss. 72 to 76.

3. *Clause* (*a*).—See s. 104. In awarding a sentence of death the court must add a direction that the accused shall suffer death by being hanged, or by being shot.

4. *Clauses* (*b*), (*c*).—As to execution of sentences of transportation and imprisonment, see ss. 107, 108, 108-A, and notes. Advantage should be taken of the proviso to s 107 to award short sentences of imprisonment, not exceeding three months, to be undergone in military custody to persons whom it is desired to retain in the service.

Sentences of imprisonment, unless for one or more years exactly, should, if for one month or upwards, be recorded in months. Sentences consisting partly of months and partly of days should be recorded in months and days.

As to the date from which a sentence of imprisonment is to be reckoned, see s. 106.

Imprisonment is either (1) rigorous, that is, with hard labour; or (2) simple. These terms "rigorous" and "simple" should invariably be used in sentences passed under this Act and not the terms used in the (British) Army Act, *viz.*, "with" or "without" hard labour. If a court inadvertently passes a sentence of "imprisonment" without specifying whether it is rigorous or simple, the sentence is treated as one of "simple imprisonment". Sentences of simple imprisonment are inexpedient and inconvenient of execution.

For the addition of solitary confinement to sentences of rigorous imprisonment, see ss. 48 and 110.

5. *Clauses* (*cc*), (*d*).—*Cashiering* is the more ignominious form of *dismissal.* When an Indian commissioned officer is sentenced to transportation or imprisonment, he must also be sentenced to be cashiered (s. 47A).

For the date on which sentences of cashiering and dismissal take effect, see Rule 154 and s. 9 of the Indian Army (Suspension of Sentences) Act.

6. *Clause* (*f*).—Although under s. 49 a substantive warrant officer or N. C. O. sentenced to transportation, imprisonment, dismissal, or field punishment is *ipso facto,* reduced to the ranks, it is desirable to specify the reduction in the sentence.

Service in the lower grade will reckon from the date of signing the original sentence, whether the punishment in question was a revised sentence, or a mitigation by the confirming officer of a more severe sentence.

Although the definition of "non-commissioned officer" includes an acting non-commissioned officer, a court-martial does not deal with acting or lance rank; a sentence reducing a naik (acting havildar) to naik or to lance-naik, or a lance-naik to the ranks, is inoperative. See R. A. I. defining ranks and appointments.

In this sub-section, the term "grade" means "rank".

7. *Clause* (*g*).—*Prescribed manner.*—See form of sentence, Third Appx. pp. 389-390. A sentence of forfeiture of seniority of rank may be combined with a sentence of forfeiture of service for the purpose of promotion.

Forfeiture of service for the purpose of promotion.—This applies only in the case of an officer, warrant officer, and N. C. O. whose promotion depends upon length of service, and a sentence can be awarded in respect of all or any part of his service. The forfeiture does not affect the seniority of the officer, etc., in the rank he holds at the time sentence is passed. A sentence of forfeiture of seniority of rank is not appropriate in the case of officers whose promotion depends upon length of service. Where it is desired to award punishment with the object of retarding any such officer's advancement in rank, the sentence should ordinarily take the form of forfeiture of service for the purposes of promotion. This would not, however, preclude a court-martial from awarding the punishment of forfeiture of seniority of rank in the form of sentencing an officer to take precedence in the rank held by him in his corps as if his name had appeared a specified number of places lower in the list of his corps, in cases where the forfeiture of even one day's service for the purposes of promotion might in its effect constitute too severe a punishment for the offence which nevertheless would not be adequately met by a severe reprimand.

Forfeiture of seniority of rank.—The effect of a sentence of forfeifuture of seniority of rank is that the seniority of the person in his rank is alone affected, not the period of his service in the rank. Thus, if a havildar who was promoted to that rank on the 19th April 1927, were sentenced by court-martial to take rank and precedence as if his appointment to that rank bore date the 21st June 1929, he would, on the latter date while having only one day's service to count for seniority, still count continuous service for all other purposes in the rank of havildar from the 19th April 1927.

8. *Clause* (*gg*).—*Severe reprimand or reprimand.*—Although acting or lance rank is not cognisable in the sentence of a court-martial, a soldier holding any such appointment, being a N. C. O., may nevertheless be sentenced by a court-martial to be severely reprimanded or reprimanded.

9. *Clause* (*h*), (*iii*), (*iv*).—S. 50 sets out the cases in which penal deductions may be made from the pay and allowances of a person subject to the Act.

An award to compensate for loss or damage is termed "stoppages". Forfeiture of pay and allowances, etc., awardable under (*iii*) when an offender is dismissed, is a substantive punishment and does not compensate the party injured by his offence. If in such a case, a court wishes to award compensation to the injured by his offence. If, in cause the offender to lose all arrears of pay and allowances, etc., they should sentence him to stoppages under (*iv*) and to forfeiture of all arrears of pay and allowances, etc., under (*iii*). The stoppages will first be satisfied from any pay and allowances or other public money due to him, and the remainder (if any) will be forfeited to the State under the sentence.

A court-martial acting under (*iv*) will simply sentence the offender to stoppages to a certain extent. The officer enforcing the sentence will be guided by the proviso to section 50 and by section 51, *i.e.*, he will (unless the offender is sentenced to dismissal) stop half his pay and allowances and the whole of any prize money, gratuity, or similar sum (not pay and allowances) due to him, until the compensation awarded in the sentence is complete. No portion of the pay and allowances of a person sentenced to dismissal is protected, and the whole of such a person's pay and allowances can, if necessary, be withheld.

10. *Clause* (*h*), (*v*).—The forfeiture commences from the date of award and applies to all pay and allowances. Any other stoppages of pay and allowances which the offender may be under are suspended during the period of the forfeiture.

11. S. 47 specifies the particular instances in which more than one punishment may be awarded.

44. Lower punishments.—Where in respect of any offence under this Act there is specified a particular punishment or such less punishment as is in this Act mentioned, there may be awarded in respect of that offence instead of such particular punishment (but subject to the other provisions of this Act as to punishments and regard being had to the nature and degree of the offence) any one punishment lower in the above scale than the particular punishment.

NOTE

Subject to the other provisions, etc.—S. 47 specifies the particular instances in which more than one punishment may be awarded.

45. Field punishment.—Where any person, subject to this Act and under the rank of warrant officer, on active service is guilty of any offence, it shall be lawful for a court-martial to award for that offence any such punishment, other than flogging, as may be prescribed as a field punishment. Field punishment shall be of the character of personal restraint or of hard labour but shall not be of a nature to cause injury to life or limb.

NOTE

For the prescribed form of field punishment, see Rule 155. A court-martial may award field punishment (on active service only) for a period not exceeding three months. A term of field punishment commences from the date of award.

46. Position of field punishment in scale.—Field punishment shall, for the purpose of commutation, be deemed to stand in the scale of punishments next below dismissal.

NOTE

Field punishment can, therefore, be commuted to reduction or to any punishment lower than reduction in the scale contained in s. 43. Only sentences of death, transportation, imprisonment or dismissal can be commuted to field punishment, and then only if offender is under the rank of warrant officer and the offence is committed on active service.

47. Combination of punishments.—A sentence of a court-martial may award, in addition to or without any one other punishment, the punishment specified in clause (*cc*) or clause (*d*) and any one or more of the punishments specified in clauses (*f*), (*g*), (*gg*) and (*h*) of section 43.

NOTE

1. *e.g.*, the following combined sentences are legal :—

(*i*) imprisonment, dismissal (*or* cashiering), reduction (W. O. and N. C. O.) forfeitures and stoppages ;

(*ii*) field punishment, dismissal, reduction (N. C. O.), forfeitures and stoppages ;

(*iii*) forfeiture of seniority of rank, forfeiture of service for promotion (when applicable), severe reprimand, forfeitures and stoppages, in the case of an officer, W. O. and N. C. O.

See s. 73 for sentences awardable by a D. C. M. to a warrant officer.

2. The punishments specified in this section may be awarded for civil offences tried under s. 41 either in lieu of, or in addition to, those assigned by the ordinary law to the offence of which the accused has been convicted. See note 4 to s. 41.

47A. Whenever an Indian commissioned officer is sentenced to transportation or imprisonment, the court shall, by its sentence, sentence such officer to be cashiered.

48. Solitary confinement.—Whenever any person is sentenced to rigorous imprisonment, the court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say, —

(a) a time not exceeding one month if the term of imprisonment does not exceed six months ;

(b) a time not exceeding two months if the term of imprisonment exceeds six months and does not exceed one year ;

(c) a time not exceeding three months if the term of imprisonment exceeds one year.

NOTE

As to execution of sentences of solitary confinement, see s. 110. Such sentences are, as a rule, undesirable unless the rigorous imprisonment is to be undergone in a civil jail.

49. Reduction of warrant and non-commissioned officers, to ranks.—A warrant officer or a non-commissioned officer sentenced by court-martial to transportation, imprisonment, field punishment or dismissal from the service, shall be deemed to be reduced to the ranks.

NOTE

See note 6 to s. 43. Although under this section a W. O. or N. C. O. holding substantive rank, when sentenced to transportation, imprisonment, dismissal or field punishment, is, *ipso facto*, reduced to the ranks it is desirable to specify the reduction in the sentence. A court-martial cannot sentence a person holding acting or lance rank to reduction to the ranks ; but a lance-naik, being a N. C. O. loses his lance rank under this section upon being sentenced to any of the punishments therein mentioned.

49A. Retention in the ranks of a person convicted on active service.—When any enrolled person on active service has been sentenced by court-martial to dismissal or to transportation or imprisonment whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve

in the ranks, and where such person has been sentenced to transportation or imprisonment, such service shall be reckoned as part of his term of transportation or imprisonment.

NOTE

1. *Any enrolled person, i.e.*, a person subject to the Act under s. 2 (*1*) (*b*). Viceroy's commissioned officers and warrant officers, though originally enrolled under the Act, are not liable to be retained to serve in the ranks under this section.

Prescribed officer.—See Rule 164.

2. A person can only be retained to serve in the ranks under this section while he is on active service, and the order must be made before the sentence of dismissal has taken effect. See Rule 154. The dismissal is not avoided but is merely suspended so long as the person is retained to serve in the ranks. If it is subsequently desired to retain the person in the service, the dismissal must be remitted.

CHAPTER VII

PENAL DEDUCTIONS

50. Deductions from pay and allowances.—(1) The following penal deductions may be made from the pay and allowances of an Indian commissioned officer, that is to say,—

(*a*) all pay and allowances for every day of absence without leave, unless a satisfactory explanation has been given through his Commanding Officer and has been approved by the Central Government;

(*b*) any sum required to make good such compensation for any expenses, loss, damage or destruction occasioned by the commission of any offence as may be determined by the court-martial by whom he is convicted of such offence or by an officer exercising authority, under section 20;

(*c*) any sum required to make good the pay of any person subject to this Act which he has unlawfully retained or unlawfully refused to pay ;

(*d*) any sum required to make good any loss, damage or destruction of public or regimental property which after due investigation appears to the Central Government to have been occasioned by any wrongful act or negligence on the part of the Indian commissioned officer;

(*e*) any sum ordered by a court-martial to be stopped under section 43.

(2) The following penal deductions may be made from the pay and allowances of a person subject to this Act other than an Indian commissioned officer, that is to say,—

(*a*) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of imprisonment awarded by a criminal court, a court-martial or an officer exercising authority under section 20 or of field punishment awarded by a court-martial or such officer;

(*b*) all pay and allowances for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted by a criminal court or court-martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment or field punishment by an officer exercising authority under section 20;

(*c*) all pay and allowances for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by an offence under this Act committed by him;

(*cc*) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence, such sum as may be specified by order of the Commander-in-Chief ;

(*d*) all pay and allowances ordered by a court-martial under section 43, or by an officer exercising authority under section 20, to be forfeited;

(*dd*) all pay and allowances for every day between his being recovered from the enemy and his dismissal from the service in consequence of his conduct when being taken by, or whilst in the hands of, the enemy;

(*e*) any sum ordered by a court-martial to be stopped under section 43;

(*f*) any sum required to make good such compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, regimental necessaries or military decoration, or to any buildings or property, as may be awarded by his commanding officer;

(*g*) any sum required to pay a fine awarded by a criminal court, a court-martial exercising jurisdiction under section 41 or an officer exercising authority under section 20 or section 21:

Provided that the total deductions from the pay and allowances of a person subject to this Act, other than an Indian commissioned officer made under clauses (*e*) to (*g*), both inclusive, shall not (except in the case of a person sentenced to dismissal), exceed in any one month one-half of his pay and allowances for that month.

Explanation.—For the purposes of clauses (*a*) and (*b*)—

(*i*) absence or custody for six consecutive hours or upwards, whether wholly in one day or partly in one day and partly in another, may be reckoned as absence or custody for a day;

(*ii*) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody; and

(*iii*) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person.

NOTE

1. Section 136 of the British Army Act states that the pay of an officer or soldier of the regular forces shall be paid without any deduction other than the deduction authorised by that or any other Act or by any Royal Warrant or by any law passed by the Governor-General of India in Council. This section applies to persons subject to the Indian Army Act [Army Act s. 190 (8)]. It should be noted, however, that the issue of additional remuneration such as proficiency pay, extra duty pay, corps pay and other forms of additional pay, may be conditional on work being performed with due diligence and efficiency, and regulations may provide for the withdrawal of such additional pay if the conditions are not fulfilled.

2. This section states the penal deductions that may be made from the pay and allowances of a person subject to the Act (see also s 51); The section is permissive, not mandatory.

As to deductions actually made within the limits of the section, see P. & A. Regulations, Part I, and as to remission of deductions, see s. 52.

Other deductions which may lawfully be made are stoppages from pay, etc., under the Royal Warrant, dated 22nd February 1902, prefixed to P. & A. Regulations, Part I, to meet public claims or regimental debts or claims. They are limited to deductions which are not penal under this section.

Also, under the Rules made by the Central Government in pursuance of s. 4 of the Indian Reserve Forces Act, a reservist who fails to appear for training, etc., or takes his discharge between trainings, may be deprived of any arrears of pay and allowances due to him.

3. The term "pay" means the rate of pay with increases, if any, for length of service, to which a person subject to the Act is entitled by reason of his rank, appointment, trade group or trade classification, and includes additional remuneration such as command pay, corps pay, engineer pay, proficiency pay and the various forms of additional pay. All other emoluments are "allowances".

4. *Sub-sec. (1), clause (a).*—If pay has not been drawn during a period of absence without leave, such pay is forfeited under this clause, if pay has been drawn during a period of absence without leave, the issue constitutes a public claim and the amount may be recovered as an overissue due to an error as to the facts under the Royal Warrant (see note 2 above).

5. *Clause (b).—Occasioned by.*—The loss must be the natural and reasonable consequence of the particular offence of which he is convicted. It is not sufficient to show merely that the loss was facilitated or made possible by the offence, though in such circumstances recovery may be effected as a public, etc., claim under the Royal Warrant.

6. *Clause (d).*—It must be shown to the satisfaction of the Central Government that there has been a loss, etc., occasioned by (in the sense referred to in note 5) some wrongful act or negligence on the part of the Indian commissioned officer; and as a general rule an officer is first afforded an opportunity of advancing any reasons why a deduction should not be made. The Central Government can legally impose a penal deduction on an Indian commissioned officer under this clause notwithstanding that he has been dealt with under s. 20 for the wrongful act or negligence.

7. *Sub-sec. (2).—Clauses (a) and (b).*—See note 2 above, P. and A. Regulations, Part I, provide for the cases in which pay is to be forfeited under these clauses, and no discretion is given to the commanding officer whether or not to enforce wholly or partially the forfeiture. But see s. 52, and Rule 165 as to remission of deductions.

It is unnecessary for a person to be found guilty of absence by a court-martial or by his commanding officer before a forfeiture of pay and allowances for the period of absence can be enforced.

Upon a charge for desertion or absence without leave, a finding that the accused did the act charged but was insane at the time when he did the same, does not amount to a conviction, as it negatives "intention", and no forfeiture of pay and allowances results.

8. *Clause (c).*—The deduction of pay and allowances for days in hospital is only authorised where the sickness is caused by an offence of which the person has been found guilty. The medical officer must attend the investigation of the offence, whether before the court-martial or the commanding officer, and give evidence in substantiation of the facts contained in his certificate.

9. *Clause (cc).*—The sum to be deducted is specified in P. & A. Regulations, Part I.

9A. *Clause (dd).*—This clause was added by the Indian Army (Amendment) Ordinance, 1945 (XXXVII of 1945) and takes effect from the 1st November 1943.

10. *Clause (e).*—Compensation cannot be awarded by a court-martial unless the grounds for awarding it are stated in the particulars of the charge and proved in evidence, see Rule 20 (F) and note, and Note as to the use of forms of charges (19, 20), p. 349; also note 9 to s. 43.

11. For the purposes of trial, the amount of compensation will be estimated as follows.—

When an article which has an official value has been lost or rendered unserviceable, a witness is required who can prove the value (inclusive of authorized departmental expenses) of the article at the date of loss upon a basis of its age and/or condition and by reference to the regulations which should be produced for fixing the value of the article at that age or in that condition.

When the article has not an official value, competent evidence is required to prove the approximate value.

When an article has been damaged but not rendered unserviceable, competent evidence is required to prove the pecuniary amount of the damage, which will be either the cost of repairing it, if it can be repaired, or the loss of value caused by the act of the accused, if it cannot be repaired, or the cost of repair *plus* any ultimate loss of value due to the act of the accused.

Similar principles will be observed if the case is disposed of summarily.

12. *Clause (f).*—The word "expenses" is not limited to public and regimental funds and property but would also extend to, *e.g.*, loss of wages and doctor's expenses incurred by a civilian as the direct result of the offence of which the person is convicted. But occasions will rarely arise when it is advisable for a military tribunal to exercise its power of awarding a penal deduction to compensate a civilian, who has always his proper legal remedy of bringing a civil action for recovery of damages. Stoppages, however, should be awarded where a charge of theft of or damage to the property of a civilian is dealt with by court-martial or summarily.

A person is not liable for the ordinary expenses of his prosecution, capture or conveyance or indirect expenses of a similar kind. Nor would he be liable under this clause for damage to a policeman's clothes, because the policeman fell down and damaged them while in pursuit of the person endeavouring to escape. Where a person refuses to march,

being able to do so, and a cab has to be hired for his conveyance, he may be held liable for the expense thus incurred by his contumacy; but he would not be liable if intoxicated and incapable of walking.

Caused by.—These words have the same meaning as the expression "occasioned by" See note 5 above.

13. The buildings or property need not be public buildings or property; the words include the buildings or property of officers, soldiers or civilians, whether there is any claim against the public or not. Thus, a commanding officer may order a man to pay damage for a broken window, or other slight damage done by him; a case of serious damage is, of course, not one which a commanding officer should dispose of summarily.

14. Where a person has been convicted by a court-martial for an offence, his commanding officer cannot subsequently award compensation for damage caused through that offence.

15. A Viceroy's commissioned officer may be awarded stoppages by his commanding officer under this clause.

16. If a person is sentenced to stoppages for losing by neglect articles of his clothing or equipments, and these articles are afterwards found and in serviceable condition, he has made good the loss. Where two persons are convicted of having jointly injured property, each should be sentenced to make good the whole amount of the injury sustained; and in the event of one person dying, or otherwise ceasing to be amenable to the award the whole amount may legally be levied upon the other. Where, however, both remain amenable the stoppages would be properly divided between them in equal proportions.

The principle is that stoppages are intended, not for punishment, but to compensate for loss sustained.

17. In the case of absence or desertion, the deficiencies to be alleged in a charge under s. 35 (*e*) are those ascertained when the person rejoins, not necessarily those found on the commencement of the absence or by a court of inquiry.

Evidence should not be taken of the values of personal clothing and necessaries the value of which has not to be made good to the public.

18. *Clause* (*g*).—The fines awardable as minor punishments under s. 20 are specified in R. A. I. See also notes to s. 20.

As to cases where a fine awarded by a court-martial is not recoverable under this clause, see s. 111A.

19. The *Explanation* at the end of this sub-section prescribes how days of absence, etc., are to be calculated for the purposes of clauses (*a*) and (*b*).

For instance, if a person absented himself from 9 P.M., on the 2nd October and returned at 2-45 A.M., on 3rd October, he would forfeit no pay as his absence did not amount to six hours or upwards, but if he was bound to go on guard or perform some other military duty and in consequence of his absence some other person had to go on guard or perform that duty, then he would forfeit one day's pay.

Again, if a person absents himself at 10 P.M., on the 2nd October and remains absent until 4 A.M., on the 3rd October, he would forfeit one day's pay, and if he remained absent until 2 A.M., on the 10th October he would forfeit nine days' pay, for in the latter case he would be absent for over twelve consecutive hours and the period of absence on the 2nd and 10th October would each reckon as absence for one whole day.

51. Deductions from public money other than pay.—Any sum authorised by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a pension.

NOTE

This will allow the amount to be deducted from a gratuity, or other sums earned but not paid to an officer or soldier. It would not include money lodged in a fund of whatever description.

51A. Power to withhold pay and allowances pending inquiry into conduct as prisoner of war.—Where the conduct of any person subject to this Act when being taken by, or whilst in the hands of, the enemy, is to be inquired into under this

Act or any other law, the Commander-in-Chief or any officer authorised by him in this behalf may order that the whole or any part of the pay and allowances of such person shall be withheld pending the result of such inquiry.

NOTE

This section was added by the Indian Army (Amendment) Ordinance, 1945 (XXXVII of 1945) and takes effect from the 1st November 1943.

52. Remission of deductions.—Any deduction from pay and allowances authorised by this Act may be remitted in such manner and to such extent and by such authority, as may from time to time be prescribed.

NOTE

1. *Prescribed.*—See Rule 165. The most common case is that of a man absent without leave for a period not exceeding five days. In such a case, unless the man is convicted by a court-martial, his commanding officer may remit the forfeiture of pay and allowances which his absence entails. See s. 50 (2) (*a*).

2. *And to such extent.*—The remission may be partial, but there is nothing to prevent a further remission being made subsequently.

52A. Provision for dependents of prisoners of War.—(*1*) In the case of all persons subject to this Act, being prisoners of war, whose pay and allowances have been forfeited under section 50, but in respect of whom a remission has been made under section 52, it shall be lawful, notwithstanding any provision in any enactment or any rule of law to the contrary, for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependents of such persons, and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances.

(*2*) Any payments hitherto made to dependents by way of deductions from pay and allowances which, if this section had been in force, could have been validly made are hereby validated.

(3) For the purposes of this section, a person shall be deemed to continue to be prisoner of war until the conclusion of any inquiry into his conduct such as is referred to in section 51A, and if he is dismissed from the service in consequence of such conduct, until the date of such dismissal.

NOTE

Prescribed authorities.—See Rule 166. See also note to Rule 158 (H).

2. Sub-section (3) was added by the Indian Army (Amendment) Ordinance, 1945 (XXXVII of 1945) and takes effect from the 1st November 1943.

52B. General power to make provision for dependants.—(*1*) In the case of all persons subject to this Act, it shall be lawful, notwithstanding any provision in this Act or in any other enactment or any rule of law to the contrary, for proper provision to be made by the prescribed authorities for any dependants of any such person who is a prisoner of war or missing, out of his pay and allowances.

(*2*) Any payments made before the commencement of the Army (Provision for Dependants) Ordinance, 1944 (XXX of 1944) to dependants which, if this section has been in force, could have been validly made are hereby validated.

(*3*) For the purposes of this section a person shall be deemed to continue to be prisoner of war until the conclusion of any inquiry into his conduct such as is referred to in section 51A, and if he is dismissed from the service in consequence of such conduct, until the date of such dismissal.

NOTE

Sub-section (3) was added by the Indian Army (Amendment) Ordinance, 1945 (XXXVII of 1945) and takes effect from the 1st July 1944.

CHAPTER VIII

COURTS-MARTIAL

Constitution and Dissolution of Courts-martial.

53. Courts-martial and the kinds thereof.—For the purposes of this Act there shall be four kinds of courts-martial, that is to say :—

(1) general courts-martial;

(2) district courts-martial:

(3) summary general courts-martial; and

(4) summary courts-martial.

54. Power to convene general courts-martial.—A general court-martial may be convened by the Commander-in-Chief, or by any officer empowered in this behalf by warrant of the Commander-in-Chief.

NOTE

1. For form of warrant, see Part V. The warrant (Form A-2) is at present issued by the Commander-in-Chief in India to command, district, and independent area commanders, and to commanders of colonial garrisons where Indian troops are stationed.

2. When a warrant has been issued and its contents communicated to the addressee, he can act upon it before it actually reaches him.

3. As to the duty of an officer before convening a court, see Part I, Ch. IV, and Rule 27.

55. Power to convene district courts-martial.—A district court-martial may be convened by any officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such officer.

NOTE

1. For form of warrants, see Part V. Form B.-2 is at present issued to brigade commanders by the command or district commander concerned. Where the headquarters of more than one brigade are situated at the same station a similar warrant is held by the officer commanding the station. Form C-2 is issued to officers commanding at important stations.

2. An officer having power to convene a general court-martial at a port of embarkation can issue a warrant to the officer commanding the troops on board a ship empowering the latter to convene, during the period of the voyage, district courts-martial on board the ship.

56. Contents of warrant issued under section 54 or section 55.—A warrant issued under section 54 or section 55 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

57. Composition of general courts-martial.—A general court-martial shall consist of not less than five British officers or Indian commissioned officers each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of Captain.

NOTE

1. A court would have no jurisdiction if each member had not held a commission for the required period, or if its composition differed in any respect from that detailed in the convening order.

As to the composition, etc., of courts-martial, see also Rules 29, 30.

2. A convening officer can increase beyond the legal minimum the number of officers to sit on a court-martial, but cannot decrease the number below that minimum; he must therefore take care to convene a court with not less than the minimum, otherwise the proceedings are void. See also s. 65.

It is desirable that every court should consist of an uneven number of members.

3. The president of a court-martial is not detailed in the convening order (see s. 77). The members of the court may be detailed by name or by their ranks and units, and in cases where units cannot be specified (*e.g.*, R. E., R. I. A. S. C.,), they should be named.

"Waiting" members can be detailed to replace absentees, or members successfully challenged [Rule 27 (C)]; but if a waiting member sits in addition to all the members detailed, and not in place of an absentee, the court will be improperly constituted.

58. Composition of district courts-martial.—A district court-martial shall consist of not less than three British officers or Indian commissioned officers.

NOTE

See notes to s. 57. There is no statutory requirement as to the rank and service of a member of a district court-martial, but Rule 29 (C) (*i*) requires a member to have held a commission for not less than two years.

59. (Section 59 repealed).

60. Composition of general, summary general or district courts-martial.—A general, summary general or district court-martial may be composed of either British officers or Indian commissioned officers or of both British officers and Indian commissioned officers.

61. (Section 61 repealed).

62. Convening of summary general courts-martial.—The following authorities shall have power to convene a summary general court-martial, namely :—

(*a*) an officer empowered in this behalf by an order of the Central Government or of the Commander-in-Chief;

(*b*) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf;

(*c*) an officer commanding any detached portion of the Regular Army upon active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by an ordinary general court-martial.

NOTE

The following officers commanding in and out of India have been empowered by the Commander-in-Chief in India under clause (*a*):—

1. The Officer Commanding the British Forces in Iraq. (I. A. O. No. 125 of 1924.)
2. The Officer Commanding the Forces at Aden. (I. A. O. No. 725 of 1927.)

63. Composition of summary general courts-martial.—A summary general court-martial shall consist of not less than three British officers or Indian commissioned officers.

NOTE

See s. 60. See also note 2 to s. 57.

64. Summary courts-martial (1) A summary court-martial may be held—

(*a*) by the commanding officer of any corps or department of the Regular Army, or of any detachment of those forces;

(*b*) by the commanding officer of any British crops or detachment to which details subject to this Act are attached.

(*2*) At every summary court-martial the officer holding the trial shall alone constitute the court, but the proceedings shall be attended throughout by two other officers who shall not, as such, be sworn or affirmed.

NOTE

1. For the history of this court, which is peculiar to the Indian Army, see Part I, Ch. II, para. 18, and for its powers and procedure, see Ch. IV, para. 1 *et seq.*

2. *Commanding Officer.*—See s. 7 (6). A Commissary, Deputy Commissary, or Assistant Commissary, even when placed in charge of an enrolled establishment of the Royal Indian Army Service Corps or Indian Army Ordnance Corps or a Senior Assistant Surgeon in charge of a Medical unit is not ordinarily a "Commanding Officer" as defined in section 7 (*6*). Ordinarily, he cannot, therefore, hold a summary court-martial. But if a departmental officer has, under s. 20, been specially placed in command of a unit or detachment or is the only officer present with a unit or detachment he would become a "Commanding officer" and could therefore hold a summary court-martial.

A Medical Officer commanding a hospital or other medical unit is the "Commanding Officer" medical personnel under his command and is, for the time being, the "Commanding Officer" of a person subject to the Indian Army Act not belonging to the medical personnel who is a patient in, or is employed in, that hospital or medical unit and may either himself dispose of a charge against such person or refer it for disposal, after the person has left the hospital or medical unit, to the officer commanding the corps, department or detachment to which such person belongs or is attached, but the medical officer in charge of a regimental medical establishment is not, unless that establishment is detached, the "Commanding Officer" of that establishment or of any person who is a patient in, or is employed in, the medical unit to which that establishment belongs.

Corps are specified in Rule 161 (C).

Detachment.—Every separate body of persons subject to this Act or the Army Act which is not a corps or department is a "detachment of His Majesty's Indian Forces" or a "British detachment" as the case may be. The following are examples of such detachments:—

(*a*) Any enrolled establishment of the Royal Indian Army Service Corps that is not itself a corps.

(b) The enrolled establishment of a station hospital.

(*c*) The enrolled establishment of an Ordnance Depot.

(*d*) A detached, or unattached, battery of British or Indian artillery.

(*e*) Recruiting parties, including enrolled recruits accompanying them, under the orders of a recruiting officer.

3. *Sub-sec. 2.*—For definition of "officer", see s. 7 (*5*). An officer of the Indian State Forces is not as such an officer within the meaning of s. 7 (*5*) and is not therefore eligible to attend at a summary court-martial for the trial of a person belonging to His Majesty's Indian Forces.

Unless two officers attend the trial, the court will have no jurisdiction.

4. If the commanding officer does not himself take the interpreter's oath, one of the officers attending the trial may be appointed interpreter. He may legally combine this duty with attendance at the trial under this section.

65. Dissolution of courts.—(*1*) If a court-martial after the commencement of a trial is reduced below the smallest number of officers of which it is by this Act required to consist, it shall be dissolved.

(*2*) If, on account of the illness of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(*3*) Where a court-martial is dissolved under this section, the accused may be tried again.

NOTE

1. See also Rules 70—72 and Notes. As to procedure on death of Judge—advocate or his inability to attend, see Rule 90.

2. The trial is for the purposes of this section, held to have commenced when the accused is arraigned. See note 1 to Rule 38.

3. *Illness of the accused.*—Oral evidence of the fact of the death or illness will be taken on oath or affirmation. Also, a medical certificate should always, where possible, be obtained, stating that the illness of the accused renders his presence in court impracticable, or dangerous to himself or others, and also the time when, in the opinion of the medical officer, the accused will be able to be present.

4. *Impossible to continue.*—This means to continue within what is, having regard to all the circumstances, a reasonable time.

5. *Sub-sec. (3).*—It may frequently be inexpedient to convene a fresh court for a retrial under this sub-section, especially where the accused has been for some time under arrest or in confinement.

Jurisdiction of Courts-martial

66. Prohibition of second trial.—When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been summarily dealt with for an offence under section 20 or section 22, he shall not be liable to be tried again for the same offence by a court-martial or dealt with summarily in respect of it under either of the said sections.

NOTE

1. See also s. 94 and Rule 43 and notes.

A finding of a general, summary general (if confirmation is required) or district court-martial, if not confirmed, is of no validity; in such case, therefore, the accused has not been acquitted or convicted, and may legally be tried again; see ss. 94, 98; but re-trials should rarely be resorted to, and only when the needs of discipline and justice demand that an offender shall not escape punishment on account of a legal technically. Re-trial should not be ordered until the Deputy or Assistant Judge Advocate-General of the Command has been consulted and the sanction of superior authority obtained.

2. Where a court is not legally constituted—as, for example, if the convening order is not signed, or is signed by or on behalf of an officer not authorised to convene such a court, or if the court is composed of too few members, or if unqualified officers sit—it is no court at all. The accused will not have been really tried, and may be tried again, even though the proceedings of such illegally constituted court have been inadvertently confirmed.

Where, however, a conviction is confirmed and then quashed, not for improper constitution of the court, but because the trial was unsatisfactory—*e.g.*, because evidence was improperly admitted—the accused has stood a trial and cannot be tried again.

3. It is a general principle of law that it does not permit a man to be tried twice in respect of the same offence; but the application of the rule is not always easy. Where the same incident, or set of incidents, gives rise to two trials, the test of whether the offence is "the same" offence would appear to be this:—Could the accused have been lawfully convicted at the first trial upon the charge-sheet then before the court of the offence charged at the second trial? If so, the second trial is illegal and void. Thus on a charge of desertion, a man could by virtue of s. 86, be convicted of absence without leave: if he is acquitted generally, the acquittal applies to both offences and he cannot subsequently be charged with absence (upon the same facts); if, however, the court while acquitting him of desertion: convict him of absence, and this finding is not confirmed, he has not been acquitted of absence, and can be charged again with that offence.

4. Where a man is re-tried on the same charges, it is not usual to impose a more severe punishment than that awarded on the first trial, and a confirming officer should exercise his powers of mitigation, etc., when confirming the proceedings, if a greater punishment has been awarded on the second trial.

5. Where a new trial is ordered, no officer may serve on it who sat on the former court: Rule 29 (B) (*iii*).

6. As to the legality of trial by a criminal court after trial by court-martial, see s. 71.

67. Limitation of trial.—No trial by court-martial of any person subject to this Act for any offence, other than an offence committed after the 7th day of December 1941 while the person in question was a prisoner of war or was present in enemy territory or an offence of mutiny, desertion or fraudulent enrolment, shall be commenced after the expiration of a period of three years (in the computation of which period any time spent by the person in question after the aforesaid date as a prisoner of war or in enemy territory or in evading arrest shall be excluded) from the date of such offence and no such trial for an offence of desertion (other than desertion on active service) or of fraudulent enrolment shall be commenced if the person in question (not being an Indian commissioned officer) has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the Regular Army.

Explanation.—For the purposes of this section, 'mutiny' means any of the offences specified in clauses (a), (b) and (c) of section 27 and 'enemy territory' means any area at the time of the presence therein of the person in question under the sovereignty of or administered by or in the occupation of a State at that time at war with the Government of India.

NOTE

1. The effect of this section is that on the expiration of three years from the commission of an offence, the offender is free from being tried or punished under this Act by court-martial for any offence except mutiny, desertion or fraudulent enlistment. It follows that where an accused person is charged with desertion commencing on a date more than three years before his trial begins, he cannot be found guilty under s. 86 (*1*) of absence without leave from that date, but such absence must be restricted to a period not exceeding three years immediately prior to the commencement of the trial.

Mutiny and desertion on active service may be tried at any time. For desertion not an active service and fraudulent enrolment, a man cannot be tried if he has since served continuously in an exemplary manner for three years in any portion of His Majesty's regular forces.

For forfeiture of service in the case of desertion and fraudulent enrolment, see pension Regulations.

2. *In an exemplary manner.*—See R. A. I.

3. On active service. See s. 7 (*13*).

68. Place of trial.—Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

Adjustment of the jurisdiction of Courts-martial and Criminal Courts.

69. Order in case of concurrent jurisdiction.—When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the prescribed military authority to decide before which court the proceedings shall be instituted, and, if that authority decides that they shall be instituted, before a court-martial, to direct that the accused person shall be detained in military custody.

NOTE

Prescribed military authority.—See Rule 167. See also R. A. I.

70. Power of criminal court to require delivery of offender.—(1) When a criminal court having jurisdiction is of opinion that proceedings ought to be instituted before itself in respect of any alleged offence, it may, by written notice, require the prescribed military authority at its option either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.

(*2*) In every such case the said authority shall either deliver over the offender in compliance with the requisition or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Central Government whose order upon such reference shall be final.

NOTE

Prescribed military authority.—See note to s. 69.

71. Trial by court-martial no bar to subsequent trial by criminal court.—(*1*) Notwithstanding anything contained in section 26 of the General Clauses Act 1897 (X of 1897), or in section 403 of the Code of Criminal Procedure, 1898, (V of 1898) a person convicted or acquitted by a court-material may be afterwards tried by a criminal court for the same offence or on same facts.

(*2*) If a person sentenced by a court-martial in pursuance of this Act to punishment for an offence is afterwards tried by a criminal court for the same offence or on the same facts, that court shall, in awarding punishment, have regard to the military punishment he may already have undergone.

NOTE

1. This section, in effect, declares that the civil law remains supreme, and that a person subject to military law is not thereby exempted from the civil law. In the case of any offence against the criminal law of India he may be tried and punished by a criminal court: and if such a court once tries him, then (whether acquitted or convicted) he cannot be tried again under this Act for the same offence. See also s. 66 and notes. On the other hand, a person acquitted or convicted of an offence by a court-martial may still be tried by a criminal court for the same offence (if an offence against the criminal law of India) or on the same facts, but in such case the criminal court, in awarding punishment, must have regard to any punishment which the accused may already have undergone.

2. For definition of "criminal court", see s. 7 (*17*).

72. Powers of general and summary general courts-martial.—A general or summary general court-martial shall have power to try any person subject to this Act for any offence made punishable therein, and to pass any sentence authorized by this Act.

73. Powers of district court-martial.—A district court-martial shall have power to try any person subject to this Act other than an officer for any offence made punishable therein, and to pass any sentence authorized by this Act other than a sentence of death, or transportation, or imprisonment for a term exceeding two years:

Provided that a district court-martial shall not award to a warrant officer any punishment other than the punishments specified in clauses (*g*), (*gg*) and (*h*) of section 43 or, either in addition to or in substitution for any such punishment, the punishment specified in clause (*d*) or the punishment specified in clause (*f*) of that section.

74. Offences triable by summary court-martial.—A summary court-martial may try any offence punishable under any of the provisions of this Act:

Provided that when there is no grave reason for immediate action, and reference can without detriment to discipline be made to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender, an officer holding a summary court-material shall not try without such reference any of the following offences namely:—

(*a*) any offence punishable under sections 25, 27, clauses (*a*), (*b*) or (*c*), 33, or 41, or

(*b*) any offence against the officer holding the court.

NOTE

1. The discipline of the Indian Army depends in a great measure on the summary court-martial. When a soldier or other person amenable to the Act has committed an offence which is ordinarily triable by summary court-martial, a commanding officer, when determining by what court the accused is to be tried must bear in mind that the legislature, in conferring upon him the power of a summary court-martial, intends that he shall exercise those powers.

Though a summary court-martial may, subject to the proviso to this section, try *any* offence punishable under the Act, it is obvious that its powers of punishment are *insufficient for many of the graver offences known to military law. Commanding officers should, therefore, notwithstanding the increased powers of summary trial vested in them, submit* to higher authority any cases which appear to require more exemplary punishment than a summary court-martial can award. It should, however, be remembered that even a comparatively slight punishment *promptly* inflicted is often more deterrent than a heavier one which follows long after the offence, and that this is especially so with Indian troops.

The commanding officer is the best and sole judge, *at the time*, of the necessity which justifies him in trying, without reference, cases which should ordinarily be tried only after reference and sanction. If it should subsequently appear to superior authority that his action was not justified, this should merely be viewed as a grave irregularity for which the commanding officer may be held responsible, but it does not affect the legality of the finding or sentence, nor, in ordinary circumstances, furnish reason for setting aside the trial, in whole or in part. Where, however, the officer holding the trial loses sight of the law, and tries without considering whether an emergency exists or not, the trial is illegal. See Rule 116 for certificate to be signed by the officer holding the trial when he tries, without reference, a case which would ordinarily be referred to the officer empowered to convene a district court-martial for the trial of the alleged offender.

2. *Offence against the officer holding the trial.*—It is difficult to lay down a definite rule in this matter, but, speaking generally, a consideration of personal interest which would suffice to render an officer ineligible to sit as a member of a general or district court-martial debars him from holding a summary court-martial (save in case of emergency) without previous reference. Insubordination to a commanding officer or disobedience to his personal orders, as well as offences under section 27 (*d*) when committed towards himself, fall within the terms of the proviso, and should not, except in case of emergency be tried by summary court-martial without previous reference to the officer empowered to convene a district court-martial (or on active service a summary general court-martial) for the trial of the alleged offender. Theft or misappropriation of property of which a commanding officer is either part-owner or trustee (*e.g.*, mess or regimental property) should not, except as aforesaid, be tried by summary court-martial without such reference.

It is most undesirable that an offence against an individual should be tried by that individual, and the reason for immediate action would require to be unusually weighty to justify the provision as to reference to higher authority being disregarded when the offence is one against the officer holding the trial.

3. At a trial by summary court-martial the officer holding the trial cannot himself give evidence against an accused person appearing before him, except evidence of a formal character such as the production of a document. But see Rule 109 which authorises the court to record "of its own knowledge" certain facts for guidance in determining the sentence. If he gives formal evidence, he must be sworn as a witness.

Where it is necessary for the commanding officer of the accused to give material evidence for the prosecution, he should apply for a district court-martial so as to secure an impartial trial.

75. Persons triable by summary court-martial.—A summary court-martial may try any person subject to this Act and under the command of the officer holding the court, except an officer or warrant officer.

76. Sentences awardable by summary court-martial.—A summary court-martial may pass any sentence which can be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding one year.

NOTE

See generally R. A. I. and notes to s. 107 as to the principles to be observed by a summary court-martial in awarding sentence.

Procedure at Trials by Court-martial.

77. President.—At every general, district or summary general court-martial the senior member shall sit as president.

NOTE

See notes to s. 57.

78. Judge Advocate.—Every general court-martial shall, and every district or summary general court-martial may, be attended by a judge advocate, who shall be either an officer belonging to the department of the Judge Advocate General in India, or, if no such officer is available, a person appointed by the convening officer.

NOTE

Judge Advocate.—See Rules 89 to 91.

79. (Section 79 repealed).

80. Challenges.—(*1*) At all trials by general, district or summary general courts-martial, as soon as the court is assembled, the names of the president and members shall be read over to the accused, who shall thereupon be aksed whether he objects to being tried by any officer sitting on the court.

(*2*) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the court shall, in the absence of the challenged officer, decide on the objection.

(*3*) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(*4*) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

NOTE

As to challenges generally, see Rule 34 and notes; as to adjourning for the purpose of appointing fresh members, and the power to convene another court, Rule 28; and as to challenges where a court is being sworn to try several persons, Rule 75.

81. Voting of members.—(*1*) Every decision of a court-martial shall be passed by an absolute majority of votes; and where there is an equality of votes, as to either finding or sentence, the decision shall be in favour of the accused.

(*2*) In matters other than a challenge or the finding or sentence, the president shall have a casting vote.

NOTE

As to manner of voting, see Rule 73 and notes.

As to votes required before a sentence of death can be passed, see s. 87.

82. Oaths of president and members.—An oath or affirmation in the prescribed form shall be administered to every member of every court-material and to the judge advocate before the commencement of the trial.

NOTE

1. The form of oath or affirmation for a member of the court is set out in Rules 35 and 95, and for the judge-advocate in Rule 36, and the person to administer them is prescribed by Rule 37.

2. The forms of oath or affirmation for an officer attending for instruction, a shorthand writer and interpreter, are set out in Rule 36, and the person to administer them is prescribed by Rule 37.

83. Oaths of witnesses.—Every person giving evidence at a court-martial shall be examined on oath or affirmation, and shall be duly sworn or affirmed in the prescribed form.

NOTE

The form of oath or affirmation for a witness is set out in Rule 126, and the person to administer it is prescribed by that rule.

84. Summoning witnesses and production of documents.—(*1*) The convening officer, the president of the court, the judge advocate, or the commanding officer of the accused person, may, by summons under his hand, require the attendance, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(*2*) In the case of a witness amenable to military authority, the summons shall be sent to the officer commanding the corps, department or detachment to which he belongs, and such officer shall serve it upon him accordingly.

(*3*) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

(*4*) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with convenient certainty.

(*5*) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, (1 of 1872) sections 123 and 124, or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities.

(*6*) If any document in such custody is, in the opinion of any district magistrate, chief presidency magistrate, high court or court of session, wanted for the purpose of any court-martial, such magistrate or court may require the postal or telegraph auhtorities, as the case may be, to deliver such document to such person as such magistrate or court may direct.

(*7*) If any such document is, in the opinion of any other magistrate or of any commissioner of police or district superintendent of police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of any such district magistrate, chief presidency magistrate or court.

NOTE

1. See Rules 15 (A), 123 and notes. For form of summons, see p. 397.

Under sub-sec. (*1*) civilian witnesses can be required to attend before a commanding officer and at the taking of a summary of evidence; but see Rule 15 (H). " They cannot be compelled to attend before a court of inquiry.

2. Witnesses who are subject to military law should be ordered by the proper authority to attend without the issue of a formal summons. If no summons has been issued, the witness cannot be dealt with under s. 38 for making default in attending; but he may be dealt with under s. 27 (*e*) or under s. 39 (*i*), as the case may be.

3. For action where a civilian witness, who has been duly summoned and whose expenses have been tendered, makes default in attending, see Rule 136 (C) and notes.

As to privilege from arrest under civil or revenue process of a witness summoned to attend before a court-martial, see s. 118.

4. *Sub-sec.* (*5*).—Sections 123 and 124 of the Indian Evidence Act deal with "affairs of State" and "official communications". See Part I, Ch. V, paras. 94 and 95, as to how such matters are protected from disclosure in courts of law, including courts-martial, except under adequate guarantees for public interests being safeguard. "Affairs of State" include all matters of a public nature with which the Government is concerned.

5. *Sub-secs.* (*6*), (*7*).—These sub-sections indicate the only way in which letters, post-cards, telegrams and similar documents in the custody of the postal or telegraph authorities can be made available as evidence. If none of the authorities mentioned in these sub-sections are available, and it is considered necessary that the document should be detained until such authority is communicated with, application should be made to one of the authorities mentioned in sub-sec. (*7*), one of whom is certain to be present in or near any military station in India, however small.

85. Commissions.—(*1*) Whenever, in the course of a trial by court-martial, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Judge Advocate General in order that a commission to take the evidence of such witness may be issued.

(*2*) The Judge Advocate General may then, if he thinks necessary, issue a commission to any district magistrate or magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(*3*) When the witness resides in a part B State in which there is an officer representing the Central Government, the commission may be issued to that officer.

(*4*) The magistrate or officer to whom the commission is issued, or, if he is the district magistrate, he or such magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under the Code of Criminal Procedure, 1898.

(*5*) Where the commission is issued to such officer as is mentioned in sub-section (*3*), he may delegate his powers and duties under the commission to any magistrate whose powers are not less than those of a magistrate of the first class in a part A State.

(*6*) When the witness resides out of India, the commission may be issued to any Indian consular officer, Indian magistrate or other Indian official competent to administer an oath or affirmation in the place where such witness resides.

(*7*) The prosecutor and the accused person in any case in which a commission is issued may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the magistrate or officer to whom the commission is issued shall examine the witness upon such interrogatories.

(*8*) The prosecutor and the accused person may appear before such magistrate or officer by pleader or, except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

(*9*) After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Judge Advocate General.

(*10*) On receipt of a commission and deposition returned under sub-section (*9*), the Judge Advocate General shall forward the same to the court at whose instance the commission was issued, or, if such court has been dissolved, to any other

court convened for the trial of the accused person; and the commission, the return thereto and the deposition shall be open to the inspection of the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.

(*11*) In every case in which a commission is issued under this section the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Explanation.—In this section, the expression "Judge Advocate General" means the Judge Advocate General in India, and includes a Deputy Judge Advocate General.

NOTE

1. This section provides for the examination of witnesses "on commission", that is, by means of a series of written questions decided upon by the court trying the case, which questions are sent to another court at a distance and put by it to the witness, whose answers are then recorded. It will be noticed that the procedure here laid down can only be set in motion by a court-martial assembled for the trial of the accused, and then only in the circumstances specified in sub-section (*1*) above, while the actual issue of the commission can only be effected by the Judge Advocate General in India or the Deputy Judge Advocate General of a Command. An Assistant Judge Advocate General cannot, as the law now stands, issue a commission. Cases from Commands in which there is not a Deputy Judge Advocate General must be referred to the Judge Advocate General in India.

When a court-martial considers that the evidence of a witness should be taken on commission it should forward to the Deputy Judge Advocate General of the Command (or to the Judge Advocate General in India if the trial is not held in a Command or is held in a Command in which there is not a Deputy Judge Advocate General) a list of the questions to be put to the witness, along with an explanation of the circumstances which appear to render his examination on commission necessary. Any questions which the prosecutor or the accused desire to have put to the witness, and which the court considers relevant, should be added.

2. The taking of evidence by commission in criminal trials should be most sparingly resorted to, and ought not to be adopted save in extreme cases of delay, expense or inconvenience. The following considerations should guide courts-martial in this important matter:—

(i) A complainant, or a witness who practically fills the role of complainant, should never be examined on a commission; the risk of injustice to the accused is too great.

(ii) A material prosecution witness, the value of whose evidence can only be made apparent under full examination and cross-examination in court, should very seldom be so examined.

(iii) A merely "formal" or corroborative witness for either side, or a material witness for the defence, if the accused if fully satisfied by this action, might generally be examined on a commission. By "formal" is here meant a witness who has to prove a document, entry, or similar fact, which must be legally proved, but which when so proved cannot rationally be disputed by the accused, or by the prosecution.

3. It will be noticed [sub-sec. (*10*)] that evidence taken on commission at the instance of a court-martial which has been dissolved is admissible before another court-martial assembled for the trial of the accused (of course, only on the same or substantially the same charges). If great delay in the return of a commission is anticipated, advantage may be taken of this provision and the original court dissolved. In such a case, however, each of the witnesses who gave evidence at the first trial must repeat his evidence on oath or affirmation at the second trial unless—

(*a*) he is dead or cannot be found; or

(*b*) he is incapable of giving evidence; or

(*c*) he is kept out of the way by the adverse party; or

(*d*) his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable.

In any of these cases the evidence given at the first trial can, under s. 33 of the Indian Evidence Act, be read and considered at the second.

86. Conviction of one offence permissible on charge of another.—(*1*) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(*2*) A person charged before a court-martial with attempting to desert may be found guilty of being absent without leave.

(*3*) A person charged before a court-martial with any of the following offences specified in section 31, that is to say, theft, dishonest misappropriation or conversion to his own use of property entrusted to him, or dishonestly receiving or retaining property in respect of which any of the aforesaid offences has been committed knowing or having reason to believe it to have been stolen or dishonestly misappropriated or converted, may be found guilty of any other of these offences with which he might have been charged.

(*4*) A person charged before a court-martial with an offence punishable under section 41 may be found guilty of any other offence of which he might have been found guilty if the provisions of the Code of Criminal Procedure, 1898, were applicable.

(*5*) A person charged before a court-martial with any other offence under this Act may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

(*6*) A person charged before a court-martial with any offence under this Act may be found guilty of having attempted to commit or of abetment of that offence although the attempt or abetment is not separately charged.

NOTE

1. The object of this section is to prevent a miscarriage of justice by permitting a person charged with one of the offences mentioned in it to be found guilty of a cognate offence. But a court-martial has no power to find a person guilty of any offence other than that with which he is charged in the statement of the offence except in the cases specified in this section (see notes to Rule 20). A court may, however [as allowed by Rule 51 (E)], find a person guilty of a charge with the exception of certain words in the particulars of the charge or with certain immaterial variations, and each finding will be valid as long as in its reduced or varied form it discloses the offence which forms the subject of the charge.

In practice, it will usually be expedient to prefer alternative charges, the more serious charge being placed first in order [note (C) to Rule 42]. See note as to the use of forms of charges (6), p. 348.

2. *Sub-sec.* (*3*).—It should be noted that sub-sec. (*3*) does not admit of a person accused of the theft of mess property being found guilty of dishonestly misappropriating the same property, as, though clause (*d*) of s. 31 makes the theft of mess property punishable, clause (*a*), which alone deals with dishonest misappropriation, is restricted to Crown property; see notes to s. 31. On the other hand, a person charged under clause (*d*) with the theft of Crown property can be convicted of dishonestly receiving or retaining it under clause (*e*), or, if it was entrusted to him, of dishonestly misappropriating it under clause (*a*).

3. *Sub-sec.* (*4*).—For the special findings referred to in this sub-section, see ss. 237 and 238 of the Code of Criminal Procedure in Part IV.

87. Majority requisite to sentence of death.—No sentence of death shall be passed by any court-martial without the concurrence of two-thirds at the least of the members of the court.

Evidence before Courts-martial.

88. General rule, as to evidence.—The Indian Evidence Act, 1872 (I of 1872) shall, subject to the provisions of this Act, apply to all proceedings before a court-martial.

NOTE

As to evidence generally, see Part I, Ch. V, and Rules 120 to 129.

***Indian Evidence Act.*—See Part IV of this Manual.**

89. Judicial notice.—A court-martial may take judicial notice of any matter within the general military knowledge of the members.

NOTE

"Judicial notice" means that the court will recognise a matter without formal evidence. Thus, evidence need not be given as to the relative rank of officers, as to the general duties, authorities, and obligations of different members of the service, or generally as to any matters which an officer, as such, may reasonably be expected to know.

For other matters of which a court may (under the Indian Evidence Act) take judicial notice, see Part I, Ch. V, para. 66.

90. Presumption as to signatures.—In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the service of the Government shall, on production, be presumed to have been duly signed by the person and in the character by whom and in which it purports to have been signed, until the contrary is shown.

NOTE

Purporting.—See note 2 to s. 91A.

91. Enrolment paper.—Any enrolment paper purporting to be signed by an enrolling officer shall, in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given. The enrolment of such person may be proved by the production of a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.

NOTE

On the trial of a person subject to the Indian Army Act for making a false answer on enrolment or for fraudulent enrolment, the answer made or the fact of enrolment can, therefore, be proved by the production of his enrolment paper. The fact of the enrolment (but not any answer made on enrolment) may also be proved by a properly certified true copy of the enrolment paper. The enrolment paper, or when admissible the true copy thereof, must be produced by a witness on oath or affirmation and the accused identified as the person referred to.

See generally notes to s. 91-A.

91A. Presumption as to certain documents.—(*1*) A letter, return or other document respecting the service of any person in, or the dismissal or discharge of any person from, any portion of His Majesty's Forces before the twenty-sixth day of January, 1950, or of the Regular Army thereafter, or respecting the circumstance of any person not having served in or belonged to any portion of His Majesty's Forces before the twenty-sixth day of January, 1950, or of the Regular Army thereafter, if purporting to be signed by or on behalf of the Central Government or the Commander-in-Chief or by any prescribed officer, shall be evidence of the facts stated in such letter, return or other document.

(*2*) An Army List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers or warrant officers therein mentioned, and of any appointment held by such officers or warrant officers and of the corps, battalion or arm or branch of the service to which such officers or warrant officers belong.

(*3*) Where a record is made in any regimental book in pursuance of this Act or of any rules made thereunder or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts thereby stated.

(*4*) A copy of any record in any regimental book purporting to be certified to be a true copy by the officer having the custody of such book shall be evidence of such record.

(5) When any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by a provost-marshal, assistant provost-marshal or other officer, or any portion of His Majesty's Forces before the twenty-sixth day of January, 1950, or of the Regular Army thereafter, a certificate purporting to be signed by such provost-marshal, assistant provost-marshal or other officer, or by the commanding officer of that portion of His Majesty's Forces or, as the case may be, the Regular Army, and stating the fact, date and place of such surrender or apprehension shall be evidence of the matters so stated.

(6) When any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by, a police officer not below the rank of an officer in charge of a police station, a certificate purporting to be signed by such police officer and stating the fact, date and place of such surrender or apprehension, shall be evidence of the matters so stated.

(7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report may be used as evidence in any proceeding under this Act.

NOTE

1. This section provides for the admissibility in evidence of a variety of documents or copies of documents used in connection with military administration, but does not make them conclusive proof of the facts stated in them; therefore evidence may be given to contradict them. They can only be received as evidence when produced by a witness on oath or affirmation.

A document purporting to be such a document as is specified in the various sub-sections is upon mere production on oath or affirmation to the court *prima facie* evidence of the facts therein stated; but, of course, it is not evidence that the accused is the person to whom it relates; and evidence must be given on oath or affirmation by a witness to prove that the accused is in fact the person referred to in the document. If the accused disputes the identity, great caution is required as to the sufficiency of the evidence, and if he disputes the accuracy or completeness of the books, further evidence on the disputed points must be adduced.

2. *Purporting.*—This expression means that if the paper appears to be certified or signed, as mentioned in the sub-section, it can be accepted without calling a witness to prove that it has been so certified, signed, etc., unless indeed some evidence is given to the contrary. If any evidence is given casting a doubt on the authenticity of a document, the court should require evidence of the certificate or signature, etc., to be given by a witness.

3. *Sub-sec.* (*1*) is limited to proof of the fact or length of service or date of dismissal or discharge; it does not assist proof of particular incidents occurring during such service. A telegram, as delivered by the telegraph department, respecting the service of a person is not signed at all and would not be admissible.

4. *Sub-sec.* (*3*).—The phrase "any regimental book" means any "regimental book" specified in R. A. I. to be maintained by corps and departments. In s. 163 (1) (*g*) of the Army Act the phrase "in *one of the* regimental books" is used, thus implying that certain specified regimental books are recognised as being used for the purpose of making records; these are enumerated in Appx. XXIV of King's Regulations. The scope of the term "regimental books" in this sub-section is therefore wider than in s. 163 (1) (*g*) of the Army Act.

It should be noted that every entry in a regimental book is not made evidence under the sub-section; the entry must be made for the purpose of being used as a record, and must be made in pursuance of the Indian Army Act or of any rules made thereunder or in pursuance of military duty, and it must purport to be signed by the commanding officer or by the officer whose duty it is to make the record. No hard and fast rule can be laid down as to what entries can properly be considered as "records", but as a general rule the sub-section should only be taken advantage of in cases where a formal record, *prima facie* of a non-controversial character, is made in a regimental book of

record in pursuance of the Act or Rules or of military duty and purporting to be signed in accordance with the sub-section. Entries which cannot properly be considered as records, such as daily entries in accounts, and entries in books not being "regimental books", such as books of a brigade or station office and company order books, can, of course, be proved under the ordinary provisions of the Indian Evidence Act.

The fact that a statement is recorded in a regimental book does not make it admissible in evidence if it is otherwise legally objectionable, *e.g.*, if a court of inquiry under s. 126 be held before 60 clear days have expired, a record of its finding is inadmissible.

5. *Sub-sec.* (*4*).—Such a copy cannot be certified by another officer "for" the officer having the custody of the book.

6. Where a certified true copy of a record in any "regimental book" is to be produced, the copy should show clearly that the record purports to have been signed by the commanding officer or by the officer whose duty it was to make the record.

7. Where I. A. F. D.-918 is to be produced, it must be signed by the officer having the custody of the books from which it is compiled. The original declaration of the court of inquiry even if in existence, is not admissible in evidence. Nor is I. A. F. D-918, unless the entry in the court-martial book (of which it is a certified copy) purports to have been signed by the officer in actual command of the accused's corps or department, as required by s. 126.

8. *Sub-secs.* (*5*) *and* (*6*).—The certificate should only state the *fact, date, and place* of the surrender or apprehension; it can only be admitted as evidence of those facts and then only in cases of desertion or absence without leave. If it is necessary to prove the *circumstances* of the surrender or apprehension, a witness must be called.

Under sub-sec. (*6*) it is essential that the certificate should be actually signed by a police officer not below the rank of officer in charge of a police station. The certificate should be on I. A. F. D-910.

92. Reference by accused to Government Officer.—(*1*) If at any trial for desertion, absence without leave, over-staying leave or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorized absence, and refers in support thereof to any officer in the service of the Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn until his reply is received.

(*2*) The written reply of any officer so referred to shall, if signed by him, be received in evidence and have the same effect as if made on oath before the court.

(*3*) If the court is dissolved before the receipt of such reply or if the court omits to comply with the provisions of this section, the convening officer may, at his discretion, annul the proceedings and order a fresh trial by the same or another court-martial.

NOTE

For presumption as to civil officer's signature, see s. 90.

93. Evidence of previous convictions and general character.—(*1*) When any person subject to this Act has been convicted by a court-martial of any offence, such court-martial may inquire into, and receive and record evidence of, any previous convictions of such person, either by a court-martial or by a criminal court, and may further inquire into and record the general character of such person, and such other matters as may be prescribed.

(*2*) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, court-martial books or other official records; and it shall not be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(*3*) At a summary court-martial the officer holding the trial may, if he thinks fit, record any previous convictions against the offender, his general character, and such other matters as may be prescribed, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this section.

NOTE

This section should be read with Rules 53 and 109 which prescribe the other matters which may be proved.

Confirmation and Revision of Findings and sentences.

94. Finding and sentence invalid without confirmation.—No finding or sentence of a general or district court-martial shall be valid except so far as it may be confirmed as provided by this Act.

NOTE

1. As to confirmation generally, see Part I, Ch. IV.

Confirmation is complete when the proceedings are promulgated. At any time before promulgation the confirming authority may cancel his minute of confirmation and revoke the minute or order a revision. If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null, and it is open to the proper authority to confirm.

2. The result of this section is that if a finding of guilty or not guilty is not confirmed it is invalid; consequently there is no conviction or acquittal, and the accused has not been convicted or acquitted by a court-martial for the purpose either of any subsequent trial or of any entry in regimental books or of any forfeiture. See s. 66 and note as to a second trial, and Rule 135 as to merely technical errors not involving injustice to the accused.

Confirmation of the sentence alone implies confirmation of the finding also, but is not the correct mode of recording confirmation.

Confirmation ought to be withheld in the following cases:—

Where the provisions of this Act relating to jurisdiction have been contravened. See ss. 54—63, 72, 73 and 77—83.

Where evidence of a nature prejudicial to the accused has been wrongly admitted.

Where the accused has been unduly restricted in his defence.

Where a finding of guilty has been come to with the exception of certain words of the charge, and these words so far describe the essence of the offence, that the finding with the words omitted fails to disclose an offence of which the court could legally have convicted.

Where a special finding of guilty fails to disclose an offence of which the court could have legally convicted.

Where the charge is bad in law, even though the accused has pleaded guilty.

Where there has been such a deviation from the Rules under this Act that injustice has been done to the accused.

3. A confirming officer cannot substitute a special finding on any charge for the court's finding; he can only confirm, reserve confirmation for superior authority, send back for revision, or refuse to confirm.

95. Power to confirm finding and sentence of general court-martial.—The findings and sentences of general courts-martial may be confirmed by the Commander-in-Chief, or by any officer empowered in this behalf by warrant of the Commander-in-Chief.

NOTE

The warrant (form A-2) is at present issued by the Commander-in-Chief in India to command, district and independent area commanders, and to commanders of colonial garrisons where Indian troops are stationed.

For form of warrant, see Part V.

96. Power to confirm finding and sentence of district court-martial.—The findings and sentences of district courts-martial may be confirmed by any officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such officer.

NOTE

1. For forms of warrants, see Part V. Form B-2 is at present issued to brigade commanders by the command or district concerned. Where the head-quarters of more than one brigade are situated at the same station a similar warrant is held by the officer commanding the station.

Form C-2 is issued to officers commanding at important stations.

2. An officer having power to convene a general court-martial at a port of embarkation can issue his warrant to the officer commanding the troops on board a ship empowering the latter to confirm during the period of the voyage the findings and sentences of district court-martial held on board the ship.

97. Contents of warrant issued under section 95 or section 96.—A warrant issued under section 95 or section 96 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

NOTE

1. As to restrictions, etc., see forms of court-martial warrants. Certain administrative instructions have also been issued on the subject and should be consulted; *e.g.*, a sentence of death (except for mutiny) must be reserved for confirmation by the Commander-in-Chief in India and a sentence of transportation cannot be confirmed by a district commander.

2. A member of a court-martial or an officer who has acted as prosecutor cannot confirm the proceedings of that court-martial. See Rule 62.

3. When a warrant has been issued and its contents communicated to the addressee, he can act upon it before it actually reaches him.

98. Confirmation of finding and sentence.—(*1*) The finding and sentence of a summary general court-martial shall require to be confirmed by the convening officer or if the convening officer so directs, by an authority superior to the convening officer—

(*a*) in the case of the trial of an officer,

(*b*) in the case of an acquittal or a sentence of death or transportation or imprisonment for a term exceeding two years, and

(*c*) in any other case if so ordered by the convening officer.

(*2*) Save as provided in sub-section (*1*), a sentence passed by a summary general court-martial shall not require to be confirmed but may be carried out forthwith.

NOTE

1. *Sub-sec.* (*1*).—An order under clause (*c*) must be made by the convening officer at the time he convenes the court, or at any rate before the trial commences. If he has made such an order or if the finding and sentence require confirmation under (*a*) or (*b*) he can, instead of dealing with the finding and sentence himself, reserve them for confirmation by an authority superior to him.

2. *Sub-sec.* (*2*). *Carried out forthwith.*—If a sentence of imprisonment, not requiring confirmation be passed, the president, when passing sentence, must consider the provisions of section 3 (*1*) of the Indian Army (Suspension of Sentences) Act in Part III. The notes to that section should in such cases be consulted.

99. Power of confirming officer to mitigate, remit or commute sentences.—Subject to such restrictions as may be contained in any warrant issued under section 95 or section 96, a confirming officer may, when confirming the sentence

of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any less punishment or punishments to which the offender might have been sentenced by the court-martial or if that punishment is death or transportation for life, then for any less punishment or punishments mentioned in this Act:

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court.

NOTE

1. As to mitigation of sentence for offences in several charges, where the finding on one or more of them is not confirmed, see Rule 59; and as to the power of the confirming officer to vary a sentence informally expressed or in excess of the punishment authorised by law, see Rule 61.

2. The powers conferred by this section may be exercised by the confirming officer, as such, only when confirming the sentence. After promulgation, when the confirmation is complete the power of the confirming officer in that capacity ceases and the above powers can only be exercised by one of the authorities mentioned in s. 112.

3. A confirming officer may also, under s. 3 (*1*) of the Indian Army (Suspension of Sentences) Act (see Part III) direct that an offender sentenced to transportation or imprisonment be not committed until the orders of a superior military authority are obtained. If himself a superior military authority he has further powers as such under that Act.

4. *Mitigation* is awarding a less amount of the same species of punishment, as, for example, by reducing the length of imprisonment to which an offender has been sentenced; and is in effect equivalent to a remission of part of the sentence. The power to mitigate, etc., cannot be exercised whilst execution of the sentence is suspended.

5. *Remission* may be remission of the whole or of part of the sentence; thus a sentence of imprisonment may be remitted altogether, or a portion of the term may be remitted.

A confirming officer cannot remit such forfeitures of pay and allowances as follow automatically (under s. 50 and P. & A. Regulations) upon the finding of the court.

6. *Commutation* is changing the description of punishment by awarding a punishment lower in the scale of punishments in s. 43, as imprisonment in lieu of transportation, or dismissal in lieu of cashiering, or forfeiture of seniority in lieu of reduction in rank; but the effect of the proviso to this section is that transportation can only be commuted to an equal or shorter term of imprisonment, *e.g.*, the commutation of seven years' transportation to ten years' imprisonment would be illegal.

7. *Other punishments.*—There is no standard of comparison between one punishment and two or more other punishments, and as it is necessary that the commuted sentence should be less than the original sentence, commutation of one punishment to two or more punishments is only permissible where it is obvious that the two are together less severe than the one, *e.g.*, death commuted to cashiering and transportation, or dismissal to forfeiture of seniority and severe reprimand. Partial commutation of any one punishment by the substitution for a portion thereof of another punishment is illegal: thus where in a case of "losing by neglect" a court passed a sentence of imprisonment, but omitted to pass a sentence of stoppages of pay which would have been valid, a portion of the imprisonment cannot be commuted to stoppages.

8. If a confirming officer purports (by way of commutation) to substitute for a valid sentence a sentence which the court had no power to award, neither the original sentence —since it has been commuted—nor the new sentence—since it is illegal—can stand. The conviction, however, remains good.

9. Where a term of imprisonment or field punishment is reduced in length by remission or mitigation, automatic forfeiture of pay under s. 50 and P. & A. Regulations is governed by the term actually undergone—not by that originally imposed.

99A. Confirmation of finding and sentence on board ship.—When any person subject to this Act is tried and sentenced by court-martial while on board ship, the finding and sentence so far as not confirmed and executed on board ship may

be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

NOTE

On active service the officer commanding the troops on board a ship could convene a summary general court-martial on board under clause (*c*) of s. 62.

See notes to ss. 55 and 96.

100. Revision of finding or sentence.—(*1*) Any finding or sentence of a court-martial which requires confirmation may be once revised by order of the confirming officer; and on such revision, the court, if so directed by him, may take additional evidence.

(*2*) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(*3*) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided that, if a general court-martial, it still consists of five officers, or if a district court-martial, of three officers.

NOTE

1. See Rule 57 and notes for procedure on revision.

2. *Which requires confirmation.*—The finding or sentence of a summary court-martial can therefore, never be revised. Neither can that of a summary general court-martial be revised if it does not under s. 98 require to be confirmed.

101. Finding and sentence of a summary court-martial.—The finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out forthwith :

Provided that, if the officer holding the trial is of less than five years' service, he shall not, except on active service, carry into effect any sentence until it has received the approval of an officer commanding not less than a corps.

NOTE

Carried out forthwith.—The officer holding the trial when passing sentence may, if a sentence of imprisonment be awarded, direct under the provisions of s. 3 (*1*) of the Indian Army (Suspension of Sentences) Act that the offender be not committed until the orders of a superior military authoriy are obtained. See notes to s. 3 of the Indian Army (Suspension of Sentences) Act in Part III.

102. Transmission of proceedings of summary courts-martials.—The proceedings of every summary court-martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held, or to the prescribed officer; and such officer, or the Commander-in-Chief, or the officer commanding the army or army corps in which the trial was held, may, for reasons based on the merits of the case, but not on any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the court might have passed.

NOTE

1. *Division or Brigade.*—Also District and Area.

Army Corps.—Also Command.

Prescribed officer.—See Rule 168 and A. D. Notifications No. 843 of 1924 and No. 1015 of 1929 in Part V.

2. The proceedings of a summary court-martial cannot be sent back for revision and do not require confirmation, and any sentence passed by the court should, except as provided in s. 101 of the Act and s. 3 (*1*) of the Indian Army (Suspension of Sentences) Act, be put into execution forthwith.

Under this section and Rule 119 the proceedings must be forwarded for review to the reviewing authority (through the Deputy or Assistant Judge Advocate General of the Command, if the trial is held in India) who, if he considers that justice has been done, should countersign the proceedings and return them to the accused's corps for preservation. If a direction under s. 3(*1*) of the Indian Army (Suspension of Sentences) Act has been passed, he should issue his orders thereon, or, if not himself a superior military authority, forward the proceedings to such an authority for orders. The reviewing authority can, for reasons based on the merit of the case, but not on merely technical grounds (as to which, see note to Rule 119), set aside the proceedings or mitigate, remit or commute the sentence. If the sentence is illegal he must set it aside, or under s. 103 a valid sentence may be substituted by one of the authorities mentioned in s. 112.

A sentence of imprisonment for three months or less unaccompanied by dismissal should normally be undergone in military custody. See s. 107 and notes. It has been ruled that a reviewing authority may direct that such a sentence should be undergone in military custody, either when reducing a sentence of imprisonment to three months or less or when the court omits to add such a direction to the sentence.

103. Substitution of a valid finding or sentence for an invalid finding or sentence.—(*1*) Where a finding of guilty by a court-martial, which has been confirmed, or which does not require confirmation, is found for any reason to be invalid or cannot be supported by the evidence, the authority which would have had power under section 112, to commute the punishment awarded by the sentence, if the finding had been valid, may substitute a new finding, if the new finding could have been validly made by the court-martial on the charge and if it appears that the court-martial must have been satisfied of the facts establishing the offence specified or involved in the new finding, and may pass a sentence for the said offence.

(*2*) Where a sentence passed by a court-martial which had been confirmed, or which does not require confirmation, not being a sentence passed in pursuance of a new finding substituted under sub-section (*1*), is found for any reason to be invalid, the authority which would have had power under section 112 to commute the punishment awarded by the sentence if it had been valid may pass a valid sentence.

(*3*) The punishment awarded by a sentence passed under sub-section (*1*) or sub-section (*2*) shall not be higher in the scale of punishments than, or in excess of the punishment awarded by, the sentence for which a new sentence is substituted under this section.

(*4*) Any finding substituted, or any sentence passed, under this section shall for the purposes of this Act and the rules made thereunder have effect as if it were a finding or sentence, as the case may be, of a court-martial.

NOTE

1. Sub-section (*1*) enables any of the authorities mentioned in section 112 to substitute a new finding for an invalid finding or for one which cannot be supported by the evidence, which have been confirmed and which are thus not open to revision and to pass a sentence in respect of the new finding. It also gives these authorities similar powers in regard to a sentence not requiring confirmation, *i.e.*, any sentence by summary court-martial, or one by a summary general court-martial, which does not, under s. 98, require confirmation.

Sub-section (*2*) similiarly enables the said authorities to substitute a valid sentence for an invalid sentence, not being a sentence passed in pursuance of a new finding under sub-section (*1*).

Sub-section (*3*) requires that the new sentence substituted for an invalid sentence must not be higher in scale than, or in excess of, the original sentence.

2. As to mitigation of sentence after confirmation, see s. 112 and Rule 59 (B).

103A. Provision in the case of accused being lunatic.—(*1*) Whenever, in the course of a trial by court-martial, it appears to the Court that the person charged is of unsound mind and consequently incapable of making his defence, or that

such person committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the Court shall record a finding accordingly, and the President of the Court, or the officer holding the trial, as the case may be, shall forthwith report the case to the confirming officer, or, in the case of a court-martial whose finding does not require confirmation to the prescribed officer.

(*2*) A confirming officer to whom a case is reported under sub-section (*1*) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another court-martial for the offence with which he was originally charged.

(*3*) A prescribed officer to whom a case is reported under sub-section (*1*) and a confirming officer confirming a finding in any case so reported to him shall order the accused person to be kept in custody in the prescribed manner, and shall report the case for the orders of the Central Government.

(*4*) On receipt of a report under sub-section (*3*), the Central Government may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

(*5*) Where an accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention, the prescribed officer may—

(*a*) if such person is in custody under sub-section (*3*), on the report of a medical officer that he is capable of making his defence, or

(*b*) if such person is detained under sub-section (*4*), on a certificate such as is referred to in section 473 of the Code of Criminal Procedure, 1898,

take steps to have such person tried by the same or another court-martial for the offence with which he was originally charged or, provided that the offence is a civil offence, by a Criminal Court.

(*5-A*) Where any person is in custody under sub-section (*3*) or under detention under sub-section (*4*),—

(*a*) if such person is in custody under sub-section (*3*), on the report of a medical officer, or

(*b*) if such person is detained under sub-section (*4*), on a certificate from any of the authorities empowered to grant a certificate under section 473 of the Code of Criminal Procedure, 1898,

that, in the judgment of such officer or authority, such person may be released without danger of his doing injury to himself or to any other person, the Central Government may thereupon order such person to be released, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum.

(*5-B*) Where any relative or friend of any person who is in custody under sub-section (*3*) or under detention under sub-section (*4*) desires that he shall be delivered to his care and custody, the Central Government may, upon the application of such relative or friend and on his giving security to the satisfaction of the Central Government that the person delivered shall—

(*a*) be properly taken care of and prevented from doing injury to himself or to any other person, and

(*b*) be produced for the inspection of such officer, and at such times and places, as the Central Government may direct,

order such person to be delivered to such relative or friend.

(6) A copy of every order made by the prescribed officer under sub-section (5) shall forthwith be sent to the Central Government.

NOTE.

1. *Sub-sec. (1).*—For form of findings of insanity, see p. 387.

Prescribed officer.—See rule 169(1).

It is to be observed that two distinct cases are contemplated. A person may have been sane at the time when he did the act or made the omission charged, but may not be sane enough to make his defence; while on the other hand, a man insane at the time when he did the act or made the omission charged may have recovered sufficiently to take his trial.

In the case of a court-martial whose findings requires confirmation, confirmation is required in both cases mentioned above.

2. An application that the accused is of unsound mind and consequently incapable of making his defence should be made before arraignment. The application will normally be made by counsel for the defence or defending officer, but should, if necessary, be made by the prosecutor. Evidence in support of the application may of course, be given.

3. Where a court-martial find that an accused person committed the act (or made the omission) alleged as constituting the offence (or offences) specified in the charge or charges but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, such finding does not amount to a conviction, but means that on the facts proved the court would have found him guilty of the offence (offences) had it not been established to their satisfaction that the accused at the time was not responsible for his actions.

If such a finding is recorded, no pay and allowances are forfeited automatically under s. 50 of the Act and P. & A. Regulations, *e.g.*, in respect of the period during which the accused is in custody awaiting trial.

4. *Sub-sec. (3).—Prescribed manner.*—See Rule 169 (3). The confirming officer who confirms the finding or the prescribed officer should then forward the proceedings to Army Headquarters.

5. *Sub-sec. (4)—Other suitable place.*—In view of the provisions of s. 473, Code of Criminal Procedure, the place of safe custody must, if it is not a lunatic asylum, be a jail.

6. *Sub-sec. (5).—Prescribed officer.*—See Rule 169 (2).

7. The certificate referred to in clause (*b*) is a certificate, in the case of a person detained in a lunatic asylum, by the visitors of such asylum or any two of them, or, in the case of a person detained in a jail, by the Inspector General of Prisons, to the effect that, in their or his opinion, such person is capable of making his defence.

CHAPTER IX.

EXECUTION OF SENTENCES

104. Form of sentence of death.—In awarding a sentence of death a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death.

105. (Section 105 repealed).

106. Commencement of sentence of transportation or imprisonment.—Whenever any person is sentenced under this Act to transportation or imprisonment, the term of his sentence shall whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the president or, in the case of a summary court-martial, by the court.

NOTE.

1. Under this section a term of transportation or imprisonment cannot be made to commence at the expiration of a previous term, but must commence on the day on which the sentence is signed. If, therefore, the court desire to inflict, *e.g.*, six months' additional imprisonment on a prisoner already undergoing six months' imprisonment, of which three months are unexpired, the court must award nine months.

A term of transportation or imprisonment awarded by way of commutation must commence on the date of the original sentence even though such sentence was one of a different character.

The suspension of a sentence of transportation or imprisonment has no effect on its currency. See section 4 of the Indian Army (Suspension of Sentences) Act in Part III.

2. It is essential that the proceedings be dated as well as signed. When, however, a president or officer holding the trial omits either to sign or date the proceedings, he can even after confirmation sign them and date his signature as of the true date of passing the sentence.

107. Execution of sentence of transportation or imprisonment.—(*1*) Whenever any sentence of transportation is passed under this Act or whenever any sentence so passed is commuted to transportation, the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined and shall forward him to such prison with the warrant.

(*2*) Whenever any sentence of imprisonment is passed under this Act or whenever any sentence so passed is commuted to imprisonment, the confirming officer, or in the case of a sentence which does not require confirmation, the Court or in either case such officer as may be prescribed may direct either that the sentence shall be carried out by confinement in a civil prison or by confinement in a military prison, and the commanding officer of the person under sentence or such other officer, as may be prescribed, shall forward a warrant in the prescribed form to the officer in charge of the prison in which the person under sentence is to be confined and shall forward him to such prison with the warrant :

Provided that in the case of a sentence of imprisonment for a period not exceeding three months, in lieu of a direction that the sentence shall be carried out by confinement in a civil or a military prison, a direction may be made that the sentence shall be carried out by confinement in military custody :

Provided further that on active service a sentence of imprisonment may be carried out by confinment in such place as the officer commanding the forces in the field may from time to time appoint.

NOTE.

1. *Passed.*—A sentence requiring confirmation (see ss. 94 and 98) is inoperative until confirmed ; action in respect of such a sentence cannot, therefore, be taken under this

section before confirmation. Until promulgation has been effected, confirmation is not complete (see Rule 58).

Prescribed.—See Rule 152.

Civil Prison.—I.e., a prison maintained under the Prisons Act (IX of 1894).

2. For forms of warrants, see Form A, B and BB in the Fourth Appendix to the Rules.

When a death sentence is commuted by the confirming officer to transportation or imprisonment, Forms A, B or BB with the necessary variations, will be used. See Rule 4 (A).

3. Sentences of imprisonment combined with dismissal should, as a rule, be carried out by confinement in a civil prison. Sentences of imprisonment not exceeding three months, to which no sentence of dismissal has been added, should be carried out by confinement in military custody, or, if sufficient accommodation in calls does not exist, in a military prison. Where an offender has been sentenced to imprisonment exceeding three months but circumstances exist which justify the return of the offender to military service the competent authority should give a direction that he should be committed to a military prison.

When the power of directing imprisonment to be undergone in military custody or a military prison vests in the confirming officer, the direction should be part of the confirmation minute, but when, as in the case of a summary court-martial it vests in the court, the direction should form part of the sentence. The direction may also be given by an authority having power, under s. 102 or s. 112, to mitigate the sentence.

4. Under the second proviso the officer commanding the forces in the field on active service can establish military prisons in the field in which sentences of imprisonment of any length may be carried out. This enables a sentence of imprisonment to be carried out locally on active service and the prisoner, unless he is dismissed, to be sent back to duty on its expiration. The officer commanding the forces in the field can also appoint a local civil prison as a place in which such sentences may be carried out, if he considers the civil prison to be a suitable place and accommodation is available.

108. Execution of sentence of imprisonment in special cases.—Whenever, in the opinion of an officer commanding an army, army corps, division or independent brigade, any sentence or portion of a sentence of imprisonment cannot, for special reasons, conveniently be carried out in accordance with the provisions of section 107, such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

NOTE.

1. *Army Corps, Division.*—Also Command and District.

The power conferred in this section might be of use in an emergency, such as an epidemic. It will also admit of local arrangements being made for the execution of a sentence of rigorous imprisonment passed in a colonial garrison when it is, for any reason, inconvenient or undesirable that an offender should be sent to India to undergo his sentence.

2. When a portion of a sentence of transportation (see s. 108A) or of imprisonment which has to be carried out in a civil prison is, under an order made under this section for special reasons, carried out in local civil custody out of India the warrant of commitment in Form A or Form B (see Fourth Appendix to Rules) must be suitably varied (see Rule 4) and must cite the order made under this section. When the prisoner is to be despatched to India he should be demanded by a warrant in Form F and must be committed to the civil prison in India on a fresh warrant of commitment.

108A. Offenders sentenced to transportation how dealt with until transported.—In every case in which a sentence of transportation is passed under this Act, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be deemed to have been undergoing his sentence of transportation during the term of his imprisonment.

NOTE.

This section read with s. 107 enables a person sentenced to transportation to be committed to a civil prison where, until he is transported, he will be dealt with in the same manner as if sentenced to rigorous imprisonment.

A person sentenced to transportation out of India may be confined in any civil prison or other fit place pending his removal to India. See s. 108 and notes. A person so sentenced should, however, be sent to India as soon as it is practicable to do so.

109. Communication of certain orders to prison officers.—Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil or military prison, a warrant in accordance with such order shall be forwarded by the prescribed officer to the officer in charge of the prison in which such person is confined.

NOTE.

For form of warrants under this section, see Forms C to F in the Fourth Appendix to the Rules. The heading of each of these shows clearly the cases in which it is to be used. It will be noticed that Form C is applicable to cases in which the person concerned is to be released, Form D to those in which he remains in a civil prison and Form E to those in which he remains in a civil or military prison but with a reduced sentence, and Form F to those in which he is to be transferred to military custody, *i.e.*, to cases in which his sentence, in its new form, admits of or requires such custody. When a death sentence is commuted, *subsequent to confirmation*, to one of transportation or imprisonment, Form D or E, with the necessary variations, will be used. See Rule 4 (A).

The order, after promulgation, should be sent to the Judge Advocate General in India for attachment to the court-martial proceedings. See R. A. 1.

Prescribed officer.—See Rule 153.

110. Limit of solitary confinement.—In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and, when the imprisonment awarded exceeds three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

111. (Section 111 repealed).

111A. Execution of sentence of fine.—When a sentence of fine is imposed by a court-martial under section 41, whether the trial was held within a Part A State or a Part C State or elsewhere, a copy of such sentence, signed and certified by the President of the Court or the officer holding the trial, as the case may be, may be sent to any Magistrate in a Part A State or Part C State, and such Magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure 1898 (V of 1898), for the levy of fines as if it was a sentence of fine imposed by such Magistrate.

NOTE.

This provision should be used when the fine imposed by sentence of a court-martial is not recoverable under section 50 (*2*) (*g*) of the Act.

111B. Establishment and regulation of military prisons.—(*1*) The Central Government may set apart any building or part of a building or any place under its control as a military prison for the confinement of persons sentenced to imprisonment under this Act or under the BURMA Army Act.

(*2*) The Central Government may make rules providing—

(*a*) for the government, management and regulation of such military prisons;

(*b*) for the appointment and removal and powers of inspectors, visitors, governors and officers thereof;

(*c*) for the labour of prisoners undergoing confinement therein, and for enabling persons to earn, by special industry and good conduct, a remission of a portion of their sentence; and

(*d*) for the safe custody of prisoners and the maintenance of discipline among them and the punishment, by personal correction, restraint or otherwise, of offences committed by prisoners:

Provided that such rules shall not authorise corporal punishment to be inflicted for any offence nor render the imprisonment more severe than it is under the law for the time being in force relating to civil prisons in Part A States.

(*3*) Rules made under this section may provide for the application to military prisons of any of the provisions of the Prisons Act, 1894 (IX of 1894), relating to the duties of officers of prisons and the punishment of person not prisoners.

CHAPTER X.

PARDONS AND REMISSIONS

112. Pardons and remissions.—(*1*) When any person subject to this Act has been convicted by a court-martial of any offence, the Central Government or the Commander-in-Chief or, in the case of a sentence which he could have confirmed or which did not require confirmation, the officer commanding the army, army corps, division or independent brigade in which such person at the time of his conviction was serving, or prescribed officer, may—

(*a*) either without conditions or upon any conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded ;

(*b*) mitigate the punishment awarded, or commute such punishment for any less punishment or punishments mentioned in this Act :

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the Court.

(*2*) If any condition on which a person has been pardoned or a punishment has been remitted is, in the opinion of the authority which granted the pardon or remitted the punishment, not fulfilled, such authority may cancel the pardon or remission, and thereupon the sentence of the Court shall be carried into effect as if such pardon had not been granted or such punishment had not been remitted :

Provided that, in the case of a person sentenced to transportation or imprisonment, such person shall undergo only the unexpired portion of his sentence.

(*3*) When under the provisions of section 49 a warrant officer or a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purposes of this section, be treated as a punishment awarded by sentence of a court-martial.

NOTE.

1. As to mitigation, remission and commutation of sentences, see notes to s. 99 ; as to substitution of a valid for an invalid sentence, see s. 103 ; and as to mitigation of the sentence when the finding on one of several charges is found to be invalid, see Rule 59 (B).

Army Corps, Division.—Also Command and District.

Prescribed officer.—See Rule 170.

2. *Sub-sec.* (*1*).—*E.g.*, a sentence of dismissal might be remitted on the condition that the person sentenced shall not receive pay in respect of or count service for any purpose during the period spent under the dismissal. The conditions, if any, must be clearly stated and the written acceptance of the person obtained. Mitigation or commutation cannot be made conditional.

A pardon takes away the conviction, and when a pardon has been granted the record of the conviction must be removed from the pardoned person's conduct sheet and will not be provable against him should he be again tried by court-martial and convicted of any offence.

3. *Sub-sec.* (*2*) *Proviso. Unexpired portion.*—This is the period of the sentence less the period the person was in custody in consequence of the sentence, *i.e.*, less the period from date of sentence to date of release in consequence of the remission.

4. *Sub-sec.* (*3*).—The remission of the punishments mentioned in s. 49 would not of itself avoid the reduction to the ranks consequent on the sentence. If it is desired to avoid such reduction to the ranks the reduction may, by reason of this sub-section, be remitted as well.

5. Any order made under this section should, after promulgation, be sent to the Judge Advocate General in India for attachment to the court-martial proceedings, see R. A. I.

CHAPTER XI.

RULES

113. Power to make rules.—(*1*) The Central Government may make rules for the purpose of carrying into effect the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the removal, retirement or discharge from the service of persons subject to this Act;

(*b*) the amount and incidence of fines to be imposed under section 21;

(*bb*) the specification of the punishments which may be awarded as field punishments under sections 20 and 45;

(*c*) the assembly and procedure of courts of inquiry, and the administration of oaths or affirmations by such courts;

(*d*) the convening and constituting of courts-martial;

(*e*) the adjournment, dissolution and sittings of courts-martial;

(*f*) the procedure to be observed in trials by courts-martial;

(*g*) the confirmation and revision of the findings and sentences of courts-martial;

(*h*) the carrying into effect sentences of courts-martial;

(*i*) the forms of orders to be made under the provisions of this Act relating to courts-martial, transportation or imprisonment;

(*ii*) the constitution of authorities to decide for what persons, to what amounts and in what manner, provision should be made for dependants under section 52A, and the due carrying out of such decisions; and

(*j*) any matter in this Act directed to be prescribed.

(*3*) All rules made under this Act shall be published in the Official Gazette, and, on such publication, shall have effect as if enacted in this Act.

NOTE.

1. The "Rules" made under this section are included with notes at the end of the Act in this Manual.

2. *Sub-sec.* (*2*) (*j*). See s. 7 (*21*).

CHAPTER XII.

PROPERTY OF DECEASED PERSONS, DESERTERS AND LUNATICS

114. Property of deceased persons and deserters.—The following provisions are enacted respecting the disposal of the property of every person subject to this Act not being an Indian Commissioned officer who dies or deserts :—

(*1*) The commanding officer of the corps, department or detachment to which the deceased person or deserter belonged shall secure all the moveable property belonging to the deceased or deserter that is in camp or quarters, and cause an inventory thereof to be made, and draw any pay and allowances due to such person.

(*2*) In the case of a deceased person who has left in a bank (including any post office savings bank, co-operative bank or society or any other institution receiving deposits in money, however named) a deposit not exceeding one thousand rupees, the commanding officer may, if he thinks fit, require the agent, manager or other proper officer of such bank, society or other institution to pay the deposit to him forthwith, notwithstanding anything in any rules of the bank, society or other institution and when any money has been paid by such bank, society or other institution in compliance with such requisition, no person shall have any claim against the bank, society or other institution in respect of such money.

(*3*) In the case of a deceased person whose representative is on the spot and has given security for the payment of the regimental or other debts in camp or quarters (if any) of the deceased, the commanding officer shall deliver over any property received under clauses (*1*) and (*2*) to that representative.

(*4*) In the case of a deceased person whose estate is not dealt with under clause (*3*), and in the case of any deserter, the commanding officer shall cause the moveable property to be sold by public auction and may convert into money and cash certificates (including post office cash certificates, defence savings certificates and national savings certificates) and shall pay the regimental and other debts in camp or quarters (if any), and, in the case of a deceased person, the expenses of his funeral ceremonies, from the proceeds of the sale or conversion and from any pay and allowances drawn under clause (*1*) and from the amount of the deposit (if any) received under clause (*2*).

(*5*) The surplus, if any, shall, in the case of a deceased person, be paid to his representative (if any), or in the event of no claim to such surplus being established within twelve months after the death, then the same shall be remitted to the prescribed person.

(*6*) In the case of a deserter, the surplus (if any), shall be forthwith remitted to the prescribed person and shall, the expiry of three years from the date of his desertion, be forfeited to the Central Government, unless the deserter shall in the meantime have surrendered or been apprehended.

(*7*) The decision of the commanding officer as to what are the regimental and other debts in camp or quarters of a deceased person or deserter and as to the amount payable therefor shall, subject to the result of any appeal, as against an order to the principal court of original civil jurisdiction in the locality, be final.

NOTE.

Sub-secs. (*5*) *and* (*6*). *Prescribed person.*—See Rule 172 (A).

115. Disposal of certain property without production of probate, etc.—Property deliverable and money payable to the representative of a deceased person under section 114 may, if the total value or amount thereof does not exceed one thousand rupees, and if the prescribed person thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title; and such delivery or payment shall be a full discharge to those ordering or making the same and to the Government from all further liability in respect of the property or money; but nothing in this section shall affect the rights of any executor or administrator or other representative, or of any creditor, of a deceased person against any person to whom such delivery or payment has been made.

NOTE.

Prescribed person.—See Rule 172.

116. Application of sections 114 and 115 to lunatics, etc.—The provisions of sections 114 and 115 shall, so far as they can be made applicable, apply in the case of a person subject to this Act, not being an Indian commissioned officer, who, notwithstanding anything contained in the Indian Lunacy Act, 1912 (IV of 1912), is ascertained in the prescribed manner to be insane, or, who, being on active service, is officially reported missing, as if he had died on the day on which his insanity is so ascertained, or, as the case may be, on the day on which he is officially reported missing:

Provided that in the case of a person so reported missing no action shall be taken under clauses (2) to (5), inclusive, of section 114 until such time as such person is officially presumed to be dead.

116-A. Property of Indian commissioned officers who die or desert.—The provisions of sections 116-B to 116-I, inclusive, shall apply to the disposal of the property of Indian commissioned officers subject to this Act, who die or desert.

116-B. Powers of Committee of Adjustment.—(1) On the death or desertion of an Indian commissioned officer, a Committee of Adjustment appointed in this behalf in the manner prescribed (hereinafter referred to as the Committee) shall, as soon as may be, subject to the rules made in this behalf under this Act,—

(*a*) secure all the moveable property belonging to the deceased or deserter, that is in camp or quarters, and cause an inventory thereof to be made, and ascertain and draw the pay and allowances, if any, due to him; and

(*b*) ascertain the amount, and provide for the payment of the regimental and other debts in camp or quarters (if any) of the deceased or deserter.

(2) In the case of a deceased Indian commissioned officer whose representative, widow (if any) or next of kin has given security to the satisfaction of the Committee for the payment of the regimental and other debts in camp or quarters (if any) of the deceased, the Committee shall deliver any property received by it under sub-section (1) to that representative, widow or next of kin, as the case may be, and shall not further interfere in relation to the property of the deceased.

(3) In the case of a deceased Indian commissioned officer, the Committee, save as may be prescribed, shall, if it appears to it necessary for the payment of regimental and other debts in camp or quarters and the expenses, if any, incurred by the Committee, and may, in any other case, collect all moneys left by the deceased in any bank (including any post office savings bank, co-operative bank or society or any other institution receiving deposits in money, however named) and for that purpose may require the agent, manager or other proper officer of such

bank, society or other institution to pay the moneys to the Committee forthwith, and such agent, manager or other officer shall be bound to comply with the requisition notwithstanding anything in any rules of the bank, society or other institution, and when any money has been paid by a bank, society or other institution in compliance with the requisition under this sub-section, no person shall have a claim against the bank, society or other institution in respect of such money.

(*4*) In the case of a deceased Indian commissioned officer whose estate has not been dealt with under sub-section (*2*) and in the case of a deserter, the Committee, subject to any rules made in this behalf under this Act, shall for the purpose of paying the regimental and other debts in camp or quarters, and may in any other case, sell or convert into money the moveable property of the deceased or deserter.

(*5*) The Committee shall, out of the moneys referred to in sub-sections (*3*) and (*4*), pay the regimental and other debts in camp or quarters (if any) of the deceased or deserter.

(*6*) In the case of a deceased Indian commissioned officer the surplus (if any) shall be remitted to the prescribed person.

(*7*) In the case of an Indian commissioned officer who is a deserter, the surplus (if any) shall be forthwith remitted to the prescribed person and shall, on the expiry of three years from the date of his desertion, be forfeited to the Central Government unless the deserter shall in the meantime have surrendered or been apprehended :

Provided that the prescribed person may pay the whole or such part of the surplus as he may deem proper to the wife or children or other dependents of the commissioned officer.

(*8*) If any in case a doubt or difference arises as to what are the regimental and other debts in camp or quarters of a deceased officer or deserter or as to the amount payable therefor, the decision of the prescribed person shall be final and shall be binding on all persons for all purposes.

(*9*) For the purpose of the exercise of its duties under this section, the Committee shall, to the exclusion of all authorities and persons whomsoever, have the same rights and powers as if it had taken out representation to the deceased, and any receipt given by the Committee shall have effect accordingly.

116-C. Power of Central Government to hand over the estate of a deceased officer to Administrator General.—(*1*) Notwithstanding anything contained in the Administrator General's Act, 1913 (III of 1913), an Administrator General shall not interpose in any manner in relation to any property of a deceased Indian commissioned officer which has been dealt with under the provisions of section 116-B except in so far as he is expressly required or permitted to do so by or under the provisions contained in this Chapter.

(*2*) The Central Government may at any time and in such circumstances as it thinks fit direct that the estate of a deceased Indian commissioned officer shall be handed over by the Committee to the Administrator General of a State for administration and thereupon the Committee shall make over the estate to such Administrator General.

(*3*) Where under this section any estate is handed over to the Administrator General he shall administer the estate in accordance with the provisions of the Administrator General's Act 1913 (III of 1913).

Provided that the regimental and other debts in camp or quarters of the deceased officer (if any) shall be paid in priority to any other debt due by him.

(*4*) The Administrator General shall pay the surplus, if any, remaining in his hands after discharging all debts and charges, to the heirs of the deceased and, if no heir is traceable, shall remit such surplus to the prescribed person in the prescribed manner.

(*5*) The Administrator General shall not charge in respect of his duties any fee exceeding three per cent of the gross amount coming to or remaining in his hands after payment of the regimental and other debts in camp or quarters.

116-D. Disposal of surplus by the prescribed person.—On receipt of the surplus referred to in sub-section (*6*) of section 116-B or sub-section (*4*) of section 116-C, the prescribed person shall proceed as follows :—

(1) If he knows of a representative of the deceased, he shall pay the surplus to that representative.

(2) If he does not know of any such representative, he shall publish every year a notice in the prescribed form and manner for six consecutive years. If no claim to the surplus is made by a representative of the deceased within six months after the publication of the last of such notices the prescribed person shall deposit the surplus together with any income or accumulation of income accrued therefrom to the credit of the Central Government.

Provided that such deposit shall not bar the claim of any person to such surplus or any part thereof.

116-E. Disposal of effects not money.—Where any part of the estate of a deceased Indian commissioned officer consists of effects, securities or other property not converted into money, the provisions of section 116-B and section 116-D with respect to paying the surplus shall, save as may be prescribed, extend to the delivery, transmission or transfer of such effects, securities or property, and the prescribed person shall have the same power of converting the same into money as a representative of the deceased.

116-F. Disposal of certain property without production of probate, etc.—Property deliverable and money payable to the representative of a deceased Indian commissioned officer under section 116-B or section 116-D may, if the total amount or value thereof does not exceed five thousand rupees, and, if the prescribed person thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, succession certificate or other such conclusive evidence of title.

116-G. Discharge of Committee, prescribed person and the Government.—Any payment of money or delivery, application, sale or other disposition of any property or money made, or purported to be made, by the Committee or the prescribed person in good faith in pursuance of section 116-B, section 116-D, section 116-E, or section 116-F shall be valid and shall be a full discharge to the Committee or the prescribed person, as the case may be, and to the Government from all further liability in respect of that money or property; but nothing herein contained shall affect the right of any executor or administrator or other representative, or of any creditor of the deceased officer against any person to whom such payment or delivery has been made.

116-H. Property in the hands of the Committee or the prescribed person not to be assets at the place where the Committee or the prescribed person is stationed.—Any property coming under secton 116-B or under sub-secton (*4*) of section 116-C into the hands of the Committee or the prescribed person shall not, by reason of so coming be deemed to be assets or effects at the place in which that Committee or the prescribed person is stationed and it shall not be necessary by reason thereof that representation be taken out in respect of that property for that place.

116-I. Saving of rights of representatives.—After the Committee has deposited with the prescribed person the surplus of the property of any deceased officer under sub-section (*6*) of section 116-B, any representative of the deceased or any Administrator General, shall, as regards any property of the deceased not collected by the Committee and not forming part of the aforesaid surplus, have the same rights and duties as if Section 116-B had not been enacted.

116-J. Application of sections 116-B to 116-I to lunatics, etc.—The provisions of sections 116-B to 116-I shall, so far as they can be made applicable, apply in the case of an Indian commissioned officer, who notwithstanding anything contained in the Indian Lunacy Act, 1912 (IV of 1912), is ascertained in the prescribed manner to be insane, or who, being on active service, is officially reported missing, as if he had died on the day on which his insanity is so ascertained or, as the case may be, on the day on which he is officially reported missing:

Provided that in the case of an officer so reported missing no action shall be taken under sub-sections (*2*) to (*5*) of section 116-B or under section 116-C until such time as he is officially presumed to be dead.

116-K. Appointment of Standing Committee of Adjustment when officers die or desert while on active service.—When an Indian commissioned officer dies or deserts while on active service, the references in the foregoing provisions of this Chapter to the Committee shall be construed as references to the Standing Committee of Adjustment, if any, appointed in this behalf in the manner prescribed.

116-L. Interpretation.—For the purposes of this Chapter—

(1) the expression 'regimental and other debts in camp or quarters' includes money due as military debts, namely, sums due in respect of, or of any advance in respect of—

(a) quarters;

(b) mess, band, and other regimental accounts;

(c) military clothing, appointments and equipments, not exceeding a sum equal to three months' pay of the deceased, and having become due within eighteen months before his death;

(2) 'representation' includes probate and letters of administration with or without the will annexed and a succession certificate, constituting a person the executor or administrator of the estate of a deceased person or authorising him to receive or realize the assets of a deceased person;

(3) 'representative' means any person who has taken out representation but does not include an Administrator General.

CHAPTER XXI

MISCELLANEOUS

MILITARY PRIVILEGES

117. Complaints against officers.—(*1*) Any person subject to this Act other than an Indian commissioned officer who deems himself wronged by any superior or other officer, may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer commanding the same.

(*2*) When the officer complained against is the officer to whom any complaint should, under sub-section (*1*), be preferred, the aggrieved person may complain to such officer's next superior officer.

(*3*) Every officer receiving any such complaint shall examine into it, and, when necessary, refer it to superior authority:

Provided that a decision by an authority competent to dispose of the matter complained of shall be final.

(*4*) Every such complaint shall be preferred through such channels as may be from time to time specified by proper authority.

NOTE.

1 For further information regarding complaints and petitions generally, see R. A. I.

Complaints may be made respecting any matter, but can be made by an individual only. The combined complaint of several can never be permissible, but should not, if well founded, be treated as mutinous, where it is plain that the only object of those making the complaint is to procure redress of the matters by which they think themselves wronged. A complaint cannot legitimately be preferred to a superior officer except in the regular course defined by this section. The channels through which complaints must be preferred are specified in R. A. I., and it is only where the immediate superior refuses or unnecessarily delays to redress or forward the complaint that direct application can be made to higher authority. The officer in question ought to be informed of the application being made to his superior.

The persons to whom this section applies have not the right to petition the Central Government on matters arising out of their military service.

2. The authority competent to dispose finally of the matter complained of is the officer who, in pursuance of regulations or the custom of the service, is authorised to dispose of that matter. As a rule, he is the next superior officer to the officer against whom the complaint is made. If, however, a person thinks himself wronged by his commanding officer in respect of his complaint not being redressed, it has been held that he may complain to the brigade commander.

3. A petition from a person who considers himself aggrieved by the finding or sentence of a Court Martial does not fall within the scope of this Section. Such petitions must be dealt with under the provisions of K. R. 695. Reviewing authorities for the purpose of this Regulation in its application to persons tried by Court Martial under this Act are the authorities specified in s. 112.

4. A false accusation or false statement made in preferring a complaint under this section is punishable under s. 36 (*b*), but the mere fact that a complaint appears to be baseless, or even frivolous, does not render the maker liable to punishment. As to the repetition of baseless complaints, or the submission of complaints in disrespectful language, see note 9 to s. 39.

117A. Complaints by Indian Commissioned officers.—Any Indian Commissioned officer who deems himself wronged by his Commanding Officer or any superior officer and who on due application made to his Commanding Officer

does not receive the redress to which he considers himself entitled, may complain to the Central Government.

NOTE.

It is the custom of the service to forward every complaint through the commanding officer of the unit, and an officer would not be justified in deviating from this course, unless the commanding officer should refuse, or unreasonably delay, to forward it. In such a case, an officer, on addressing himself directly to higher authority, should apprise his commanding officer of his doing so, and should observe in the channel of approach to the Central Government each intermediate gradation of command. Although the complaint is to the Central Government, an intermediate authority is not debarred from expressing his own view of the case, and such an expression of opinion may even in some cases suffice to render further steps unnecessary.

118. Privileges of persons attending courts-martial.—(*1*) No president or member of a court-martial, no judge advocate, no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial, shall, while proceeding to, attending on or returning from a court-martial, be liable to arrest under civil or revenue process.

(*2*) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

119. Exemption from arrest for debt.—(*1*) No person subject to this Act shall, so long as he belongs to the Regular Army be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue court or revenue officer.

(*2*) The judge of any such court may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section, and may, by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(*3*) For the recovery of such costs no fee shall be payable to the court by the complainant.

120. Property exempted from attachment.—Neither the arms, clothes, equipment, accoutrements or necessaries of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue-officer, in satisfaction of any decree or order enforceable against him.

NOTE.

The words "civil or revenue court" in this section do not include a criminal court. The section does not afford protection against a distress warrant issued under s. 386 of the Code of Criminal Procedure; but the commanding officer should arrange to pay the fine in respect of which the distress warrant is issued by stoppages of pay and allowances under s. 50 (*2*) (*g*).

As to action to be taken to have an order of attachment set aside, see R. A. I.

121. Application of the last two foregoing sections to reservists.—Every person belonging to the Indian Reserve Forces shall, when called out for or engaged upon or returning from training or service, be entitled to all the privileges accorded by sections 119 and 120 to a person subject to this Act.

122. Priority hearing courts of cases in which Indian officers and soldiers are concerned.—(*1*) On the presentation to any court by or on behalf of any person subject to this Act of a certificate, from the proper military authority, of leave

of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of leave so granted or applied for.

(2) The certificate from the proper military authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee shall be payable to the court in respect of the presentation of any such certificate, or in respect of any application by or on behalf of any such person for priority for the hearing of his case.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for having been unable to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid, such question shall be at once referred by the court to an officer commanding a corps, whose decision shall be final.

NOTE.

1. For orders as to the speedy disposal of suits by or against officers or soldiers who have obtained leave of absence for the purposes of the suit, see R. A. I.

2. The Indian Soldiers Litigation Act, 1925 (Act IV of 1925), (see part IV) provides, among other things, for the postponement, when necessary in the interests of justice, of proceedings pending before a Civil or Revenue Court in British India to which any person subject to the Indian Army Act serving under "special conditions" (see section 3 of the Indian Soldiers Litigation Act) is a party when such person is unable to appear in person or is not represented by any person duly authorised to appear, plead or act on his behalf. This concession, however, does not necessarily extend to pre-emption cases or to cases where the soldiers' interests are identical with those of any other party to the proceedings and are adequately represented by such other party or are merely of a formal nature.

There are also the arrangements, made in 1910 and 1911, stated below, which may still prove to be useful in cases in which advantage is not taken or cannot be taken of the Indian Soldiers Litigation Act.

The following is an extract from Adjutant General's Circular No. 53-E., dated 25th February 1910, regarding civil proceedings against soldiers serving in China (for certain other places see below):—

"Civil courts have received instructions to fix the hearing of suits to which soldiers of the Indian Army serving at stations in China are parties for a date not less than four months in advance of the date of posting the summons or notice.

Immediately on receipt of a summons or notice a soldier should act as follows:—

(i) Authorise a person to defend the suit in his stead. The authority must be in writing, must be signed by the soldier in the presence of his commanding officer, and must be countersigned by the latter. (First Schedule, Order XXVIII, Code of Civil Procedure, 1908). The person so authorised may defend the suit *in person* in the same manner as the soldier could do if present, or he may appoint a pleader to defend the suit on behalf of the absent soldier, or

(ii) Appoint a pleader or recognised agent to act on his behalf. (Order III, *ibid.*) In both these cases, the person authorised under (i) or the pleader or agent appointed under (ii) *should be fully instructed* so as to be competent to defend the suit; and the soldier must be content that the case should be decided on the merits of the defence put in on his behalf by such person or pleader; or

(iii) If the soldier is not content to entrust the defence of his suit to such person or pleader, but considers it essential that he himself should be present, or that a longer time should be given him to collect materials for defence of his suit,

he should forward a letter to a pleader, to be produced in court, instructing him to apply for an adjournment *and giving fully the special reasons for such request.* In this case the soldier should give the pleader *no other instructions,* nor authorise him to do anything but apply for an adjournment. If the court then declines to adjourn the case the decree would be passed *ex parte,* and the soldier on returning to India would be entitled to apply for the setting aside of the decree under First Schedule Order IX, rule 13, *ibid.*; or

(iv) The soldier can instruct a person or pleader to *defend the suit and also to apply for an adjournment,* but this course is dangerous, as, if the adjournment is refused, the case is decided not '*ex parte*', but on such defence as is put in, and the soldier thus loses his chance of subsequently taking action under Order IX, rule 13, above."

Arrangements similar to those introduced in regard to China were made in regard to the following places the minimum interval between the posting of the summons or notice and the hearing of the suit being fixed, *vide* Adjutant General's Circular No. 873-I (A. G. 5), dated 27th March 1911, as follows:—

	Months.
1. All stations on the persian Gulf	4
2. Tabriz	5
3. Somaliland	
4. Uganda	
5. Straits Settlements	
6. Nayasaland	
7. Ceylon	2
8. Andaman Islands	
9. Aden	
10. Burma	

The clauses numbered (i) to (iv) in Adjutant General's Circular No. 53-E. of 25th February 1910, quoted above, are equally applicable to suits against officers and soldiers serving in India or elsewhere (other than the places mentioned) who cannot obtain leave of absence to appear personally. Instead, however, of applying for an adjournment, as suggested in clause (iii), it will, when the officer or soldier is in India, often be sufficient if his agent or pleader applies to have the evidence of his principal taken on commission.

DESERTERS AND MILITARY OFFENDERS

123. Capture of deserters.—(*1*) Whenever any person subject to this Act deserts, the commanding officer of the corps, department or detachment to which he belongs shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall there-upon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, to military custody.

(*2*) Any police officer may arrest without warrant any person reasonably believed to be subject to this Act and to be travelling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

NOTE.

1. For detailed instructions as to action to be taken by the commanding officer, see R. A. I.

2. *Civil authorities.*—This includes political and police authorities.

124. Arrest by military authorities.—(*1*) Any person subject to this Act who is charged with an offence may be taken into military custody.

(*2*) Any such person may be ordered military custody by any superior officer.

(*3*) The charge against every person taken into military custody shall, without unnecessary delay, be investigated by the proper military authority, and, as soon as may be, either proceedings shall be taken for punishing the offence, or such person shall be discharged from custody.

NOTE.

1. As to arrest and investigation of charges generally, see Part I, Ch. III and Rules 14—17.

Military custody.—See s. 7 (*14*).

Superior officer.—See s. 7 (*7*).

2. The "charge" referred to in this Section and in Rules 14, 15 and 17 is distinct from that referred to in Rule 18 (B). The latter is the formal charge preferred by the commanding officer and set out in the written charge-sheet, if and when it is decided to send the case for trial. The former is simply a complaint that an offence has been committed.

125. Arrest by Civil authorities.—Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any magistrate or police-officer, such magistrate or officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer.

126. Inquiry on absence of person subject to Act.—(*1*) When any person subject to this Act has been absent without due authority from his duty for a period of sixty days, a court of inquiry shall, as soon as practicable, be assembled and, upon oath or affirmation administered in the prescribed manner, shall inquire respecting the absence of the person, and the deficiency, if any, of property of the Government, entrusted to his care, or of his arms, ammunition, equipment, instruments, clothing or necessaries; and, if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(*2*) If the person declared absent does not afterwards surrender, or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

NOTE.

1. For procedure of courts of inquiry held under this section, see Rule 159.

2. In calculating the period of 60 days, the day on which the man became absent and the day on which the court assembles must both be excluded. If the court assembles a day too soon, the record of its declaration is not admissible in evidence. The man, however, should be declared illegally absent and charged with absence as from the day on which absence commences.

3. In the event of a person subject to the Act being absent without leave for a period of 60 clear days, a court of inquiry must be assembled at once, unless before such court of inquiry has been assembled it has come to the knowledge of the man's commanding officer that he has been apprehended or has surrendered. In that case no court of inquiry will be held and the facts of his absence and of the deficiency (if any) of his clothing, etc., must be proved by oral evidence at any subsequent court-martial. As to dispensing with the court of inquiry in the case of a reservist who has failed to attend for training, etc., see Rule 9 of the Indian Reserve Forces Rules in Part IV.

4. *Prescribed manner.*—See **Rules 159 and 126.**

5. Before declaring any deficiency of arms, etc., the court will satisfy themselves by evidence that the absentee was in possession of the missing articles within a reasonable period before the date of absenting himself. It will record the values of the unexpired wear of all articles of Crown property including arms, equipments, public clothing, etc., found to be deficient.

The property of the Crown entrusted to his care.—i.e., Crown property issued to him for his use or entrusted to his care for military purposes.

A court of inquiry under this section does not inquire respecting a deficiency of public money or stores which had been in the absentee's charge.

6. The declaration of the court should contain—the date and place from which the man absented himself, the date of the deficiency (if any) of clothing, etc., and the place where it occurred. Under Rule 159 and this section the witnesses will be sworn, but not the members of the court. As to the form of declaration, see notes to Rule 159; the actual values of missing articles will be stated.

7. In order to make the record admissible in evidence it must be a record in the regimental books of the unit to which the man belonged at the time, signed by the commanding officer [s. 91A (*3*)]. The actual proceedings of the court (which ought, under Rule 159, to be destroyed as soon as recorded in the regimental books) are not admissible in evidence.

The record of the court's finding will be admissible, notwithstanding that the man had already surrendered or been apprehended, provided that such surrender or apprehension had not come to the knowledge of his commanding officer when the court assembled.

8. As soon as the declaration of illegal absence has been made and recorded the man is struck off the strength of the unit as a deserter, but he does not thereby cease to belong to the corps in which he is enrolled (see R. A. I.).

9. When a man, who has been 'struck off' as a deserter, rejoins, the commanding officer, if satisfied that the evidence does not justify a charge of desertion may legally deal with the case as one of absence without leave.

10. As to disposal of a deserter's property, see s. 114.

Disposal of Property

126A. Order for custody and disposal of property pending trial in certain cases.—When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a court-martial during a trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

126-B. Order for disposal of property regarding which offence committed.—(*1*) After the conclusion of a trial before any court-martial, the court or the officer confirming the finding or sentence of such court-martial or any authority superior to such officer, or, in the case of a court-martial whose finding or sentence does not require confirmation, the officer commanding the army, army corps, division or brigade within which the trial was held, may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before the court or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(*2*) Where any order has been made under sub-section (*1*) in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within a Part A State or Part C State or elsewhere be sent to a Magistrate in any presidency town or district of a Part A State or Part C State in which such property for the time being is, and such Magistrate shall thereupon cause the order to be carried into effect as if it was an order passed by such Magistrate under the provisions of the Code of Criminal Procedure, 1898 (V of 1898).

Explanation.—In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

NOTE.

1. The stealing or misappropriation of property does not alter the ownership, and therefore *prima facie* the person from whom property has been stolen or misappropriated is the lawful owner of it, and can recover it from the holder.

2. Where stolen property has not been recovered, the value of the property should be stated in the particulars of the charge and proved in evidence. Stoppages may then be awarded to recoup the owner. In a case of theft followed by sale to an innocent purchaser, stoppages may be awarded to recoup the purchaser on a charge of theft, provided that charge contains an additional averment informing the accused of the further liability he has incurred in respect of the innocent purchaser.

127. (Section 127 repealed).

THE INDIAN ARMY ACT RULES

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INDIAN ARMY ACT RULES.

CHAPTER I.

PRELIMINARY

1. Short title.—These rules may be cited as the "Indian Army Act Rules".

2. Definitions.—In these rules, unless there is anything repugnant in the subject or context,—

(A) "Proper military authority", when used in relation to any power, duty act or matter, means such military authority as, in pursuance of the Regulations of the Army or the custom of the service, exercises or performs that power or duty or is concerned with that act or matter.

(B) "The Act" means the Indian Army Act, 1911.

3. Reports and Applications.—Any report or application directed by these rules to be made to a superior authority, or proper military authority, shall be made in writing through the proper channel, unless the authority, on account of military exigencies or otherwise, dispenses with the writing.

4. Forms in Appendices.—(A) The forms set forth in the appendices to these rules, with such variations as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient, but a deviation from such forms will not, by reason only of such deviation, render any charge, warrant, order, proceedings or other document invalid.

(B) An omission of any such form will not, by reason only of such omission, render any act or thing invalid.

(C) The notes to, and instructions in, the forms will be considered as instructions which it is expedient to follow in all cases to which such notes and instructions apply, but shall not have the force of rules.

5. Exercise of power vested in holder of military office.—Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service.

6. Cases unprovided for.—In any case not provided for by these rules such course will be adopted as appears best calculated to do justice.

CHAPTER II.

ENROLMENT AND ATTESTATION

7. Enrolling officers.—The following officers shall be "enrolling officers" for the purposes of section 8 of the Act :—

(i) All recruiting and assistant recruiting officers, including officers of the Royal Indian Navy or of the Royal Indian Air Force, who may be appointed as such.

(ii) The Officer Commanding a Regiment, Battalion or Training or Regimental Centre.

(iii) Any other officer or Extra Assistant Recruiting officer who may be appointed an "enrolling officer" by the Adjutant General in India.

NOTE.

1. For Forms of Enrolment, see First Appendix, page 334. The enrolling officer must himself sign the form.

2. For "Corps", see I. A. A. 7(9) and r. 161 (A). Every person enrolled under the Act must belong to some corps or department from which he can only be transferred in accordance with the conditions of his enrolment (if they provide for such transfers) or with his own consent. He can be transferred, with or without his consent, from one portion of his corps or department to another.

3. Direct enrolment into the reserve of a corps can be effected either by the officer commanding the reserve centre or by the ordinary enrolling officers of the corps of which the reserve forms part.

8. Persons to be attested.—All combatants, and the following enrolled persons other than combatants, shall, when reported fit for duty, be attested as provided in section 12 of the Act :—

(i) Enrolled personnel of the Indian Army Medical Corps except persons belonging to the general section of that corps.

(i-a) Enrolled personnel of the Indian Pioneer Corps.

(ii) Camel drivers of siladar camel units and artificers of the mechanical transport units of the Royal Indian Army Service Corps.

(iii) Persons serving in any Corps or Department who may be selected for non-commissioned rank.

NOTE.

See I. A. A. 11. For persons to be enrolled as combatants and non-combatants, see R. A. I.

9. Oath or affirmation to be taken on attestation.—(A) The oath or affirmation to be taken on attestation will be in one of the following forms or in such other form to the same purport as the attesting officer ascertains to be in accordance with the religion of the person to be attested, or otherwise binding on his conscience.

Form of Oath

I.....do swear in the name of God that I will bear true faith and allegiance to the Constitution of India as by law established and that I will, as in duty bound, honestly and faithfully serve in the Regular Army of the Union of India and go wherever ordered by air, land or sea, and that I will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life.

Form of Affirmation

I.....do solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will, as in duty bound, honestly and faithfully serve in the Regular Army of the Union of India and go wherever ordered by air, land or sea, and that I will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life.

(B) The oath or affirmation prescribed in this rule shall, whenever practicable, be administered by the commanding officer of the person to be attested (or in the presence of such commanding officer by a person empowered by him to administer it) in the manner described in section 12 of the Act. If it is not so administered, it may be administered by a magistrate or such officer as is hereinafter indicated; that is to say,—

A recruiting officer or assistant recruiting officer;

The officer commanding a station.

Any gazetted officer of the Indian Posts and Telegraphs Department, in the case of persons enrolled in units of the Defence of India Corps (Post and Telegraph).

NOTE.

(A) 1. For manner of administering, and taking the oath or affirmation, see notes to rr. 35 and 37.

(B) See I. A. A. 12 and notes. This paragraph prescribes the persons, in addition to the commanding officer, who can attest enrolled persons.

CHAPTER III.

DISMISSAL AND DISCHARGE

10. Discharge not to be delayed.—Every person enrolled under the Act shall, when entitled under the conditions of his enrolment to be discharged, be so discharged with all convenient speed.

NOTE.

1. For the prescribed authorities under I.A.A., 16, see r. 13 and table annexed thereto.

2. The discharge of a person who is under the conditions of his enrolment entitled to be discharged must be authorised and completed with all convenient speed by the proper authorities (see rr. 12 and 13). Until a person's discharge is completed, he remains subject to military law, but any undue delay in carrying out the discharge would give him good ground for complaint.

11. Discharge certificates.—(A) Every Viceroy's commissioned officer or warrant officer who is dismissed or discharged shall be furnished by his commanding officer with a certificate setting forth, in respect of such Viceroy's commissioned officer or warrant officer, the same matters as are required to be set forth in a certificate furnished under section 17 of the Act to a person enrolled thereunder who is dismissed or discharged. A certificate furnished under the provisions of this rule or of section 17 of the Act, as the case may be, is hereinafter called a "discharge certificate".

(B) A discharge certificate may be furnished either by personal delivery thereof by or on behalf of the commanding officer to the person dismissed or discharged or by its transmission by post to such person.

NOTE.

(A) 1. The proper form to use is I.A.F.Y.-1949, but any certificate which complies with I.A.A. 17 would be legally sufficient. See also R. A. I.

2. An Indian commissioned officer, not being an enrolled person, is not furnished with a discharge certificate.

(B) When a discharge certificate is sent by post, it should be registered.

12. Date from which discharge, or dismissal otherwise than by sentence of court-martial, takes effect.—(A) The dismissal of an Indian commissioned officer under section 13 of the Act or the retirement of such officer shall take effect from the date specified in that behalf in the notification of such dismissal or retirement in the Gazette of India.

(B) The dismissal of a person subject to the Act, other than an Indian commissioned officer, whose dismissal otherwise than by sentence of a court-martial is duly authorised, or the discharge of a person so subject whose discharge is duly authorised, shall be carried out by the commanding officer of such person with all convenient speed. The authority competent to authorise such dismissal or discharge may, when authorising the dismissal or discharge, specify any future date from which it shall take effect. Provided that if no such date is specified the dismissal or discharge shall take effect from the date on which it was duly authorised, or from the date on which the person dismissed or discharged ceased to do military duty, whichever is the later date.

NOTE.

(B) 1. See rr. 11 and 12 and notes. As to cashiering and dismissal awarded by court-martial, see r. 154 and notes.

2. In the case of a person serving in India with his unit it will generally be convenient for the authority authorising the dismissal or discharge not to specify any date but to leave the commanding officer to relieve the person of military duty on the most convenient date. In other cases it may sometimes be more convenient for the authority to specify the date and sometimes for him to leave it unspecified.

3. The competent authority cannot make the dismissal or discharge retrospective. Moreover he must, if he desires to specify a date, specify it at the time he authorises the dismissal or discharge. There is no legal objection to the "future date" being in suitable cases, *e.g.*, "date of disembarkation"; but whenever possible a precise date should be specified. In the case of persons serving out of India at certain Imperial stations regard must be had to Army Department Notification No. 274, dated the 20th February 1925, and notes thereto on page 687. The discharge certificate should be furnished to the person on the date from which the dismissal or discharge takes effect. But see r. 11 and note.

4. If the dismissal or discharge of a person is found to be illegal, *e.g.*, if it was not authorised by competent authority, that person will be entitled to pay from the date of his illegal discharge, although he performed no military duty from that date.

5. When a person has been duly dismissed or discharged in the manner prescribed by the Indian Army Act and Rules, he ceases to be subject to the Act and the dismissal or discharge cannot be cancelled, except with the consent of the person concerned.

13. Authorities empowered to authorise discharge.—(A) The retirement of an Indian commissioned officer will be authorised by the Central Government and notified in the Official Gazette.

(B) The causes of discharge of person subject to the Act, other than Indian commissioned officers, the authorities empowered to authorise the discharge and special instructions to be observed in each case are contained in the following table. In this table "Commanding Officer" means the officer commanding the corps or department to which the person to be discharged belongs and in the case of Viceroy's commissioned officers and warrant officers of the Indian Medical Department or the Indian Army Veterinary Corps, the Director-General of the Indian Medical Service or the Director, Veterinary Services in India, as the case may be. It also includes, as regards persons under their command, the officers specified in items (iii) to (xxvii) of rule 7. Any power conferred by this rule on any authority may be exercised by any higher authority.

TABLE.

Class.	Cause of discharge.	Competent authority to authorise discharge	Special Instructions.
Viceroy's commissioned officers	I. (*i*) (*a*) On completion of the period of service or tenure specified in the Regulations for his rank or appointment, or on reaching the age limit, whichever is earlier, unless retained on the active list for a further specified period with the sanction of the Commander-in-Chief in India, or on becoming eligible for release under the Regulations.	Commanding Officer.	[See Note (1) below.]
	(*b*) At his own request on transfer to the pension establishment.	Commanding Officer.	
	I. (*ii*) Having been found medically unfit for further service.	Commanding Officer.	To be carried out only on the recommendation of an Invaliding Board.
	I. (*iii*) All other classes of discharge.	(a) In the case of Viceroy's commissioned officers granted direct commissions, during the first 12 months' service-District or Divisional Commander or Major-General Administration, Army/Command. (b) In case of Viceroy's Commissioned officers not covered by (a), serving in any Army or Command, under the India Command, the General Officer Commanding-	[See Notes (2) and (3) below.

Class.	Cause of discharge.	Competent authority to authorise discharge	Special Instructions.
		in-Chief of that Army or Command, if not below the rank of Lieutenant-General, and if, the General Officer Commanding-in-Chief is below that rank, the Commander-in-Chief in India. (c) In any other case, the Commander-in-Chief in India.	
Warrant officers.	II. (*i*) (*a*) On completion of the period of service or tenure specified in the Regulations for his rank or appointment, or on reaching the age limit, whichever is earlier unless retained on the active list for a further specified period with the sanction of the Brigade Commander or on becoming eligible for release under the Regulations.	Commanding Officer.	[See Note (1) below.]
	(b) At his own request on transfer to the pension establishment.	Commanding Officer.	
	II. (*ii*) Having been found medically unfit for further service.	Commanding Officer.	To be carried out only on the recommendation of an Invaliding Board.
	II. (*iii*) All other classes of discharge.	Warrant Officers Class I—any officer not below the rank of Lieutenant-General appointed	In the case of Warrant Officers of the Indian Medical Corps and the Indian Army Veterinary Corps, the Brigade Commander or higher authority will, save

Class.	Cause of discharge.	Competent authority to authorise discharge	Special Instructions
		by the Commander-in-Chief in Indian in this behalf; other Warrant Officers-Brigade Commander.	in exceptional circumstances exercise this power only in consultation with the Director of Medical Services in India, or Director, Veterinary Services in India, as the case may be. [See Note (4) below]
Persons enrolled under the Act who have been attested.	III. (*i*) On fulfilling the conditions of his enrolment or having reached the stage at which discharge may be enforced.	Commanding Officer, except in the case of persons of the rank of havildar (or equivalent rank) otherwise than at their own request.	
	III. (*ii*) On completion of a period of Army Service only, there being no vacancy in the Reserve.	Commanding Officer (in the case of persons unwilling to extend their Army Service).	Applicable to persons enrolled for both Army Service and Reserve Service. (A person who has the right to extend his Army Service and wishes to exercise that right cannot be discharged under this head.)
	III. (*iii*) Not being a good rider.	Commanding Officer.	Applicable to persons enrolled as combatants in a mounted corps and whose duties require them to be mounted. Liability to discharge under this item ceases on completion of three years' service from date of enrolment.
	III. (*iv*) Having been found medically unfit for further service.	Commanding Officer.	To be carried out only on the recommendation of an Invaliding Board.
	III. (*iv-a*) At his own request before fulfilling the conditions of his enrolment.	Commanding Officer.	The Commanding Officer will exercise this power only where he is satisfied as to the desirability of sanctioning the application and that the strength of the unit will not thereby unduly reduced.
	III. (*v*) All other classes of discharge.	Brigade Commander.	

Class.	Cause of discharge.	Competent authority to authorise discharge	Special Instructions.
Persons enrolled under the Act but not attested.	IV. All classes of discharge.	Commanding officer or an Officer commanding a Recruiting, Reception camp, or a Recruiting, Technical Recruiting, Deputy Recruiting or Deputy Technical Recruiting Officer.	In the case of persons requesting to be discharged before fulfilling the conditions of their enrolment, the Commanding Officer will exercise this power only where he is satisfied as to the desirability of sanctioning the application and that the strength of the unit will not thereby be unduly reduced. Recruits who are considered unlikely to become efficient soldiers will be dealt with under this item.

[See Note (5) below.]

NOTES

(1) Commanding Officers who consider it desirable to retain on the active list a Viceroy's commissioned officer or a warrant officer who is desirous of continuing to serve beyond the date on which he would ordinarily be retired, should forward an application to that effect six months before that date. In all other cases discharge should be carried out in accordance with the provision of Rule 11.

(2) When application is made for the removal of a Viceroy's commissioned officer, reference should be made to the "Memorandum of the orders of His Excellency the Commander-in-Chief in India on the procedure to be observed in cases where the removal or retirement of officers holding Viceroy's commissions in the Indian Army, or Indian Medical Department or Indian Army Veterinary Corps, is for any cause considered necessary, without having recourse to trial by Court-Martial."

(3) The discharge certificate for a person discharged under item I (iii) will specify the particular cause of discharge—

e.g., On resignation of his commission.

On transfer to the pension establishment for a specified reason.
Compulsory, with gratuity.
Services no longer required

(4) The discharge certificate for a person discharged under item II (*iii*) will specify the particular cause of discharge—

e.g., On resignation of his warrant.

On transfer to the pension establishment for a specified reason.
Compulsory, with gratuity.
Services no longer required.

(5) The discharge certificate for a person discharged under items III (*v*) and IV will specify the particular cause of discharge—

e.g. Irregular enrolment.

Compulsory transfer to pension establishment, or discharge with gratuity, for a special reason.

At his own request before fulfilling the conditions of his enrolment.
Services no longer required.

On completion of Army Service only, there being no vacancy in the Reserve (in the case of persons willing to extend their Army Service).

Having reached the stage at which discharge may be enforced (in the case of persons of the rank of havildar, or equivalent rank, otherwise than at their own request.

CHAPTER IV.

INVESTIGATION OF CHARGES AND TRIAL BY COURT-MARTIAL

SECTION 1.—INVESTIGATION OF CHARGES AND REMAND FOR TRIAL

Power of Commanding Officer

14. Duty of Commanding-officer as to investigation of charge for offence.—Every commanding officer shall take care that a person under his command, when charged with an offence is not detained in custody for more than forty-eight hours after the committal of such person into custody is reported to him, without the charge being investigated, unless investigation within that period seems to him impracticable with due regard to the public service. Every case of a person being detained in custody beyond a period of forty-eight hours, and the reason thereof, shall be reported by the commanding officer to the general or other officer to whom application would be made to convene a general or district court-martial for the trial of the person charged.

Provided that Sunday, Good Friday and Christmas day shall be excluded in reckoning the periods of forty-eight hours specified in this rule.

NOTES

1. For definition of "commanding officer" see I.A.A. 7 (6).

2. This rule applies in the case of officers as well as soldiers.

3. This rule means that the investigation must be commenced within the time specified, though it may be impossible to complete it within that time.

4. The report should be made by letter and should refer specifically to the case, and state the reasons justifying the detaining of the accused in custody and preventing the investigation. The absence of an important witness would justify a remand; or the accused might be ordered to return to his duty with a distinct intimation that his case will be investigated so soon as the absent witness is available.

15. Disposal of the charge or adjournment for taking down the summary of evidence.—(A) Every charge against a person subject to the Act other than an Indian commissioned officer, shall be heard in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him, and to call any witnesses and make any statement in his defence.

(B) The commanding officer shall dismiss a charge brought before him if, in his opinion, the evidence does not show that some offence under the Act has been committed, and may do so if, in his discretion, he thinks the charge ought not to be proceeded with.

(C) At the conclusion of the hearing of a charge, if the commanding officer is of opinion that the charge ought to be proceeded with, he shall, without unnecessary delay, either—

(1) dispose of the case summarily; or

(2) refer the case to the proper superior military authority; or

(3) adjourn the case for the purpose of having the evidence reduce to writing; or

(4) if the accused is under the rank of warrant officer, order his trial by summary court-martial.

Provided that the commanding officer shall not order trial by summary court-martial without reference to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender unless either—

(i) the offence is one which he can try by summary court-martial without reference to that officer; or

(ii) he considers that there is grave reason for immediate action and such reference cannot be made without detriment to discipline.

(D) Where the case is adjourned for the purpose of having the evidence reduced to writing, at the adjourned hearing the evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, and of any other person whose evidence appears to be relevant, shall be taken down in writing in the presence and hearing of the accused before the commanding officer or such officer as he directs.

(E) The accused may put questions in cross-examination to any witness, and the questions with the answers shall be added in writing to the evidence taken down.

(F) The evidence of each witness when taken down, as provided in (D) and (E), shall be read over to him, and shall be signed by him, or if he cannot write his name, shall be attested by his mark and witnessed. After all the evidence against the accused has been given, the accused will be asked: "Do you wish to make any statement? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence". Any statement thereupon made by the accused shall be taken down and read over to him.

(G) The evidence of the witnesses and the statement (if any) of the accused shall be recorded in the English language. If the witness or accused, as the case may be, does not understand English the evidence or statement, as recorded, shall be interpreted to him in a language which he understands.

(H) If a person cannot be compelled to attend as a witness, or if owing to the exigencies of service or on other grounds (including the expense and loss of time involved), the attendance of any witness cannot in the opinion of the officer taking the summary (to be certified by him in writing) be readily procured, a written statement of his evidence purporting to be signed by him may be read to the accused and included in the summary of evidence.

(I) Any witness who is not subject to military law may be summoned to attend by order under the hand of the commanding officer of the accused. The summons shall be in the form provided in the Third Appendix to these rules.

NOTES

(A) 1. As to the mode of conducting the investigation, see Pt. I, ch. III, para 3, *et seq.* The evidence is not taken in writing; but see r. 15 (D) and note (C) below.

2. For the procedure in the case of an Indian commissioned officer, see r. 17

3. Under I.A.A. 84 police and other civilian witnesses may be summoned to attend before a commanding officer, if it is considered desirable to compel their attendance by the service of a summons. A witness cannot be sworn or affirmed.

4. As to procedure where a criminal court and court-martial have each jurisdiction in respect of a civil offence, see I.A.A. 69 and 70 and notes and r. 167, see also R. A. I.

(B) 1. Every offence which a person subject to the Indian Army Act can commit is an offence under that Act, because it is either a military offence specified in the Act or a civil offence under s. 41.

In deciding whether a charge under I. A. A. 39(*i*) should be proceeded with, the commanding officer must consider whether the alleged offence is, or is not, prejudicial to good order and military discipline; if, in his opinion, it is not, the charge must be dismissed.

He must also consider whether, having regard to the limitations of time prescribed by section 67 of the Act, the accused is liable to be proceeded against.

2. The commanding officer must dismiss the charge if there is no evidence of any offence under the Act, or if the accused has been previously acquitted or convicted of the alleged offence by any court, military or civil, or has been summarily dealt with under sections 20, 22, or 50 (*2*) (*f*) (I.A.A. 66) or the charge has previously been dismissed [r. 43A(1)]. He may dismiss it if he considers that the evidence is doubtful or the case trivial, or, in the exercise of his discretion, for any reason, *e.g.*, the good character of the accused.

3. No particular time is fixed within which a commanding officer must dispose of a case, so that he can always carefully consider a difficult case, but as a rule he should decide immediately, and should never delay for more than a day unless further evidence is required.

4. To make an entry against a man without punishment is a summary disposal and not a dismissal of the case.

(c) 1. There is no offence which a commanding officer is compelled by the Act or the Rules to send before a court-martial and each case should be considered on its merits. A commanding officer, however, has no power to punish an officer summarily [except by awarding a penal deduction under I.A.A. 50 (*2*) (*f*) to a Viceroy's commissioned officer] but he may remand an officer or warrant officer for disposal of a charge against him by a superior authority empowered to deal summarily with the case under s. 20 of the Act (*see* R. A. I.).

2. Except as provided in r. 17 a summary of evidence is to be made in every case where it is intended to remand the accused for trial by a general or district court-martial, or where the accused is an officer or warrant officer, for summary disposal of the charge by superior authority. In the case of a summary court-martial a summary of evidence need not be made, if it is intended to try the accused forthwith without reference to superior authority, either because the charge admits of this, or because of such grave necessity as is referred to in proviso (*ii*) to paragraph (c) of this rule. The offences, which a commanding officer must (except in cases of grave necessity falling under the above proviso) refer to superior authority before ordering trial by summary court-martial are detailed in section 74 of the Indian Army Act. All other offences can be tried by summary court-martial without such reference.

The summary of evidence, or a true copy thereof, should accompany the application for a general or district court-martial or summary disposal by superior authority, or for sanction to hold a summary court-martial when such sanction is necessary.

3. A person subject to the Indian Army Act has no right to elect to be tried by court-martial, except as provided in R. A. I. in the case of an officer or warrant officer.

4. A commanding officer disposes of a case summarily by awarding one of the punishments specified under section 20 of the Act, and which he can award (see R. A. I. and note to s. 20) or by awarding stoppages under section 50(*2*) (*f*) of the Act. If section 22 of the Act is applicable he may award a punishment mentioned in that section. A term of imprisonment awarded by a commanding officer should be awarded in days and will commence to run from the day of award. In law (in the absence of any special provision) there is no division of a day, and therefore, however, late in the day a prisoner is committed, his term of imprisonment is considered to have commenced at the first minute of that day, that is, the first minute after midnight. The sentence, therefore, will begin on the first minute of the day of award.

5. The award is considered final when the accused has been removed from the presence of the commanding officer. The commanding officer can at any time diminish the punishment before its completion, though he cannot add to it; see also R. A. I.

6. For "proper superior military authority", see rr. 2 and 3.

(d) 1. The adjourned hearing for the purpose of reducing the evidence to writing should if possible be held on the same day as the investigation. The commanding officer may direct another officer to take down the evidence, but an officer who has given material evidence at the investigation must not be appointed for this purpose. He should be an officer of some experience and with a good knowledge of the vernacular. The adjutant or the accused's squadron or company commander, should usually be detailed—(see also note to r. 33).

2. The summary cannot be taken on oath.

3. The accused cannot claim to be represented by counsel.

4. The evidence (so far as it is relevant and admissible) of every witness who gave evidence before the commanding officer must be taken down unless some good reason renders it not reasonably practicable to call him. The evidence of witnesses who did not appear before the commanding officer may also be taken for either prosecution or defence, so long as it appears to be relevant. In reducing the evidence to writing immaterial statements may be omitted and all hearsay and irrelevant matter should be excluded.

(E) The accused must be allowed to put any reasonable question to a witness, and especially to put questions respecting any variance between the evidence taken down and that given before the commanding officer.

(F) 1. The formal caution provided for in this paragraph must be given as soon as the evidence for the prosecution is closed. If it is necessary to take an additional summary, the accused must again be formally cautioned before he makes any further statement. The fact that he was duly cautioned should be recorded in the summary.

2. The statement of an accused person can only be given in evidence at the trial if it is voluntary (see Pt. I, ch. V, para. 28, *et seq*). If it was made voluntarily, the mere fact that the caution was not given will not prevent it being used as evidence, but in no case must he be authoritatively called on to account for his proceedings, or required to make any statement, or cross-examined or asked any questions. Any such statement or the answers to any such questions will not be admissible in evidence against him.

3. The accused may call witnesses on his behalf, and their evidence will be taken down and included in the summary; but he is not bound to call a witness because such witness gave evidence before the commanding officer.

(H) 1. The certificate can conveniently be written below the signature of the absent witness on his written statement or abstract of evidence.

2. In many cases the provisions of this paragraph will effect a saving of time and expense, *e.g.*, where a civilian witness is required to prove some fact not really in dispute. Such witness must, however, attend in person at the trial.

3. If it is found necessary to call at the trial some witness for the prosecution whose evidence is not included in the summary, an abstract of the evidence to be given by him should be supplied to the accused as early as possible; see r. 121.

(1) See I. A. A. 84 and form of summons, p. 397.

For power to dispense with paras. (D), (E), (F), (G) and (H), see r. 25.

For Memoranda for the guidance of officers taking down a summary of evidence, see pp. 401-404.

16. Remand of accused.—(A) The evidence and statement (if any) taken down in writing in pursuance of Rule 15 (in these rules referred to as the summary of evidence) shall be considered by the commanding officer, who thereupon shall either-

(1) remand the accused for trial by court-martial; or

(2) refer the case to the proper superior military authority; or

(3) if he thinks it desirable, re-hear the case and dispose of it summarily.

(B) If the accused is remanded for trial by court-martial, the commanding officer shall without unnecessary delay either assemble a summary court-martial (after referring to the officer empowered to convene a district court-martial or on active service a summary general court-martial when such reference is necessary) or apply to the proper military authority to convene a court-martial, as the case requires.

NOTES

For memoranda for the guidance of commanding officers, see pp. 404-405.

For power to dispense with this rule, see. r. 25.

(A) 1. The evidence in the summary may not correspond with that given in the original investigation and the case may appear in a new aspect. The commanding officer

may, therefore, decide to re-hear the case, and if he thinks fit, dispose of it summarily or try it by summary court-martial, if he has jurisdiction to do so. He can dismiss the case on re-hearing it.

2. Where precise information as to the locality of the offence is likely to be of use in understanding a case, a plan drawn to scale should accompany any summary of evidence submitted to superior authority. If it is considered necessary that matters of evidence should be shown on this plan (*e.g.*, place where the body was found, in a murder case, or position of accused or a witness) the plan should be in duplicate, and these matters should only appear on one copy. If the plan is subsequently produced at the trial, the unmarked copy will be used, being put in and sworn to by the person who made it. These matters of evidence will then (if necessary) be marked on it, in accordance with the evidence given at the trial, and a note to that effect made in the proceedings.

(B) 1. Vernacular documents attached to a summary of evidence should be accompanied by a translation.

2. The delay in assembling a summary court-martial, etc., should not ordinarily exceed thirty-six hours, in calculating which Sunday and the other days mentioned in the proviso to r. 14 should be excluded.

17. Procedure on charge against Indian commissioned officer.—(A) Where an Indian commissioned officer is charged with an offence under the Act the investigation shall, if he requires it, be held, and the evidence taken in his presence in writing, in the same manner as nearly as circumstances admit as is required by rule 15 in the case of other persons subject to the Act.

(B) When an Indian commissioned officer is ordered to be tried by court martial, without any such taking of evidence in his presence, an abstract of the evidence to be adduced shall be delivered to him gratis, as provided in rule 22 (B).

NOTES

For the power to dispense with observance of this rule, on the ground of military exigencies or the necessities of discipline, see r. 25.

(A) In the case of an Indian commissioned officer, as in that of other persons subject to the Act, the charge must come before his commanding officer in order that the latter may determine—whether the charge shall be dismissed or the case referred to a superior authority, for summary disposal under s. 20 of the Act or for trial by court-martial. By this provision the commanding officer can dispense with a formal and detailed investigation unless the accused officer demands one. It does not preclude the commanding officer from calling the officer before him and investigating the case as he may deem necessary. The officer can only demand formal investigation of his case by the commanding officer; he has no right under this rule to demand a court of inquiry.

(B) The convening officer will be responsible for the furnishing of this abstract [see also r. 22 (B)], which should not be in too much detail. It should always be delivered to the accused even though the subject matter of the charge may have been investigated by a court of inquiry; and if a court of inquiry has been held, the officer may have a copy of the proceedings [see r. 158 (M)].

Framing Charges.

18. Charge-sheet and charge.—(A) A charge-sheet shall contain the whole issue or issues to be tried by a court-martial at one time.

(B) A charge means an accusation contained in a charge-sheet that a person amenable to military law has been guilty of an offence.

(C) A charge-sheet may contain one charge or several charges.

NOTES

(A) 1. The charge-sheet is usually prepared by the commanding officer or adjutant of the accused's unit; but in the case of a trial by a general or district court-martial r. 27 makes the convening officer responsible for its correctness. It must be signed by the officer in actual command of the unit to which the accused belongs; if trial is ordered, the order must be added at the foot and signed by—or by a staff officer "for"—the convening officer.

For submission of certain charges to the Deputy or Assistant Judge-Advocate-General before trial see R. A. I.

2. There may be several charge-sheets, see r. 68; but the court can only deal with one charge-sheet at a time. When there are two or more charge-sheets, they must be consecutively numbered. For illustration of charge-sheet, see p. 347.

(B) The "charge" here referred to is the formal written charge upon which the accused is to be tried, as distinct from the charge or complaint (mentioned in rr. 14, 15 and 17) which give rise to the preliminary investigation.

(C) All charges (including alternative charges) must be consecutively numbered. As to insertion of charges in separate charge-sheets, see r. 68 and notes.

19. **Commencement of charge-sheet.**—Every charge-sheet shall begin with the name and description of the person charged, and state, in the case of an officer, his rank, name, and corps or department (if any), and in the case of a warrant officer, non-commissioned officer, soldier or other enrolled person, his number, rank, name and corps or department (if any). When the accused person does not belong to the regular forces the charge-sheet shall show by the description of him, or directly by an express averment, that he is amenable to Indian military law in respect of the offence charged.

NOTES

1. The name or description of a person charged is immaterial so long as his identity is established: see also note to r. 21 (A) and rr. 40 (A) and 99. As an Indian commissioned officer, Viceroy's commisioned officer, warrant officer, or person enrolled in the regular Indian Army is always subject to the Indian Army Act, a statement in the charge-sheet that the accused belongs to a corps of the regular Indian Army will be sufficient to aver, and evidence of his so belonging will be sufficient to prove, that he is subject to that Act, without expressly adding words.

But if the accused is a civilian, or if his name and position are unknown, as may happen on active service, the charge-sheet must expressly aver that he was subject to the Indian Army Act, although it will be sufficient if the description of the accused is such as to imply that he was so subject. Evidence must in such a case be given to show that the persons falls under the liability clause of the Act [I. A. A.2 (1) (c)].

2. When a soldier holding an appointment is brought to trial by court-martial he is to be arraigned in his army rank with his appointment also designated (see R. A. I.), thus—

No. Sepoy (Lance Naik) Regiment.

20. **Contents of charge.** (A) Each charge shall state one offence only, and in no case shall an offence be described in the alternative in the same charge.

(B) Each charge shall be divided into two parts—

(1) The statement of the offence; and

(2) the statement of the particulars of the act, neglect, or omission constituting the offence.

(C) The offence shall be stated, if not a civil offence, in the words of the Act, and if a civil offence, in such words as sufficiently describe that offence, but not necessarily in technical words.

(D) The particulars shall state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect, or omission is intended to be proved against him as constituting the offence.

(E) The *particulars* in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as is so referred to shall be deemed to form part of the first mentioned charge as well as of the other charge.

(F) Where it is intended to prove any facts in respect of which any deduction from pay and allowances can be awarded as a consequence of the offence charged, the particulars shall state those facts, and the sum of the loss or damage it is intended to charge.

(A) 1. For forms of charges and preliminary note as to their use, see p. 335, *et seq.* See also Memoranda for guidance of courts-martial, p. 400, *et seq.*

The convening officer or, in the case of trials by summary court-martial, the commanding officer should seek the advice of the Deputy or Assistant Judge Advocate-General of the Command in any case where doubt exists as to the manner in which a charge should be framed. Charges for trial by general court-martial, and for indecency, fraud, theft (except ordinary theft), and civil offences (except simple assults) should be referred to the Deputy or Assistant Judge-Advocate-General concerned before trial; see R. A. I. and para. 10 (*a*) of Memoranda on p. 405.

2. A single charge disclosing two sepa ite offences would be a bad charge, *e.g.*, a charge under I. A. A. 28 of being grossly insubordinate and insolent to his superior officer in the execution of his office, or under I. A. A. 31 of committing theft and dishonestly retaining Government property. But the use of the word "and" in the statement of offence is permissible where the charge discloses only one offence; *e.g.*, a charge under I. A. A. 35 of losing by neglect his equipments, clothing and regimental necessaries, because the accused is not charged with two offences, but with a single offence which is constituted by his having lost by neglect the various articles specified in the charge. A single charge under I.A.A. 28 of being grossly insubordinate or insolent to his superior officer in the execution of his office would be a bad charge, as two separate offences are described in the alternative in the same charge.

The rule is applicable to the particulars of a charge—*e.g.*, in a charge under I. A. A. 26 an averment that the accused quitted his post and remained absent for a specified period is not permissible, as the particulars disclose two separate offences. Similarly, in a charge, under s. 28 it is not permissible to aver two separate instances of insubordinate language, or in a charge under s. 37 false answers to two separate questions set out in the enrolment paper.

But the incidental mention of a separate offence in the particlars would not of itself invalidate the charge—*e.g.*, the mention in the particulars of a charge for assaulting a superior officer [s. 27 (*d*)] of grossly insubordinate language [s. 28 (*a*)], which accompanied a menacing gesture and showed its purport.

3. A single transaction, though technically disclosing more than one offence, should not, as a rule, be made the subject of more than one charge. For instance, where violence to a superior is accompanied by insubordinate language, the violence alone should be charged (assuming the evidence to be satisfactory), the language being admissible in evidence as to the intent.

On the other hand, if it seems desirable, a man can legally be charged in two separate charges with escape from arresst and absence without leave (following such escape).

(B) The statement of the particulars must support the statement of the offence; *e.g.*, if the statement of an offence laid under I. A. A. 31 alleged that the accused committed theft in respect of the property of Government, particulars stating that the accused dishonestly received, or was in unauthorised possession of, the property would not support the statement of the offence and the charge would be a bad charge, and the fact that the accused pleaded guilty to it would not affect the matter.

But a merely technical difference, *e.g.*, where the word asault is used in the statement of offence and the particulars disclose the use of criminal force, would not invalidate the charge, if the statement of offence and the particlars taken together supply the court and the accused with sufficient information of the nature of the offence which the court has to try and the accused to meet.

Where the statement of offence discloses an offence under the Act and one or more essential element of that offence are omitted from the particulars, *e.g.*, the word "dishonestly" in a charge of "dishonestly misappropriating" or the words "knowing it to be stolen" in a charge of receiving, the omission of that element from the particulars would not invalidate the charge, if taken as a whole, it informs the accused of the allegations he is called upon to meet, and the offence for which he is arraigned.

(C) When civil offences are tried by court-martial under I. A. A. 41, although technical terms need not be used in the charge, the essence of the civil offence must be expressed.

(D) 1. Tht statement of particulars should state shortly in ordinary language what the accused is alleged to have done. All the ingredients necessary to constitute the offence should be specified; for example, if the charge is under s. 27, for disobeying a lawful command, the particulars must state the command, the rank and name of the superior officer who gave the command, and the fact that the accused disobeyed it.

Where a state of mind (*e.g.*, intention or knowledge) is an essential ingredient of an offence, such state of mind should be stated in the particulars,—*e.g.*, see illustrations Nos. 40 to 56 on pp. 358-363.

2. Vague statements must be avoided,—*e.g.*, in a charge for using insubordinate language to his superior officer or for making a false statement to his commanding officer, it is not sufficient to state that the accused used insubordinae language or made a false statement well knowing the statement to be false; the words alleged to have been spoken or written must be set out in the particulars. Similarly, in a charge under s. 39 (*h*), it is not sufficient to state that the accused neglected to obey battalion orders by doing a particular act; the order it is alleged the accused neglected to obey must be set out in the particulars—see illustration No. 71 on p. 369.

(E) If in such cases the accused were to be acquitted of the first charge and convicted of the second charge, the conviction when recorded should specify the place and date mentioned in the first charge.

(F) Unless these facts are stated in the particulars and proved in evidence the court cannot award the punishment of stoppages under I. A. A. 43 (*h*) (*iv*) see note as to use of forms of charges (19, 20) p. 349.

As to evidence of value, see note to I. A. A. 50 and para 2(*g*) of Memoranda on p. 403.

21. Validity of charge-sheet. (A) A charge-sheet shall not be invalid by reason only of any mistake in the name or description of the person charged, if he does not object to the charge-sheet during the trial, and it is not shown that injustice has been done to the person charged.

(B) In the construction of a charge-sheet or charge there shall be presumed in favour of supporting the same every proposition which may reasonably be presumed to be impliedly included though not expressed therein.

NOTES

(A) Although the trial of an offender is not invalid on account of a mistake in a name, such mistake are dangerous, in so far as they may lead to mistakes of substance. For instance, the accused might thus be mistaken for a man named in a certificate of previous conviction or in the sheet-roll, and a mistake of this description might cause the invalidity of the whole proceeding. Where, however, a man has been enrolled and is commonly known under an assumed name, he may be described by that name. The court has power to amend the charge by correcting under r. 40 or r. 99 any mistake in the name or description of accused.

(B) This paragraph must not be regarded as excusing any carelessness in preparing charge-sheets. It enables a court-martial, or any court before which the proceedings may come, to presume matters which, though not stated in the charge, are necessary to support its validity, and can reasonably be implied from it.

Preparation for defence by accused person

22. Rights of accused to prepare defence.—(A) An accused person for whose trial a court-martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication with his witnesses, and with any friend, defending officer, or legal adviser whom he may wish to consult.

(B) As soon as practicable after an accused has been remanded for trial by a general or district court-martial, and in any case not less than twenty-four hours before his trial, an officer shall give to him gratis a copy of the summary of evidence, or in the case of an Indian commissioned officer where there is no summary of evidence an abstract of the evidence, and explain to him his rights under these rules as to preparing his defence and being assisted or represented at

the trial, and shall ask him to state in writing whether or not he wishes to have an officer assigned by the convening officer to represent him at the trial, if a suitable officer should be available. The convening officer shall be informed whether or not the accused so elects.

NOTES

For power to dispense with this rule, see r. 25.

(A) 1. The freest communication which is consistent with the necessities of discipline and with the safe custody of the accused should be allowed. A failure to give the accused full opportunity of preparing his defence, and free communication with others for the purpose, may invalidate the proceedings. The accused, however, or the defending officer is not entitled to interview witnesses for the prosecution, without special authority. He is not bound to call as a witness everyone with whom he communicates as a possible witness on his behalf.

Neither the accused nor his defending officer or counsel should be permitted to interview for the purpose of general examination or interrogation any witness who has already given evidence for the prosecution at the taking of the summary of evidence, or whose evidence is included in the abstract of evidence as a witness for the prosecution unless the prosecution have, before the trial, definitely decided not to call such witness for the prosecution. If the accused or his defending officer or counsel desire to put any specific question or questions to such a witness for the prosecution with a view to ascertaining some specific fact or facts which it may be of assistance in the preparation of the defence to know, the Convening Officer should permit such question or questions to be put subject to any safeguard such as the presence of a representative of the prosecution as the Convening Officer may think fit. The converse holds good as regards interviews by the prosecution of witnesses for the defence.

2. As to defending officer and friend of accused, see, r. 81; and as to counsel at general and district courts-martial, see rr. 82 to 87. As to the right of the accused to consult the judge-advocate on any questions of law or procedure, see r. 91.

(B) This duty must be properly performed by a responsible officer.

23. Warning of accused for trial.—(A) The accused before he is arraigned shall be informed by an officer of every charge on which he is to be tried; and also that, on his giving the names of witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly.

The interval between his being so informed and his arraignment shall not be less than twenty-four hours.

(B) The officer at the time of so informing the accused shall give him a copy of the charge-sheet and a vernacular translation of the same, and shall, if necessary, read and explain to him the charges brought against him.

(C) If he desires it, a list of the names, rank and corps (if any) of the officers who are to form the court, and where officers in waiting are named, also of these officers will, in courts-martial other than summary courts-martial, be given to the accused.

(D) If it appears to the court that the accused is liable to be prejudiced at his trial by any non-compliance with this rule, the court shall take steps and, if necessary, adjourn to avoid the accused being so prejudiced.

For power to dispense with this rule, see r. 25.

NOTES

(A) 1. The duty of complying with the provisions of this rule will usually devolve upon the commanding officer in the case of summary and the prosecutor in the case of other courts-martial, who should, in any case, satisfy himself before the trial that it has been properly performed. Even if this rule is dispensed with under r. 25, the accused must have information of the charge, and opportunity of calling his witnesses.

2. As to arraignment, see r. 38 and notes.

3. The duty of procuring the attendance of witnesses at general and district courts-martial devolves, under r. 123 (A) upon the commanding officer or convening officer or, after the assembly of the court, the president. The duty of procuring the attendance of witnesses at summary courts-martial devolves under r. 123 (B) upon the commanding officer.

The request of an accused person for witnesses to be called on his behalf should only be refused if it is quite clear that their evidence would be immaterial, or if their attendance cannot be secured within a reasonable time. If the request is refused, the refusal and reasons for it should be communicated to the court, who will deal with the matter under r. 23 (D) or 124. If an essential witness is absent, the court should always adjourn for the purposes of enabling him to attend or of procuring his examination on commission.

For form of summons to witnesses, see p. 397.

(B) A copy and translation of the charge-sheet must always be given, unless this rule has been dispensed with under r. 25. Even where it is so dispensed with, the charges must be clearly explained to the accused, as otherwise he may not have proper opportunity to prepare his defence. If the accused objects to the charge he will have an opportunity of making his objection when called on to plead (r. 39).

(C) This list should normally be delivered to the accused, irrespective of any demand on his part, as soon as the names of the members are known.

24. Joint trial of several accused persons.—Any number of accused persons may be charged jointly and tried together for an offence averred to have been committed by them collectively, and any number of accused persons, although not charged jointly, may be tried together for an offence averred to have been committed by one or more of them and to have been abetted by the other or others. Where two or more persons are charged jointly and tried together for an offence averred to have been committed by them collectively, or when two or more persons are tried together for an offence averred to have been committed by one or more of them and to have been abetted by the other or others, any one or more of such persons may at the same time be charged and tried for any other offence alleged to have been committed by him or them individually or collectively, *provided* that all the said offences are founded on the same facts, or form or are a part of a series of offences of the same or similar character. In any such case, notice of the intention to try the accused persons together shall be given to each of the accused at the time of his being informed of the charge, and any accused person may claim, either by notice to the authority convening the Court or, when arraigned before the Court, by notice to the Court, that he *or some other accused* be tried separately on one or more of the charges included in the charge sheet, on the ground that the evidence of one or more of the other accused persons proposed to be tried together with him will be material to his defence, or that otherwise he would be prejudiced or embarrassed in his defence. The Convening Authority or Court, if satisfied that the evidence will be material or that the accused may be prejudiced or embarrassed in his defence as aforesaid, and if the nature of the charge admits of this, shall allow the claim, and such accused person, or, as the case may be, the other accused person or persons whose separate trial he has claimed, shall be tried separately. Where any such claim has been made and disallowed by the authority convening the Court, or by the Court, the disallowance of such claim will not be a ground for refusing confirmation of the finding and/or sentence unless, in the opinion of the Confirming Authority, substantial miscarriage of justice has occurred by reason of the disallowance of such claim.

NOTES

1. If two accused persons are charged separately with committing the same offence, they cannot, even at their own request, be tried together, because they have not been charged jointly.

2. As to swearing the court to try several accused persons, see r. 75 and note, and as to form of proceedings in the case of a joint trial, see para. 28 of memoranda on p. 407.

If one accused pleads guilty and another not guilty, the trial of the latter up to and including the finding must be carried out before the court deal with the case of the accused who has pleaded guilty.

3. To admit of a joint charge and trial the accused must have acted together with the common purpose of committing the offence charged.

In the case of conspiring to cause or joining in a mutiny, the essence of the charge is combination between the accused. In such a case the nature of the charge may not admit of separate trial. In cases of doubt the accused should be tried separately.

Certain offences cannot from their nature be committed collectively. Such are intoxication, sentry sleeping upon or quitting his post, malingering, giving false evidence, cowardice, etc., and, speaking generally, all offences where a person's individual state of body or mind is of the essence of the offence.

Exception from Rules.

25. Suspension of rules on the ground of military exigencies or the necessities of discipline.—Where it appears to the officer convening a court-martial, or to the senior officer on the spot, that military exigencies, or the necessities of discipline, render it impossible or inexpedient to observe any of the Rules 15 (D), (E), (F), (G), (H), 16, 17, 22, 23, and 81 (B), he may, by order under his hand, make a declaration to that effect specifying the nature of such exigencies or necessities, and thereupon the trial or other proceedings shall be as valid as if the rule mentioned in such declaration had not been contained herein; and the declaration may be made with respect to any or all of the rules above in this rule mentioned in the case of the same court-martial:

Provided that the accused shall have full opportunity of making his defence, and shall be afforded every facility for preparing it which is practicable, having due regard to the said exigencies or necessities.

NOTES

1. For form of declaration, see p. 377.

2. The power conferred by this rule should rarely be exercised except on active service and then only if absolutely necessary. Occasionally it may be necessary to resort to it in the case of embarkation or on the line of march, or possibly in an extreme case where the necessities of discipline require speedy trial and punishment.

In exercising the powers conferred by this rule, it is not necessary to dispense with all the provisions mentioned, *e.g.*, it may be expedient to comply with the relevant provisions of r. 15 but not with r. 22.

If r. 15 (D), (E), (F), (G) and (H) are suspended, steps must be taken to inform the accused beforehand of the nature of the charge, the names of the witnesses and the effect of their evidence and the court must take care that the accused is not prejudiced by reason of the suspension, as, for instance, by not having received a summary of evidence.

The power of dispensing with r. 22 (A) is only intended to be exercised where it is necessary to try a person before he can communicate with a witness or friend at a distance. That rule should never be dispensed with except in extreme cases, and even then the accused must be allowed free communication with any witness or friend upon the spot.

R. 23 (C) should always be complied with and r. 23 (A) and (B), if not complied with within the time therein mentioned, should be complied with as long as possible before the court assembles.

3. The accused will not have full opportunity of making his defence unless he receives in reasonable time the information mentioned above; and if he requests a reasonable adjournment in order to consider the witnesses' evidence, or to acquaint himself with the charge, or requests the postponement of the cross-examination of a witness the court should grant the request, and may adjourn for the purpose. A refusal might be held to be non-compliance with this proviso and thus to invalidate the trial. For the same reason the court, even in the absence of any such request, must take care that the accused is not prejudiced by being taken by surprise, either by the charge or the evidence of the witnesses.

Alternative Procedure.

26. Alternative procedure.—When an accused person is remanded for trial by general or district court-martial the procedure before and during trial shall be that ordered in section 2 of this Chapter, and when an accused person is remanded for trial by summary court-martial that ordered in section 3 of this Chapter. Section 4 is equally applicable to all trials by general, district and summary courts-martial.

NOTES

As to procedure in the case of trial by summary general court-martial, see section 5, rr. 137 to 151.

SECTION 2.—GENERAL AND DISTRICT COURTS-MARTIAL.

Convening the Court.

27. Convening of general and district courts-martial.—(A) An officer before convening a general or district court-martial shall first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Act, and that the evidence justifies a trial on those charges, and if not so satisfied, shall order the release of the accused, or refer the case to superior authority.

(B) He shall also satisfy himself that the case is a proper one to be tried by the description of court-martial he proposes to convene.

(C) The officer convening a court-martial shall appoint or detail the officers to form the court and, may also appoint or detail such waiting officers as he thinks expedient. He may also, where he considers the services of an interpreter to be necessary, appoint or detail an interpreter to the court.

(D) The officer convening a court-martial shall send to the senior member of a court the original charge-sheet on which the accused is to be tried, the summary or abstract of evidence, and the order for the assembly of the court-martial.

NOTES

(C) 1. With respect to the duties of the convening officer, see paras. 10—13 of memoranda pp. 405-406. The convening officer must ensure that he holds the necessary court-martial warrant empowering him to convene the description of court-martial that he considers appropriate.

2. Where the convening officer finds it impracticable to follow the ordinary rules as to appointing members from different corps [r. 30 (A)], or as to the rank of members [r. 30 (C)], he should state his opinion in the convening order.

The declaration as to military exigencies dispensing with certain rules (*see* r. 25) should be in a separate order. For form of declaration see p. 377.

3. Under I. A. A. 65 a court-martial which, after commencement of the trial, is reduced below the legal minimum, is dissolved. If, therefore, the trial is likely to be prolonged, the number of members detailed to serve should be in excess of the legal minimum required. Additional members should also be detailed to serve in doubtful or complicated cases.

4. It will usually be desirable, in the case of both general and district courts-martial, to add two or more waiting officers, in order to fill the places of officers retiring on challenge, or unable to attend owing to illness, etc.

5. In almost every case an interpreter in the language of the accused person will be necessary and should be detailed; see r. 77 and note.

(D) 1. Where several persons are to be tried separately by the same court, a copy of the convening order should be prepared for each accused. The original charge-sheet and convening order will subsequently be annexed to the proceedings.

2. The object of this paragraph is to enable the president of the court-martial to have a general knowledge of the case which is to come before the court. If any amendment in the charges appears to him to be required, he should communicate with the convening officer before the trial begins.

3. The summary of evidence must be read in court if the accused pleads guilty, and may be used for determining the sentence r. 44 (B). It may be used at the trial for the purpose of showing that a witness has previously made a particular statement, or is giving evidence which differs from that given by him when the summary was taken. Any statement of the accused contained in the summary may be read to the court as evidence at the close of the prosecutor's case, but before reading such statement formal proof should be given that it was made voluntarily; see notes to r. 15 (F).

Except in the above instances the summary cannot be used as evidence.

4. During the trial the president should compare the evidence given by each witness with his statement contained in the summary of evidence and, if there is any material variation, should question him thereon.

Members of the court must take care that they are not unduly influenced by any statement appearing in the summary of evidence, though they will naturally have regard, in testing the credibility of a witness, to the fact that his evidence given at the trial is contradictory to his statement at the summary. It is usually expedient that the president alone should refer to the summary.

5. Where the accused pleads guilty, the summary of evidence is to be annexed to the proceedings [r. 44 (B) and Form of Proceedings p. 381]. If the accused pleads not guilty, the summary should be enclosed with the proceedings when sent to the confirming officer, but it should only be annexed to the proceedings if it has been used in evidence.

See r. 17 (B) as to an "abstract of evidence".

28. Adjournment for insufficient number of officers.—(A) If, before the accused is arraigned, the full number of officers detailed are not available to serve, by reason of non-eligibility, disqualification, challenge or otherwise, and if there are not a sufficient number of officers in waiting to take the place of those unable to serve the court shall ordinarily adjourn for the purpose of fresh members being appointed; but if the court are of opinion that in the interests of justice, and for the good of the service, it is inexpedient so to adjourn, they may, if not reduced in number below the legal minimum, proceed, recording their reasons for so doing.

(B) If the court adjourns for the purpose of the appointment of fresh members, whether under these rules or otherwise, the convening officer may, if he thinks fit, convene another court.

NOTES

(A) 1. A general court-martial for which, say, seven members have been detailed, will not ordinarily begin the trial with less than seven. It may be assumed that the convening officer, in detailing seven members when five would have legally sufficed, had in view the possible prolongation of the trial or the desirability, in the circumstances of the case of submitting the issues to be decided to the arbitration of a larger tribunal. But under this rule the court may proceed unless reduced below the legal minimum (see notes to r. 27).

No court can be formed if the number of officers is, from whatever cause, below the legal minimum, nor can the proceedings even, if properly commenced, be continued. In either case a report of the circumstances must be made to the convening officer by the senior officer present.

2. For legal minimum, see I. A. A. 57 and 58.

(B) After the trial has once begun fresh members cannot be appointed in any circumstances; I. A. A. 65 (*1*).

29. Ineligibility and disqualification of officers for court-martial.—(A) An officer is not eligible for serving on a court-martial if he is not subject to military law.

(B) An officer is disqualified for serving on a general or district court-martial if he—

(i) is the officer who convened the court; or

(ii) is the prosecutor or a witness for the prosecution; or

(iii) investigated the charges before trial, or took down the summary of evidence, or was a member of a court of inquiry respecting the matters on which the charges against the accused are founded, or was the squadron, battery, company, or other commander, who made preliminary inquiry into the case, or was a member of a previous court-martial which tried the accused in respect of the same offence ; or

(iv) is the commanding officer of the accused, or of the corps to which the accused belongs ; or

(v) has a personal interest in the case.

(C) An officer is not eligible to serve on a court-martial unless he has held a commission during not less than the following periods, that is to say :—

(i) if it is a district court-martial, two whole years;

(ii) if it is a general court-martial, three whole years.

NOTES

(A) "Eligible" is used with reference to an officer being subject to military law and of the necessary standing ; that is to say, it refers to the status of the officer, and involves no personal considerations.

(B) 1. "Disqualified" is used with reference to the personal qualification of an officer. Except so far as is provided by r. 30, the corps to which an officer belongs is immaterial as regards his eligibility or qualification to serve on a court-martial.

2. "Personal interest". This will extend to even a remote or very small interest, *e.g.*, in a charge relating to the theft of a sum of money, however small, belonging to an officers' mess, or a club every officer of that mess or club has a personal interest, and is therefore disqualified. A merely technical interest has been held to disqualify a person from holding a judicial position, *e.g.*, a person who holds, as trustee or otherwise on behalf of others money in which he has no beneficial share himself, nevertheless has a personal interest in any charge relating to that money.

(C) Paragraph (C) (ii) is taken from I. A. A. 57. In addition, an officer should not be detailed to sit on any court-martial until regarded by his commanding officer as competent to perform so important a duty.

30. Composition of court-martial.—(A) A general court-martial shall be composed, as far as seems to the convening officer practicable, of officers of different corps or departments, and in no case exclusively of officers of the corps or department to which the accused belongs.

(B) Four at least of the members of a general court-martial shall be of a rank not below the rank of Captain.

(C) The members of a court-martial for the trial of an Indian commissioned officer shall be of a rank not lower than that of the Indian commissioned officer unless, in the opinion of the convening officer, officers of such rank are not (having due regard to the public service) available.

(D) In no case shall an officer under the rank of Captain be a member of a court-martial for the trial of a field officer.

NOTES

(A) 1. There is no similar restriction as to the composition of district courts martial, which may therefore, when necessary, be composed wholly of officers of the corps or department to which the accused belongs ; but where possible they should not be so composed.

2. The expression of the convening officer's opinion justifying a departure from the general rule should be inserted in the convening order.

(B) This is in effect, a statutory requirement, see I. A. A. 57.

(C) This paragraph does not reproduce any statutory provision.

The expression of the convening officer's opinion justifying a departure from the general rule should be inserted in the convening order.

Procedure at Trial—Constitution of Court.

31. Inquiry by court as to legal constitution.—(A) On the court assembling, the order convening the court shall be laid before them together with the charge-sheet and the summary of evidence or a true copy thereof, and also the ranks, names, and corps of the officers appointed to serve on the court; and it shall be the first duty of the court to satisfy themselves that the court is legally constituted; that is to say—

(i) that, so far as the court can ascertain, the court has been convened in accordance with the Act, and these rules;

(ii) that the court consists of a number of officers not less than the legal minimum, and, save as mentioned in Rule 28, not less than the number detailed;

(iii) that each of the officers so assembled is eligible and not disqualified for serving on that court-martial;

(iv) that in the case of a general court-martial the officers are of the required rank.

(B) The court shall, further, if it is a general or district court-martial to which a judge-advocate has been appointed, ascertain that the judge-advocate is duly appointed and is not disqualified for acting at that court-martial.

(C) The court, if not satisfied on the above matters, shall report their opinion to the convening authority, and may adjourn for that purposes.

NOTES

(A) 1. The inquiries necessitated by this and the following rule should be conducted in private. The court is not "open" at this stage, and the accused has not yet been brought before it.

2. The convening order, charge-sheet and summary or abstract of evidence will be in the possession of the senior member of the court: see r. 27 (D).

3. Where members are detailed by rank and corps and not by name, then only officers of the actual rank and corps stated in the convening order can serve as members.

4. It is essential that the court should ascertain, as far as lies in their power, that they have jurisdicttion. For form of convening order, see p. 376.

In the case of a general or district court-martial, the order must be signed by the convening officer or "for" him by a staff officer or by a staff officer as such. The absence of a properly signed convening order is a fatal flaw although an order for trial is endorsed upon the charge-sheet. Apart from the specific requirements of this rule, the court must be satisfied that it is constituted strictly in accordance with the convening order.

5. The court, in considering whether they are convened in accordance with the Indian Army Act and Rules, can only look at the convening order. The convening officer is responsible that he holds the necessary court-martial warrant empowering him to convene the court, and the court are not required to satisfy themselves in this respect.

6. For legal minimum, see I. A. A. 57 and 58.

For rank of members of the court, see I. A. A. 57 and r. 30 and notes.

7. For eligibility and disqualification, see r. 29 and notes.

When a court of inquiry has been held respecting a matter upon which a charge against the accused is founded, the president should insert and sign the certificate shown in the note on pp. 377-378.

(B) See I. A. A. 78 and r. 89.

(Form of proceedings, p. 377.)

32. Inquiry by court as to amenability of accused and validity of charge.—(A) The court, when satisfied on the above matters, shall satisfy themselves in respect of each charge about to be brought before them—

(i) that it appears to be laid against a person amenable to military law, and to the jurisdiction of the court, and

(ii) that each charge discloses an offence under the Act and is framed in accordance with these rules, and is so explicit as to enable the accused readily to understand what he has to answer.

(B) The court, if not satisfied on the above matters, shall report their opinion to the convening authority and may adjourn for that purpose.

NOTES

(A) 1. The inquiry by the court under this and the preceding rule should be in closed court.

2. For amenability to military law, *i.e.*, to the Indian Army Act, see I. A. A. 2 and M.I.M.L., Pt. I, ch. I, paras. 9 and 10.

3. As to validity of charge, see rr. 18 to 21.

(Form of proceedings, p. 377.)

Procedure at Trial.—Challenge and swearing.

33. Appearance of prosecutor and accused.—When the court have satisfied themselves as to the above facts, they shall cause the accused to be brought before the court, and the prosecutor, who must be a person subject to military law, shall take his place.

NOTES

The duty of appointing the prosecutor devolves on the convening officer who ordinarily selects the adjutant of the accused person's regiment. But the convening officer should not appoint himself to be prosecutor, and the prosecutor cannot confirm the finding and sentence of the court. In trials by general court-martial, and in complicated cases, a prosecutor should be specially selected for his experience and knowledge of military law, and should be, as far as possible, relieved from ordinary military duty, so that he may be enabled fully to master the case. In ordinary cases one of the officers mentioned in r. 29 (B) (iii) may suitably be detailed to act as prosecutor.

As to the duties of the prosecutor, see rr. 46 to 48, 66 and notes, and memoranda, pp. 408-410.

As to counsel, see rr. 82 to 87.

(Form of proceedings, p. 378.)

34. Proceedings for challenges of members of court.—The order convening the court and the names of the president and members of the court shall then be read over to the accused and he shall be asked, as required by section 80 of the Act, whether he objects to be tried by any officer sitting on the court. Any such objections shall be disposed of in accordance with the provisions of section 80 of the Act; provided that—

(i) The accused shall state the names of all the officers to whom he objects before any objection is disposed of.

(ii) The accused may call any person to give evidence in support of his objection. Such person may be questioned by the accused and by the court.

(iii) If more than one officer is objected to, the objection to each officer shall be disposed of separately, and the objection to the lowest in rank shall be disposed of first; and on an objection to an officer, all the other officers present shall vote on the disposal of such objection, notwithstanding that objections have been made to any of those officers.

(iv) When an objection to an officer is allowed that officer shall forthwith retire, and take no further part in the proceedings.

(v) When an officer so retires, or is not available to serve owing to any cause which the court may deem to be sufficient, and there are any officers in waiting detailed as such, the president shall appoint one of such officers to fill the vacancy. If there is no officer in waiting available, the court shall proceed as directed by rule 28.

(vi) The eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy shall be ascertained by the court, as in the case of other officers appointed to serve on the court.

NOTES

1. This rule must be read in connection with I. A. A. 80.

2. The accused must make each objection separately; he cannot object to the court collectively except upon a plea to the jurisdiction under r. 41. If the accused persists in objecting to the court collectively, the court should treat the objection as made to all the members individually, and the procedure provided by this rule should be strictly followed. In practice an objection to a member may be equivalent to a plea to the jurisdiction, as, for example when on the trial of a field officer one of the members is objected to because he is below the rank of Captain. In such a case the objection should be dealt with under this rule, although it might more properly have been raised under r. 41.

The accused has no right to object to the prosecutor or judge-advocate.

An officer objected to on the ground of personal enmity, prejudice, or malice, or for having formed and expressed an opinion on the case, should, unless the objection is obviously groundless, request and be permitted to retire. An officer successfully objected to on the ground of personal interest is disqualified from serving as a member [see r. 29 (B) (v) and notes].

The court may be closed to consider each objection.

3. Proviso (ii). The witnesses cannot be examined on oath, as the court are not yet sworn, but, r. 127 will substantially apply.

4. Proviso (iii) excludes an officer from voting on his own case, but all the other members present, *i.e.*, who have not retired upon objections to them being allowed, must vote on the disposal of the objection.

5. Proviso (v) prescribes the manner of filling a vacancy created either by a successful objection or through non-attendance of an officer detailed. Where any waiting members are detailed, it is the duty of the president to appoint one of those members to fill a vacancy. He is not required to take the first on the list; ordinarily he should select one of corresponding rank to the retiring or absent officer. If the president is himself successfully objected to, the senior remaining member will take his place (I. A. A. 77) and will then proceed to fill the vacancy in the court in the manner indicated above.

If there is no officer in waiting available and the court are reduced in number below the legal minimum, they must adjourn for the purpose of the appointment of fresh members; and though not so reduced, they should ordinarily adjourn unless they are of opinion that, in the interests of justice and for the good of the service, it is not expedient to do so.

6. Proviso (vi). It is desirable to ascertain before the accused is brought before the court whether a waiting member is eligible and qualified to serve if called upon. An objection to a waiting member called upon to serve will be dealt with immediately, if he is junior to any other officers who have been objected to; if he is not, the objections to junior officers will first be disposed of and he will have to vote on such objections.

In a doubtful case an objection should always be allowed. It is very important that the court should not only be impartial, but be believed by the accused and his comrades to be so.

(Form of proceedings, pp. 378-379.)

35. Swearing or affirming of members.—As soon as the court is constituted with the proper number of officers who are not objected to, or the objections to whom have been overruled, an oath or affirmation shall be administered to every member in one of the following forms or in such other form to the same purport as the court ascertains to be according to his religion or otherwise binding on his conscience.

Form of Oath.

"I.....swear by Almighty God that I will duly administer justice, according to the Indian Army Act, without partiality, favour or affection; and if any doubt shall arise, then, according to my conscience, the best of my

understanding, and the custom of war in the like cases: and that I will not divulge the sentence of this court-martial until it shall be published by authority; and, further, that I will not disclose or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial in due course of law."

Form of Affirmation.

"I.....solemnly affirm, in the presence of Almighty God, that I will duly administer justice, according to the Indian Army Act, without partiality, favour or affection; and if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases; and that I will not divulge the sentence of this court-martial until it shall be published by authority; and, further, that I will not disclose or discover the vote or opinion of any particular member of this court-martial, unless require to give evidence thereof by a court of justice or court-martial in due course of law."

NOTES

1. Christians and Sikhs are generally sworn, the former on the New Testament or some book containing it, and the latter on the Granth. Hindus and Mussalmans are generally affirmed. Jews are sworn on the Old Testament.

2. As to the person to administer the oath or affirmation, see r. 37 and notes.

3. As to swearing the court to try several persons, see r. 75.

4. A person taking the oath will hold the New Testament or, in the case of a Jew, the Old Testament, in his uplifted hand and will say or repeat the oath after the person administering it.

The oath must be administered and taken with solemnity. It is not necessary to kiss the book. The members may be sworn separately or collectively.

5. If a person desires to be sworn in the Scottish form, no question as to his religious belief is to be asked nor is he required to hold or kiss the Bible while being sworn. He will be sworn standing and holding up his right hand, and the oath will commence in these terms "I swear by Almighty God as I shall answer to God at the Great Day of Judgment.....".

6. Affirmations are repeated by the person making affirmation after the person administering it.

7. In addition to providing a prescribed form of oath and affirmation, the Rule permits an oath or affirmation to be administered to the person to be sworn or affirmed in such form to the same purport as the court ascertains to be according to his religion or otherwise binding on his conscience.

8. The following is a translation into Urdu of the form of affirmation for use by courts-martial:—

Main.....Khudà-i-Taàlà ko hàzir-o-nàzir jànkar imàn so iqràr kartà hun (Parmeshwr ko jàn mànkar dharm se bàchàn detà hun) kih main àin i- afwàj-i-Hind ke mutàbiq baghair kisi tarafdàri yà riàyàt yà himàyat ke hàq ke pàband rahkar, aur agar khi muàmala mushkuk hogà to apne zamir aur apni aql, aur fauji dastur, ke mutàbiq jo is qism ke muqaddamàt men ràij ho, insàf karungà jub tak Sàhib-i-ikhtiyàr hukm sàdi: na karen, Court-Martial ke faisale ko ki i qar zàhir na karunga, jub tak kih mujhe kisi adalat ya Court-Martial men az rui-qanun iske mutaalliq gawàhi dene kà hukm na mile.

The following is a translation into Pushtu:—

Zah.....Pàk Khudài Taàlà, ta hazir au nàzir ganram, au la imàn sara ipràr kawam che zah ba da àin-i-afwàj-i-Hind sara au be la tarfdàri yà riàyat yà khatirdàri na, insaf ba kawam, au ka tsa shak shubh rà ta màluma shi no zah ba khpul zamir an aql sara au har tarah che pa dàse muqaddamo khhe, da faui dastur wi, tsa ranga che khhài insàf ba kawam au da dagha Court-Martial hukm haargiz zàhir ba na kawam tar hagha pore che da hàkim la tarafa zàhir na wl shawi au nor zah ba hargiz da dagha Court-Martial da yo member khabara ya khayàl che ta na wàyam, baghaif la hagha hàla na che la kuma adàlata na yà Court-Martial na da quide muàfiq da gawàhi da pàra talab ki.

Sikhs are sworn as follows:—

The "Granthi" or other person administering the oath holds a copy of the Sikh scriptures (the Granth) in his hands and the persons to be sworn also places his hands upon it. The latter then repeats after the former the words of oath. This begins:—

"Main.....Sri Guru Granth Sahib ji ki saugand khakar kahta hun kih main", and proceeds as in the Urdu translation of the form of affirmation.

9. The oath or affirmation taken by members of the court implies that, as a general rule, the opinions of the individual members ought not to be stated, and consequently the court ought not to disclose whether the decision was unanimous or by a majority. The decision is the decision of the court as a whole, and the fact of its being unanimous or not is usually immaterial. The qualification at the end of the oath or affirmation, "unless required to give evidence thereof, etc.", only applies to such cases as those where members of the court are charged individually with partiality or bribery, and thus in a court of justice or a court-martial it would, or might, be necessary to make disclosures regarding individual votes to the court trying members so charged.

(Form of proceedings, p. 379.)

36. Swearing or affirming of judge-advocate and other officers.—After the members of the court are all sworn or have made affirmation, an oath or affirmation shall be administered to the following persons or such of them as are present at the court-martial, in such of the following forms as shall be appropriate, or in such other form to the same purport as the court ascertains to be according to the religion or otherwise binding on the conscience of the person to be sworn or affirmed :—

(A) Judge-advocate.

Form of Oath

"I.....swear by Almighty God that I will not, upon any account whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law, and that I will not, unless it be necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it shall be published by authority."

Form of Affirmation.

"I.....solemnly affirm in the presence of Almighty God that I will not, upon any account whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law ; and that I will not, unless it be necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it shall be published by authority."

(B) Officer attending for the purpose of instruction.

Form of Oath

"I.....swear by Almighty God that I will not divulge the sentence of this court-martial until it shall be published by authority, and, further, that I will not disclose or discover the vote or opinion of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law."

Form of Affirmation.

"I.....solemnly affirm in the presence of Almighty God that I will not divulge the sentence of this court-martial until it shall be published by authority, and, further, that I will not disclose or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial, in due course of law."

(C) Shorthand writer.

Form of Oath

"I swear by Almighty God that I will truly take down to the best of my powers the evidence to be given before this court-martial and such other matters as I may be required, and will, when required, deliver to the court a true transcript of the same."

Form of Affirmation.

"I solemnly affirm in the presence of Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial, and such other matters as I may be required, and will, when required, deliver to the court a true transcript of the same."

(D) Interpreter.

Form of Oath

"I swear by Almighty God that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial."

Form of Affirmation.

"I solemnly affirm in the presence of Almighty God that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial."

NOTES

1. The notes to Rule 35 apply, *mutatis mutandis,* to this Rule.

2. The form of oath and affirmation for a witness are set out in Rule 126.

3. The accused has a right of objection to the shorthand writer or interpreter, who may be sworn at any time during the trial (r. 76); he has no right of objection to the judge-advocate or to the officers under instruction.

(Form of proceedings, p. 379.)

37. Persons to administer oaths and affirmations.—All oaths and affirmations shall be administered by a member of the court, the judge-advocate or some other persons empowered by the Court to administer such oath or affirmation.

NOTES

Indians are generally sworn by a person professing their religion who may be either a member of the court or a person empowered by the court under this rule:—In the case of Sikhs this person is generally a *Granthi* who attends in court with a *Granth* for the purpose of swearing Sikh members and witnesses.

Affirmations may be administered by any of the persons mentioned in this rule. Their being of the same religion as the person affirmed is immaterial.

When a court-martial is composed of British officers it will generally be convenient for the judge-advocate to administer the oath or affirmation to the president and members, or if there is no judge-advocate, for the president to first administer it to the members and then he himself sworn or affirmed by one of them.

PROSECUTION, DEFENCE AND SUMMING-UP

38. Arraignment of accused.—(A) After the members of the court and other persons are sworn or affirmed as above-mentioned, the accused shall be arraigned on the charges against him.

(B) The charges upon which the accused is arraigned shall be read and, if necessary, translated to him, and he shall be required to plead separately to each charge.

NOTES

1. The accused should be arraigned by the president or the judge-advocate (if any).

"Arraignment" consists of (1) calling upon the accused by his number (if any), rank, name and description as given in the charge-sheet and asking him "Is that your number, rank, name and unit (or description)"; (2) reading the charge to him; and (3) asking him whether he is guilty or not guilty.

Where two or more persons are jointly charged and tried for the same offence, each is separately arraigned. Where there are more charge-sheets than one against an accused, he must be arraigned and tried upon the first charge-sheet before arraignment upon the second or subsequent charge-sheets; see r. 68.

2. The charge-sheet, containing the charges as settled by the convening officer, will be in the possession of the president [r. 27 (D)], who will lay the charge-sheet before the court immediately before arraignment, and the charge sheet will then be annexed to the proceedings.

The plea of the accused must be taken on all the charges in a charge-sheet. This applies to alternative charges if the accused has been arraigned upon them [but see r. 42 (C)].

(Form of proceedings, pp. 379-380.)

39. Objection by accused to charge.—The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules. The court, after hearing any submission which may be made by the prosecutor or by or on behalf of the accused, shall consider the objection in closed court and shall either disallow it and proceed with the trial, or allow it and adjourn to report to the convening authority; or, if they are in doubt, they may adjourn to consult the convening authority.

1. A charge laid under I. A. A. 35 (*e*) of losing by neglect the property of a comrade would not disclose an offence under that section of the Act.

2. See rr. 18-21.

3. For procedure where it appears that the accused is, by reason of insanity, unfit to take his trial, see r. 131.

(Form of proceedings, p. 380.)

40. Amendment of charge.—(A) At any time during the trial, if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, the court may amend the charge-sheet so as to correct that mistake.

(B) If on the trial of any charge it appears to the court at any time before they have begun to examine the witnesses, that in the interests of justice any addition to, omission from, or alteration in, the charge is required, they may report their opinion to the convening authority, and may adjourn, and the convening authority may either direct a new trial to be commenced, or amend the charge, and order the trial to proceed with such amended charge after due notice to the accused.

NOTES

(A) A mistake in name or description will only be amended, if it is clear to the court that the accused is the person intended to be charged in the charge-sheet, and that, he is not prejudiced in his defence by the mistake having been made.

(B) 1. The court may act under this paragraph whether the objection to the charge is taken by the accused, or by the judge-advocate, or by a member of the court, and either before or after the arraignment of the accused; see rr. 32 and 39.

2. The witnesses—*i.e.*, the witnesses on the substance of the charge, not those who are called as to objections to the members or with respect to a special plea to the jurisdiction under r. 41.

3. If the addition, omission, or alteration can be met by means of a special finding under r. 51 (D) (as, for instance, by omitting from the finding some of the articles alleged to have been stolen or lost by neglect, or by correcting a mistake in an immaterial date), it will not usually be necessary to have the charge amended; but if the date is material or if any addition requires to be made to the particulars of the charge, it will be safer for the court to adjourn and apply for the amendment. If the charge appears not to disclose an offence under the Act, the court must adjourn; see r. 39.

(Form of proceedings, p. 380.)

41. Special plea to the jurisdiction.—(A) The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the court; and if he does so, and the court consider that anything stated in such plea shows that the court have not jurisdiction, they shall receive any evidence offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and any address by the accused and reply by the prosecutor in reference thereto.

(B) If the court overrule the special plea, they shall proceed with the trial.

(C) If the court allow the special plea, they shall record their decision and the reasons for it, and report it to the convening authority and adjourn; such decision shall not require any confirmation, and the convening authority shall either forthwith convene another court for the trial of the accused, or order the accused to be released.

(D) If the court are in doubt as to the validity of the plea, they may refer the matter to the convening authority, and may adjourn for that purpose or may record a special decision with respect to such plea, and proceed with the trial.

NOTES

(A) 1. A plea to the general jurisdiction, that is, to the right of the court generally to try the accused on any charge at all, is here kept distinct from any plea which relates only to the particular charge on which the accused is brought before the court. Under the former he may plead, for example, that the court is improperly constituted in respect of the number of the members, or that he is not amenable to the court, either as not being subject to military law or not subject to that description of court; as, for instance, in the case of a commissioned officer being brought before a district court-martial.

A plea relating to the particular charge, and raising the defence of previous conviction or acquittal by a court-martial or criminal court, summary punishment by the commanding officer, pardon of the offence or its condonation by the deliberate act of some superior authority or of the lapse of more than three years since the date of the offence (I. A. A. 67) will be raised by way of plea in bar of trial, under Rule 43.

2. Evidence must be taken on oath or affirmation.

(B) The confirmation of the finding, after a plea to the jurisdiction has been overruled will have the effect of confirming the decision of the court in over-ruling the plea. If, however, the confirming officer is of opinion that the plea is valid and should have been allowed, he must refuse to confirm the finding of the court, and another court may legally be convened.

(C) If the court allow the plea, the decision of the court cannot be overruled, but another Court may legally be convened.

(D) If a special plea to the jurisdiction were raised, *e.g.*, on the ground that the accused was not subject to the Indian Army Act, and the court were in doubt as to the validity of the plea, they might record a special decision to that effect, and state that they had nevertheless decided to proceed with the trial. This procedure, in effect, transfers the decision as to the validity of the plea to the confirming officer, who should act as if the plea had been overruled.

(Form of proceedings, p. 380.)

42. General plea "Guilty" or "Not guilty".—(A) If no special plea to the general jurisdiction of the court is offered, or if such plea being offered, is overruled, or is dealt with by a special decision under sub-rule (D) of rule 41, the

accused person's plea—"Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly either one or the other, a plea of "Not guilty")—shall be recorded on each charge.

(B) If an accused person pleads "Guilty", that plea shall be recorded as the finding of the court; but, before it is recorded, the president or judge-advocate, on behalf of the court, shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty, and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence that the accused ought to plead not guilty.

(C) Where an accused person pleads "Guilty" to the first of two or more charges laid in the alternative, the prosecutor may, after sub-rule (B) of this rule has been complied with by the court and before the accused is arraigned on the alternative charge or charges, withdraw such alternative charge or charges without requiring the accused to plead thereto, and a record to that effect shall be made upon the proceedings of the court.

(D) A plea of "Guilty" shall not be accepted in cases where the accused is liable, if convicted, to be sentenced to death, and where such plea is offered a plea of "Not guilty" shall be recorded and the trial shall proceed accordingly.

NOTES

(A) If the accused pleads in some language not understood by the court or inarticulately, he will not have pleaded intelligibly, and a plea of "Not guilty" will be entered.

(B) 1. See, however, para. (D) of this Rule.

2. This direction is to prevent the accused pleading guilty under a misapprehension; *e.g.*, a man charged with wilfully injuring government property may, under a misapprehension, plead guilty because the property has been actually injured, though not wilfully; or a man charged with receiving property, knowing it to have been stolen may, under a misapprehension, plead "Guilty" because the property was in fact stolen, though, when he received it, he did not know it to have been stolen. So, again, on a charge for desertion, the plea "Guilty but I intended to return" amounts to a plea of "Not guilty", as the intention not to return is generally an essential element in the offence of desertion. In each case the president must explain to the accused that he must plead "Not guilty".

3. A plea of "Guilty" is only to be taken to the extent to which it is pleaded. Thus a man arraigned upon a charge of losing by neglect a number of articles, who pleads guilty in respect of some of those articles only, must be taken to have pleaded "Not guilty" as regards the remaining articles. But if the court are satisfied of the justice of the course and the consent of the convening officer is signified by the prosecutor, they may accept the qualified plea of guilty and record a special finding accordingly. See Rule 51 (H) and note.

4. If the accused pleads guilty, a statement that the requirements of Rule 42 (B) have been complied with must be recorded.

5. It must be recollected that there is nothing untrue in a person pleading not guilty, even though he committed the offence, as the plea merely amounts to a claim, which he is entitled to make, that the charge against him shall be formally proved. Indeed; where the accused, while admitting the offence, wishes to show that it was committed under circumstances of great provocation and does not deserve severe punishment he must plead not guilty if he wishes to prove the existence of such provocation out of the mouths of witnesses for the prosecution, who would not be called to give evidence if he pleaded guilty [see, however, r. 44 (F) as to the power of the court.]

6. As to procedure where it appears at a later stage of the proceedings that the plea of guilty was pleaded under a misapprehension, see r. 44 (D).

(C) If the prosecutor adopts the procedure provided by this paragraph the accused will not be entitled to a verdict on the alternative charges, as he will not have been arraigned upon them. The convening officer must take care that the most serious of two or more alternative charges is placed first in the charge-sheet. As to the procedure to be followed in other cases where there are alternative charges see r. 44 (A).

(D) This is intended to ensure that a person charged with an offence for which the death penalty can be awarded shall not be convicted without a full trial.

(Form of proceedings, p. 381.)

43. Plea in bar.—(A) The accused, at the time of his general plea of "Guilty" or "Not guilty" to a charge for an offence, may offer a plea in bar of trial on the ground that—

(1) he has been previously convicted or acquitted of the offence by a competent criminal court or by a court-martial, or has been dealt with summarily under section 20 or 22 of the Act for the offence, or that a charge in respect of the offence has been dismissed as provided in sub-rule (B) of rule 15 ; or

(2) the offence has been pardoned or condoned by competent military authority ; or

(3) the time which has elapsed between the commission of the offence and the beginning of the trial is more than three years, and the limit of time for trial is not extended under section 67 of the Act.

(B) If he offers such plea in bar, the court shall record it as well as his general plea, and if they consider that any fact or facts stated by him are sufficient to support the plea in bar they shall receive any evidence offered, and hear any address made by or on behalf of the accused and the prosecutor in reference to the plea.

(C) If the court find that the plea in bar is proved they shall record their finding, and notify it to the confirming authority, and shall either adjourn, or if there is any other charge against the accused, whether in the same or in a different charge-sheet, which is not affected by the plea in bar, may proceed to the trial of the accused on that charge.

(D) If the finding that the plea in bar is proved is not confirmed, the court may be re-assembled by the confirming authority, and proceed as if the plea had been found not proved.

(E) If the court find that the plea in bar is not proved, they shall proceed with the trial, and the said finding shall be subject to confirmation like any other finding of the court.

NOTES

(A) 1. The Indian Army Act provides that a man shall not be liable to trial for an offence of which he has been convicted or acquitted by a court-martial or by a criminal court, or for which he has been dealt with summarily (I. A. A. 66), or which was committed more than three years before the date of his trial, unless the offence was mutiny, desertion or fraudulent enrolment. Mutiny may be tried at any time, or desertion on active service. Desertion at other times, or fraudulent enrolment is not to be tried if the offender has served for 3 years in an exemplary manner in any portion of His Majesty's Regular Forces (s. 67).

The accused may also offer a plea in bar on the ground that a charge in respect of the offence has been dismissed as provided in Rule 15 (B), *i.e.*, that he has been acquitted. or the offence has been condoned, by his commanding officer.

2. It has long been recognised that a military offence can be condoned. For the purpose of barring a trial condonation means such conduct on the part of a competent authority—*i.e.*, an authority having power to determine that the charge should not be proceeded with—as is inconsistent with subsequently trying the offender, and as would make it inequitable to do so ; it must be a deliberate and intentional act, done with full knowledge of all material facts. If, with full knowledge of the facts, competent authority removes an officer, or allows him to resign, he should not afterwards be tried by court-martial for his offence. The fact that after trial, but before confirmation, the accused has been employed in active operations does not affect the legal validity of the sentence, but affords ground for pardon.

(B) See note to r. 41 (A). The evidence will be taken on oath or affirmation.

(D) If the finding is confirmed, it amounts to an acquittal, and is final. It will be noted that the finding of the court upon a plea in bar of trial whether in favour of or against the plea, is subject to confirmation.

(Form of proceedings, p. 381.)

44. Procedure after plea of "Guilty".—(A) Upon the record of the plea of "Guilty", if there are other charges in the same charge-sheet to which the plea is "Not guilty" the trial shall first proceed with respect to those other charges, and, after the finding on those charges shall proceed with the charges on which a plea of "Guilty" has been entered; but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or may, instead of trying him, record a finding of "Guilty" upon any one of the alternative charges to which he has pleaded "Guilty" and a finding of "Not guilty" upon all the other alternative charges.

(B) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the court shall receive any statement which the accused desires to make in reference to the charge, and shall read the summary or abstract of evidence ,and annex it to the proceedings, or if there is no such summary or abstract shall take and record sufficient evidence to enable them to determine the sentence, and the confirming officer to know all the circumstances connected with the offence. This evidence will be taken in like manner as is directed by these Rules in the case of a plea of "Not guilty".

(C) After evidence has been so taken, or the summary or abstract of evidence has been read, as the case may be, the accused may make a statement in mitigation of punishment, and may call witnesses as to his character.

(D) If from the statement of the accused or from the summary or abstract of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "Guilty" the court shall alter the record and enter a plea of "Not guilty", and proceed with the trial accordingly.

(E) If a plea of "Guilty" is recorded, and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under (B) and (C) shall take place when the finding on the other charges in the same charge-sheet are recorded.

(F) When the accused states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same.

NOTES

(A) An accused person cannot be found guilty upon more than one of two or more charges laid in the alternative, even if conviction upon one charge necessarily connotes guilt upon the alternative charge or charges.

Where two alternative charges are preferred and the accused pleads "Not guilty" to the charge which alleges the more serious offence and "Guilty" to the other, the court should try him under this paragraph as if he had pleaded "Not guilty" to both charges. Having regard to Rule 42 (C), the most serious of two or more alternative charges should always be placed first in a charge-sheet.

(B) For procedure where the statement of the accused is inconsistent with his plea, see para. (D) of this Rule and note (D) below.

(C) The accused will always be asked, in the case of a plea of "Guilty", whether he desires to call witness to character.

(D) 1. This would include a statement in mitigation of punishment under para. (C) as well as a statement with reference to the charge under para. (B) of this rule. For form to be followed see p. 381.

2. The following examples are given of cases in which a plea of "Guilty" should be altered to a plea of "Not guilty" under this paragraph:—

(*a*) Sepoy A, charged with desertion (not being desertion to avoid a particular service), states "I always meant to come back".

(*b*) Sepoy B, charged with using criminal force to his superior officer, states "I only did it to defend myself after he had struck me".

(*c*) Sepoy C, is charged with sleeping upon his post when a sentry and makes no statement with reference to the charge. On the reading of the summary of evidence, it is found that all the witnesses state that Sepoy C was beyond the confines of his post when found asleep.

(*d*) Naik E, is charged with disobeying a lawful command given by Naik F, his superior officer, and makes no statement with reference to the charge. He calls a witness as to character, who states incidentally that Naik F is junior to the accused. In this case the action of the court in altering the plea of the accused would be founded upon the words "or otherwise" in this paragraph.

The test to be applied in all such cases is not whether the court believe the statement, but whether, if the statement were true, it would be a valid defence to the charge. In doubtful cases, the plea of "Guilty" should be altered to a plea of "Not guilty".

3. If the court failed to act under the provisions of this paragraph, the confirming officer should refuse confirmation and can order a new trial. If he confirms, the finding will be set aside.

4. Where the accused alleges provocation for the offence, it may be desirable to record a plea of "Not guilty" [see note (B) 5 to r. 42.]

As to special finding on a qualified plea of guilty, see Rule 51 (H) and note.

(F) Although, under this paragraph, the permission of the court is required to enable the accused to call witnesses in extenuation of the offence, and consequent mitigation of punishment, such permission should always be given.

(Form of proceedings, pp. 381-382.)

45. Withdrawal of plea of "Not guilty".—The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not guilty", and plead "Guilty", and in such case the court will at once, subject to a compliance with Rule 42(B), record a plea and finding of "Guilty", and shall, so far as is necessary, proceed in manner directed by Rule 44.

NOTES

If the accused proposes to withdraw his plea of not guilty, the court must inform him of the general effect of his withdrawal, and of the difference in the procedure, in the same manner as if he pleaded guilty under Rule 42.

46. Plea "Not guilty" and case for the prosecution.—After the plea of "Not guilty" to any charge is recorded, the trial shall proceed as follows :—

(A) The prosecutor may, if he desires, and shall, if required by the court, make an opening address, and shall state therein the substance of the charge against the accused and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into any unnecessary detail.

(B) The evidence for the prosecution shall then be taken.

(C) If it should be necessary for the prosecutor to give evidence for the prosecution on the facts of the case, he shall give it after the delivery of his address (if any), and he must be sworn and give his evidence in detail.

(D) He may be cross-examined by or on behalf of the accused and afterwards may make any statement which might be made by a witness on re-examination.

NOTES

(A) 1. As to the duties of the prosecutor, see r. 66 and notes, and memoranda pp. 408-410.

(2) In cases of complexity the prosecutor should always make an opening address, so that the members of the court may be enabled to understand the general nature of the allegations. He must be careful to refrain from making any assertions which he does not

propose to substantiate by evidence. The address of the prosecutor may be in writing; in such a case it should be read by him and handed to the court for attachment to the proceedings. If the address is made orally, see r. 78 (D).

(B) 1. For general provisions as to witnesses and evidence, see rr. 120 to 129. The evidence will be taken by question and answer, or the witness may be asked to tell his own story questions being subsequently asked to make good any omissions [see r. 78 (B)]. It is the duty of the prosecutor to conduct the examination of the witnesses for the prosecution and to see that all facts essential to constitute the offence are proved; *e.g.*, on a charge laid under I.A.A. 36 (*a*) of making a false accusation against Havildar A, it must be proved:—

(1) that the accused made the accusation in question against Havildar A;

(2) that it was false;

(3) that the accused made it knowing it was false.

The prosecutor must be careful, in examining his witnesses, to avoid putting leading or suggestive questions.

2. Documentary evidence will be read by the president or judge-advocate; it will then be marked with a distinguishing letter or figure and attached to the proceedings. As a rule, it will be sufficient to attach copies of documents which must, however, be compared with the originals by the court and certified under the hand of the president to be true copies; see note 2 to r. 56.

3. For the duty of the president, see r. 65 and note.

4. If the same person gives evidence in more than one case tried by the same court, he must be sworn (or affirmed) as a witness in each case, even if all such cases are tried on a single day.

(C) 1. The prosecutor should never give evidence for the prosecution, unless it be evidence of a merely formal nature, or for the purpose of producing documents which are in his possession. In exceptional cases, however (*e.g.*, active service), no prosecutor may be available except an officer who is a material witness as to the facts for the prosecution. In such a case the prosecutor must give his evidence before any other witness for the prosecution, and must not, after delivering an address, be allowed to swear generally as to the truth of the statements contained in such address.

2. When counsel appears on behalf of the prosecutor, paras. (C) and (D) of this rule do not apply.

(D) As to the general principles to be observed in cross-examination and re-examination, see Pt. 1, ch. V, paras. 97-111.

As to questions by the court, see rr. 128 and 129.

(Form of proceedings, pp. 382-383.)

47. Close of case for the prosecution and procedure for defence where accused does not call witnesses.—(A) At the close of the case for the prosecution, the accused shall be asked if he intends to call any witnesses to the facts of the case.

(B) If the accused states that he does not intend to call any witnesses to the facts of the case, the procedure shall be as follows:—

(i) If he is not represented by counsel or by an officer subject to military law:—

(*a*) The accused may, if he wishes, call witnesses as to his character.

(*b*) The prosecutor may make a final address for the purpose of summing up the evidence for the prosecution.

(*c*) The accused may then make an address in his defence giving his account of the subject of the charges against him. The address may be made orally or in writing.

(ii) If he is represented by counsel or by an officer subject to military law:—

(*a*) The accused may make a statement giving his account of the subject of the charge against him. This statement may be made orally or in writing but the accused shall not be sworn and no question may be put to him by the court or by any other person.

(*b*) The accused may, if he wishes, call witnesses as to his character.

(*c*) The prosecutor may then make a final address.

(*d*) Counsel or the defending officer, as the case may be, may then make a closing address.

NOTES

(A) 1. It is open to the accused, his counsel or defending officer, at the close of the case for the prosecution, to submit that the evidence given for the prosecution has not established a *prima facie* case against him and that he should not, therefore, be called upon for his defence. The court will consider this submission in closed court and, if they are satisfied that it is well founded, must acquit the accused. The submission may be made in respect of any one or more charges in a charge sheet (see also note to r. 74).

2. This question as to the calling of witnesses will be put by the judge-advocate or, if there is none, by the president.

(B) 1. As will be noted from the succeeding paragraphs of this rule and Rule 48, the whole course of procedure in connection with the case for the defence will depend upon the answer of the accused to this question.

2. Witnesses to extenuating circumstances are witnesses to the facts of the case.

3. The fact that the accused has stated that he does not intend to call any witnesses to the facts of the case does not prevent him from doing so before the evidence for the defence is completed if, for example, unexpected witnesses become available.

As to re-calling of witnesses and the calling of witnesses in reply, see r. 129.

4. It is the duty of counsel for the defence or defending officer (if any) to conduct the examination of the witnesses for the defence.

As to counsel and defending officer, see rr. 81-87.

5. The utmost liberty consistent with the interests of parties not before the court and with the dignity of the court itself should be allowed to the accused in making his defence [see r. 66 (C)], and the court should, if necessary, adjourn to allow him time for its preparation.

The accused cannot give evidence on oath or affirmation as there is no provision of Indian military law corresponding to Rule 80 of the Rules of Procedure under the (British) Army Act.

6. The accused has the privilege of making statements in his address which are unsupported by evidence. Any statement of the facts, though not on oath, upon which the accused relies for his defence, must be taken into consideration by the court, who may draw their inferences from it [see note (A) 3 to r. 50.]

If made orally, it should be taken down verbatim, so far as it states facts which are within the personal knowledge of the accused and upon which he relies for his defence. If made in writing, it shall be read and attached to the proceedings. The accused cannot be questioned by the court or any other person upon his statement or address except when it is desired to supplement the defence or to bring out more clearly the points which the accused urges in his favour.

7. Counsel for the defence may not state as a fact any matter which has not been proved in evidence (note to r. 86), and the same restriction is placed upon a defending officer [r. 81 (C)].

8. The prosecutor's address may be in writing, and in such a case it should be read by the prosecutor and handed to the court for attachment to the proceedings. If the address is made orally; see r. 78 (D).

In summing up the evidence, the prosecutor must confine his remarks to the evidence given by the witnesses for the prosecution and defence; he must not strain or overstate that view of the facts which, it is his duty to present to the court; he must not state any new fact which has not been given in evidence. Any deviation in these respects on the part of the prosecutor, or any want of moderation, may lead to the setting aside of the proceedings, if it appears that injustice has been done thereby to the accused. It is the duty of the court, as far as possible, to prevent the prosecutor from transgressing in any of these respects.

9. For procedure when two or more persons are tried together, see r. 67.

(Form of proceedings, pp. 384-385.)

48. Defence where accused calls witnesses.—If the accused states that he intends to call witnesses to the facts of the case, the procedure shall be as follows :—

(i) If he is not represented by counsel or by an officer subject to military law :—

(*a*) The accused may make an opening address giving his account of the subject of the charge against him. The address may be made orally or in writing.

(*b*) The accused shall then call his witnesses including, if he so desires, any witnesses as to character.

(*c*) After the evidence of all the witnesses has been taken, the accused may make a closing address.

(*d*) The prosecutor may reply.

(ii) If he is represented by counsel or by an officer subject to military law :—

(*a*) The accused may make a statement giving his account of the subject of the charge against him. The statement may be made orally or in writing but the accused shall not be sworn and no question may be put to him by the court or by any other person. If the accused makes no such statement, counsel or the defending officer (as the case may be) may make an opening address.

(*b*) The accused shall then call his witnesses including, if he so desires, any witnesses as to character.

(*c*) After the evidence of all the witnesses has been taken counsel or the defending officer (as the case may be) may make a closing address.

(*d*) The prosecutor may reply.

1. The notes to the preceding rule should be referred to generally.

2. Counsel (note to r. 86) and defending officer [r. 81 (*c*)], are not permitted, in an opening address, to state as facts matters which they do not intend to prove in evidence.

(Form of proceedings, pp. 384-385.)

49. Summing-up by judge-advocate.—(A) The judge-advocate, if any, shall, unless both he and the court think a summing-up unnecessary, sum-up in open court the whole case.

(B) After the summing-up of the judge-advocate, no other address shall be allowed.

NOTES

(A) 1. The judge-advocate has a right to sum up when he considers it necessary or desirable. Generally speaking, a summing-up is unnecessary in simple cases; but even where the facts are simple, a legal direction is often necessary; see r. 91 (B). The judge-advocate should always sum up in cases involving fraud or indecency or where civil offences are charged, and he must be careful, where necessary, to advise the court upon the law relating to confessions (see Pt. I, Ch. V, paras. 26-35), to corroboration and to the evidence of accomplices (see Ch. V, para. 90).

In summing-up the evidence, the judge-advocate must be careful not to indicate to the court any opinion which he may have formed as to the facts. Under Rule 130 the summing-up may be given orally, but in practice it should invariably be in writing.

If a summing-up is considered unnecessary, a record to that effect must be made in the proceedings.

2. For the powers and duties of a judge-advocate, see r. 91.

(Form of proceedings, p. 386.)

Finding and Sentence.

50. Consideration of finding.—(A) The court shall deliberate on their finding in closed court.

(B) The opening of each member of the court as to the finding shall be given by word of mouth on each charge separately.

NOTES

(A) 1. See r. 69.

The president should initiate the deliberations of the court by a statement of the questions to be considered and the order in which they should be considered. If, for example, the charge is laid under I. A. A. 27 (*e*), he will ask them to discuss the bearing of the evidence upon the following questions: (*a*) was a command given? (*b*) was it a lawful command? (*c*) was it given by the superior officer of the accused? (*d*) was it disobeyed by the accused? (*e*) did the accused know that the person giving the order was his superior officer?

Similarly where the charge laid is under I. A. A. 39 (*i*), the question to be considered should be: (*a*) have the facts alleged in the particulars of the charge been proved in evidence? if they have, (*b*) do such facts amount to an act (or omission) prejudicial to good order and military discipline?

2. If the court is doubtful whether the actual offence charged is proved or whether the particulars of the charge have been satisfactorily established in evidence, they must consider their powers of making a special finding, either under I. A. A. 86 or under r. 51 (D).

3. The members of courts-martial must remember (1) that it is a fundamental maxim of law that an accused person is presumed to be innocent until he has been proved to be guilty, and (2) that their finding must be based upon the evidence given before them.

It should be remembered that the accused cannot give evidence on oath, and therefore any statement made by him must be carefully considered. Though not given on oath and subject to the test of cross-examination, it will often be of value, particularly if it is in any respect corroborated by evidence from other sources (see note 6 to r. 47).

4. At any time before the finding has been arrived at, the court may be reopened to enable a witness to be called or recalled and examined by them through the president or judge-advocate; see r. 129 (D).

5. As to form and record of finding, see r. 51 and notes.

(B) The opinions of members must be given orally. As to taking opinions see r. 73 and notes.

(Form of proceedings, p. 386)

51. Form and record of finding.—(A) The finding on every charge upon which the accused is arraigned shall be recorded and, except as mentioned in these rules, shall be recorded simply as a finding of "Guilty", or of "Not guilty" or of "Not guilty and honourably acquit him of the same".

(B) Where the court are of opinion as regards any charge that the facts proved do not disclose the offence charged or any offence of which he might under the Act legally be found guilty on the charge as laid, the court shall acquit the accused of that charge.

(C) If the court doubt as regards any charge whether the facts proved show the accused to be guilty or not of the offence charged or of any offence of which he might under the Act legally be found guilty on the charge as laid, they may, before recording a finding on that charge, refer to the confirming authority for an opinion, setting out the facts which they find to be proved, and may, if necessary, adjourn for that purpose.

(D) Where the court are of opinion as regards any charge that the facts which they find to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, they may, instead of a finding of "Not guilty", record a special finding.

(E) The special finding may find the accused guilty on a charge, subject to the statement of exceptions or variations specified therein.

(F) Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court shall record a finding of "Not guilty" on that charge.

(G) If the court think that the facts proved constitute one of the offences stated in two or more of the alternative charges, but doubt which of those offences the facts do at law constitute, they may, before recording a finding on those charges refer to the confirming authority for an opinion, setting out the facts which they find to be proved and stating that they doubt whether those facts constitute in law the offence stated in such one or other of the charges and may, if necessary, adjourn for that purpose.

(H) In any case where the court are empowered by section 86 of the Act to find the accused guilty of an offence other than that charged, or guilty of committing an offence in circumstances involving a less degree of punishment, or where they could, after hearing the evidence, have made a special finding of guilty subject to exceptions or variations in accordance with sub-rules (D) and (E), they may if they are satisfied of the justice of such course, and if the concurrence of the convening officer is signified by the prosecutor, accept and record a plea of guilty of such other offence, or of the offence as having been committed in circumstances involving such less degree of punishment, or of the offence charged subject to such exceptions or variation.

Provided that failure to obtain the concurrence of the convening officer as aforesaid shall not invalidate the proceedings when confirmed notwithstanding such failure.

NOTES

(A) 1. This includes alternative charges, except in the cases which come within Rule 42 (C).

2. In the case of an acquittal on every charge, the president must date and sign the proceedings. The judge-advocate (if any) must also sign; see r. 52.

A finding of "honourable acquittal", which may be recorded in the case of non-commissioned officers and soldiers as well as officers, is incorrect unless the charge affects the honour of the person charged, and is generally inappropriate unless the conduct of the accused throughout the transactions investigated by the court has been irreproachable.

(B) 1. If, for example where a person is charged with dishonestly receiving property, knowing it to be stolen, and the facts show that, although the property was in fact stolen, the accused was unaware that it was stolen property, the court must acquit, as the accused would not have committed the offence charged.

2. For special findings in respect of the statement of offence, see I. A. A. 86.

(C) Before referring to the confirming authority under this rule, the court must have arrived at a decision as to the facts which they find to be proved and the opinion of the confirming authority will be sought as to whether, upon the facts so found to be proved, the accused can legally be found guilty.

The court cannot refer to the confirming authority for any opinion as to the facts, as to which they are the sole judges.

The reason for the reference should be recorded (see Variation, p. 387).

The opinion of the confirming officer should be read upon re-assembly of the court and attached to the proceedings.

(D) The special finding here referred to relates only to the particulars of the charge, and not to the statement of the offence, as to which see I. A. A. 86 and notes. Before recording a special finding under this paragraph, the court must be satisfied that the facts which they find to be proved, subject to certain exceptions and variations amount to the substance of the charge; otherwise they must acquit; *e.g.*, on a charge against a soldier of losing by neglect a great-coat and a waistbelt, the court may properly find the accused "guilty of the charge except that he did not lose a waistbelt", but they could not legally find him "guilty of the charge except that he made away with and did not lose" the articles in question.

An immaterial variation of date may be made by special finding, but in cases of desertion or absence without leave the substitution of a date which would have the effect of lengthening the period of absence alleged in the charge would not be permissible.

On a charge of using criminal force to his superior officer—Havildar A—by striking him with his fist in the face, the court could properly except the words "in the face", but they could not make a special finding substituting Havildar B for Havildar A.

On a charge of dishonestly misappropriating Rs. 100, a special finding that the sum misappropriated was Rs. 50 would be permissible; but a special finding omitting from the particulars the word "dishonestly" would be tantamount to an acquittal.

(G) For general procedure, see note (C) above, and Variation, p. 387. When the court have decided to convict on one of two or more alternative charges, they will record a finding of "Not guilty" upon the other alternative charge or charges. [See para. (A) and note of this rule.]

(H) This sub-rule enables a court, if they are satisfied of the justice of the course and if the consent of the convening officer is signified by the prosecutor, to accept a qualified plea of guilty and to record a special finding. For example, if an accused charged with desertion pleads guilty to absence without leave, or if an accused charged with losing by neglect a number of articles pleads guilty in respect of some of those articles only, the court may accept such qualified plea and record a special finding accordingly.

(Form of proceedings, pp. 386-387.)

52. Procedure on acquittal.—If the finding on all the charges is "Not guilty" the president shall date and sign the finding and such signature shall authenticate the whole of the proceedings, and the proceedings upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.

NOTES

This differs from the procedure under the (British) Army Act where an acquittal is announced in open court and the accused forthwith released. Under Indian military law a finding of acquittal by a general or district court-martial requires confirmation in the same manner as any other finding by such a court and is not valid until so confirmed.

(Form of proceedings, p. 386.)

53. Procedure on conviction.—(A) If the finding on any charge is "Guilty", then, for the guidance of the court in determining their sentence, and of the confirming authority in considering the sentence, the court, before deliberating on their sentence, shall, whenever possible, take evidence of and record the general character, age, service, rank, and any recognised acts of gallantry or distinguished conduct of the accused any previous convictions of the accused either by a court-martial or a criminal court, any previous punishments awarded to him by an officer exercising authority under section 20 of the Act, the length of time he has been in arrest or in confinement on any previous sentence, and any military decoration, or military reward, of which he may be in possession or to which he is entitled.

(B) Evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the regimental books respecting the accused and identifying the accused as the person referred to in that summary.

(C) The accused may cross-examine any such witness, and may call witnesses to rebut such evidence; and if the accused so requests, the regimental books, or a duly certified copy of the material entries therein, shall be produced; and if the accused alleges that the summary is in any respect not in accordance with the regimental books, or such certified copy, as the case may be, the court shall compare the summary with those books or copy, and if they find it is not in accordance therewith, shall cause the summary to be corrected.

(D) When all the evidence on the above matters has been given the accused may address the court thereon and in mitigation of punishments.

NOTES

(A) 1. The court will always take evidence as to character, unless the circumstances render it impracticable to do so, in which case they will record upon the proceedings the reasons for such impracticability.

2. Evidence upon the matters referred to in this rule should not be given by a member of the court.

3. The court cannot take oral evidence that the accused is of bad character; this should be proved in the manner shown in para. (B) of this rule. But oral evidence of good character is always permissible; if the accused calls witnesses as to his good character, they may be cross-examined by the prosecutor with a view to testing their veracity and thereby indirectly bringing out evidence of bad character. Witnesses as to character can also be called during the hearing of the case for the defence and before the finding.

4. The court will also consider the length of time during which the accused has been in confinement awaiting trial upon the present charge or charges.

5. If by reason of the nature of the service of the accused, the finding of the court renders him liable to any exceptional punishment in addition to that to be awarded by the sentence of the court, the prosecutor should call the attention of the court to the fact, and the court should enquire into the nature and amount of such additional punishment.

6. For definition of "military reward", see I. A. A. 7 *(15)*.

(B) Previous convictions of the accused will be proved by the production of a verbatim extract from the regimental books (I. A. F. D.-905) duly completed by the officer-in-charge of these books; [see note (C) below and I. A. A. 91A *(3)* and *(4)*]. As to regimental books see R. A. I.; the term includes departmental books of the same nature as those maintained by corps, *e.g.*, a sheet-roll or a court-martial book, but does not include departmental business books. If the accused challenges the correctness of the regimental books, see para. (C) of this rule. If there is any reason to doubt the correctness of the entry in the regimental books of a civil conviction, such conviction may be proved by an extract certified by the person having the custody of the records of the court in which the accused was convicted.

The witness producing the extract from the regimental books and the statement as to age, service, rank, etc., of the accused should be the adjutant or some other officer, and there is no objection to the prosecutor giving such evidence [see note (C) to r. 46]. He must be sworn as any other witness and may be crossexamined by the accused and questioned by the court.

(C) The copy of the material entries in the regimental book must be certified by the officer having custody of the original book [I. A. A. 91A *(4)*]; custody includes temporary custody for the purpose of the trial.

(Form of proceedings, pp. 387-388.)

54. Sentence.—The court shall award one sentence in respect of all the offences of which the accused is found guilty, and such sentence shall be deemed to be awarded in respect of the offence in each charge in respect of which it can be legally given, and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given.

NOTES

1. This rule applies whether the charges on which the offender has been tried are contained in one or several charge-sheets.

2. As to postponement of sentence where several persons are tried separately for offences arising out of the same transaction, see r. 75 (D).

3. The sentence must be a sentence authorised by the Indian Army Act (see I. A. A. Ch. VI), *e.g.*, a court-martial cannot award a sentence of confinement to lines, or sentence an offender to restore stolen property. But a court-martial may, under I. A. A. 126B, make a separate order for the disposal of property. Such an order should be recorded below the signature of the president to the sentence and should be separately dated and signed by the president.

4. For procedure in voting upon the sentence, see r. 73 and note.

5. The object of the latter portion of this rule is to prevent legal objection to the validity of the sentence. If, for example, an offender has been found guilty by a general court-martial on a charge of desertion, and also upon a charge of making away with his regimental necessaries, a sentence of transportation in respect of the first charge will be valid, although a sentence of rigorous imprisonment is the maximum sentence which could have been awarded upon the second charge.

6. Sentences, unless for one or more years exactly, should, if for one month or upwards, be recorded in months. Sentences consisting partly of months and partly of days should be recorded in months and days. A month means a calendar month.

7. Even if the accused is considered by the medical officer who examines him before trial unfit to undergo rigorous imprisonment, the court can sentence him to it, as it is the duty of the medical officer of the prison, or place of military custody, to decide what severity of labour he can undergo. Sentences of simple imprisonment are inexpedient and inconvenient of execution.

(Form of proceedings, pp. 388-390.)

55. Recommendation to mercy.—(A) If the court make a recommendation to mercy, they shall give their reasons for their recommendation.

(B) The number of opinions by which a recommendation to mercy mentioned in this rule, or any question relative thereto, is adopted or rejected, may be entered in the proceedings.

NOTES

1. A recommendation to mercy will be appended to the sentence; it forms part of the proceedings of the court.

2. In view of the discretion of the court in the matter of awarding sentence, a recommendation to mercy will be exceptional. It will usually be made only when the court, though unwilling to pass a lenient sentence lest the offence should be considered a venial one, think that, owing to the offender's character or other exceptional circumstances, he should not suffer the full penalty which the offence would ordinarily demand. As a rule the court will be able to adjust the sentence according to what, in their judgment, the offender should suffer having regard to the attendant circumstances. It is indisputable that offences are more effectually prevented by certainty than by severity of punishment.

3. As a recommendation to mercy is part of the proceedings, any expression of opinion in it in relation to the finding must be read with, and as part of, the finding. Accordingly, where in a recommendation to mercy a court express an opinion inconsistent with the guilt of the person under sentence, *e.g.*, where the charge is for striking a superior, and the court state their opinion that the accused "did not intend to strike", it must be treated as an acquittal, the intent being an element of the offence.

(B) A recommendation to mercy is a matter which the court has to decide under r. 73 (A).

(Form of proceedings, p. 391.)

56. Signing and transmission of Proceedings.—Upon the court awarding the sentence, the president shall date and sign the sentence and such signature shall authenticate the whole of the proceedings, and the proceedings upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.

1. It is essential that the date of the sentence should be inserted, as under I. A. A. 106 a term of transportation or imprisonment is reckoned to commence on the day on which the sentence and proceedings were signed by the president.

When, however, a president, after recording the finding and sentence, omits to either sign or date the proceedings, he can, even after confirmation, sign them and date his signature as of the true date of the decision.

The proceedings must not be signed by the members of the court other than the president.

2. The signature authenticates the whole of the proceedings, including the documentary evidence produced at the trial.

When an original document is produced in evidence, it will rarely be necessary to annex it to the proceedings. A certified copy should be produced to the court, together with the original, the former being attached to the proceedings, and the latter returned to its proper custodian. Documents, the actual appearance of which is material to the case (*e.g.*, alleged forgeries), shall always be attached in original.

Confirmation and Revision.

57. Revision.—(A) Where the finding or sentence is sent back for revision under section 100 of the Act the court shall reassemble in closed court, but if the court is directed to take fresh evidence on revision such evidence must be taken in open court and in the presence of the accused.

(B) Where the finding is sent back for revision and the court do not adhere to their former finding, they shall revoke the finding and sentence, and record a new finding, and if such new finding involves a sentence, pass sentence afresh.

(C) Where the sentence alone is sent back for revision, the court shall not revise the finding.

(D) After revision, the president shall date and sign the decision of the court and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.

(E) Upon receiving the proceedings of a general or district court-martial, whether original or revised, the confirming authority may confirm or refuse confirmation, or reserve confirmation for superior authority, and the confirmation, non-confirmation, or reservation shall be entered in and form part of the proceedings.

NOTES

(A) 1. Indian military law as to revision differs from that contained in the (British) Army Act. Under the former, a finding of acquittal can be revised and the accused found guilty and sentenced, a sentence can be increased on revision, and evidence can (if so ordered) be taken on revision. None of these things can be done under the (British) Army Act.

2. A court cannot be re-assembled more than once for revision, whether of finding or of sentence.

3. The object of revision will generally be to cure defects in the finding or sentence, or both. The confirming officer, however, by partial confirmation or by exercising his powers under Rule 59 (A) or 61, can often correct mistakes made by the court, and thus obviate the inconvenience of re-assembling the court for revision.

If the sentence originally awarded by the court is wholly illegal, *e.g.*, a sentence of transportation awarded to a soldier by a district court-martial, or a sentence of reduction to the ranks awarded to a lance-naik, or a sentence of confinement to lines awarded to a soldier, it is null (see note to r. 61), and the court, on revision, may award any legal sentence; in such a case the confirming officer cannot pass a valid sentence; but see I. A. A. 103.

Where a special finding should have been recorded under I. A. A. 86 or Rule 51 (D), the finding should be sent back for revision. A confirming officer cannot substitute a special finding on any charge for the court's finding.

4. If a court bring in a finding of "not guilty" against the weight of the evidence, the court may be re-assembled and the confirming officer may give his views of the evidence, directing the attention of the court to any special points which they appear to have failed to appreciate.

A finding of insanity may also be sent back for revision.

5. A confirming officer cannot send back part of a finding or sentence; if he thinks that a part only requires revision, he must return the whole, pointing out the part which, in his opinion, requires revision.

6. The court should be re-assembled as soon as practicable.

If the court upon re-assembly is reduced, by death or otherwise, below the legal minimum [see I. A. A. 100 (*3*)], it cannot proceed with the revision, and the proceedings must be returned to the confirming authority. In such a case, as no revision has taken place, the original finding and sentence will stand and will be dealt with by the confirming authority.

7. Under I. A. A. 106, the term of transportation or imprisonment commences on the date of the original sentence.

(B) 1. Where the finding is sent back for revision and the court adhere to the finding, they can nevertheless revise the sentence.

2. If the revised finding is an acquittal or a finding of insanity, no sentence is involved. If a court, on revision, revoke their original finding on any charge, the original sentence automatically falls to the ground, and, if the revised finding entails a sentence, the court must pass sentence afresh; if the court omit to do so, the accused is not legally under

any sentence and the confirming officer may return the proceedings with directions to the court to complete the revision and pass sentence. This will not be a second revision, which is prohibited by I. A. A. 100 (*l*).

3. If the original finding was acquittal and the revised finding is "Guilty", the court will (whether ordered to take fresh evidence or not) proceed as directed by Rule 53. The evidence referred to in para. (A) of the present rule is evidence of the facts relating to the charge, and must not be taken on revision unless specially ordered [I. A. A. 100 (*l*)].

(E) 1. See also I. A. A. 94-99A and rr. 59-62. As to confirmation of summary general courts-martial, see I. A. A. 98 and r. 148.

2. The minute of reservation should be entered in the proceedings.

(Form of proceedings, pp. 391-392.)

58. Promulgation.—The charge, finding, and sentence, and any recommendation to mercy shall, together with the confirmation or non-confirmation of the proceedings, be promulgated in such manner as the confirming authority may direct; and if no direction is given, according to the custom of the service. Until promulgation has been effected, confirmation is not complete and the finding and sentence shall not be held to have been confirmed until they have been promulgated.

NOTE

1. For the date from which a sentence of cashiering or dismissal takes effect, see r. 154.

2. In the absence of any direction by the confirming authority, the usual custom of the service as to promulgation will be followed, but a written notice to the offender of the charge, etc., will be sufficient promulgation under this rule.

3. As to committal to a civil prison or to military custody of persons sentenced to transportation or imprisonment, see I. A. A. 107 and 108A; as to action in exceptional cases, see I. A. A. 108.

For forms of committal warrant, see pp. 412-413.

As to the suspension of sentences of transportation or imprisonment, see section 3 of the Indian Army (Suspension of Sentences) Act in Part III.

(Form of proceedings, p. 393.)

59. Mitigation of sentence on partial confirmation.—(A) Where a sentence has been awarded by a court-martial in respect of offences in several charges, and the confirming authority confirms the finding on some but not on all of such charges, that authority shall take into consideration the fact of such non-confirmation, and shall, if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges the findings on which are confirmed.

(B) Where a sentence has been awarded by a court-martial in respect of offences in several charges and has been confirmed, and any one of such charges or the finding thereon is found to be invalid, the authority having power to mitigate, remit, or commute the punishment awarded by the sentence shall take into consideration the fact of such invalidity, and if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges which with the findings thereon are not invalid, and the punishment as so modified shall be as valid as if it had been originally awarded only in respect of those offences.

NOTE

(A) 1. As to the meaning of mitigation, remission and commutation, see notes to I. A. A. 99.

2. Where a soldier has been convicted of (1) desertion and (2) theft under I. A. A. 31 (*d*) and has been sentenced to transportation, and the confirming officer confirms the finding on the second charge but not that on the first charge, which alone justified the sentence of transportation, he is bound under this rule to commute the sentence at least to imprisonment the maximum sentence under I. A. A. 31. If, however, the confirming officer confirms the finding on the first charge but not that on the second, he may mitigate or commute it to some less punishment if he considers that a sentence of transportation on the charge of desertion alone is, in the circumstances, too severe.

(B) 1. This paragraph gives to the authority prescribed under I. A. A. 112 similar powers to do after confirmation that which under para. (A) of this rule the confirming officer may do before confirmation. But it will be noted that the prescribed authority is only required to act under this paragraph where any one of the charges, or the finding thereon, is found to be invalid and has been set aside. The prescribed authority derives the ordinary powers of mitigation etc., from I. A. A. 112.

2. As to substitution of a valid for an invalid sentence. see I. A. A. 103 (2).

60. (Omitted.)

61. Confirmation notwithstanding informality in, or excess of punishment.—(A) If the sentence of a court-martial is informally expressed, the confirming authority may, in confirming the sentence, vary the form so that it shall be properly expressed; and if the punishment awarded by the sentence is in excess of the punishment authorized by law, the confirming authority may vary the sentence so that the punishment shall not be in excess of the punishment authorized by law; and the confirming authority may confirm the finding and the sentence, as so varied, of the court-martial.

NOTE

1. The object of this rule is to prevent the proceedings of courts-martial from being rendered invalid when they cannot be sent back for revision without great inconvenience to the public service. It will not exonerate from blame the presidents and members of courts-martial who award sentences which are informal or in excess of their powers. If confirming officers decide to act under this rule, instead of ordering a revision of the sentence, they should call the attention of the members of the court to the informality or irregularity of the sentence.

2. The confirming authority cannot under this rule vary a sentence which is illegal in its character and therefore null, *e.g.*, a sentence of imprisonment awarded by a district court-martial to a warrant officer, or a sentence of transportation awarded to a soldier by district court-martial, or a sentence of reduction to the ranks awarded to a lance-naik, or a sentence of confinement to lines awarded to a soldier. In such cases the court must be re-assembled for the purpose of passing a valid sentence.

(Form of proceedings, p. 392.)

62. Member or prosecutor not to confirm proceedings.—A member of a court-martial, or an officer who has acted as prosecutor at a court-martial, shall not confirm the finding or sentence of that court-martial, and where such member or prosecutor becomes confirming officer, he shall refer the finding and sentence of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of court-martial.

NOTE

If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null, and it is open to the proper authority to confirm.

Proceedings of General and District Court-Martial.

63. Seating of members.—The members of a court-martial shall take their seats according to their army rank.

64. (Omitted.)

65. Responsibility of president.—(A) The president is responsible for the trial being conducted in proper order, and in accordance with the Act, and will take care that everything is conducted in a manner befitting a court of justice.

(B) It is the duty of the president to see that justice is administered, that the accused has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a person under trial, or of his ignorance or of his incapacity to examine or cross-examine witnesses, or otherwise.

NOTE

(A) 1. The court should, always have at its disposal the Indian Army Act and Rules, Regulations for the Army in India, and any other official books or orders which are necessary for the purpose of its proceedings.

2. The president should be careful to safeguard the dignity of the court and the solemnity of its proceedings.

If any person, other than the accused, interrupts the proceedings, he should ordinarily be excluded from the court. The court have, however, further powers under Rule 136 for dealing with persons who interrupt their proceedings.

The trial of a person cannot proceed in his absence, even though he interrupts the proceedings.

(B) If the accused is not represented by counsel or defending officer, the president should assist him in putting forward his defence, and take care that he is not prejudiced by his inability to put proper questions to the witnesses or bring out clearly the points upon which he relies. If there is a judge-advocate he has a similar duty [r. 91 (G)]; but the presence of a judge-advocate does not relieve the president of his responsibility under this rule. If a witness gives evidence different from that given by him when the summary of evidence was taken, he should be questioned as to the difference.

The president should always put to the witnesses any questions which appear to him necessary or desirable for the purpose of eliciting the truth; see r. 129 and notes.

66. Power of court over address of prosecutor and accused.—(A) It is the duty of the prosecutor to assist the court in the administration of justice, to behave impartially, to bring the whole of the transaction before the court, and not to take any unfair advantage of, or suppress any evidence in favour of, the accused.

(B) The prosecutor may not refer to any matter not relevant to the charge or charges then before the court, and it is the duty of the court to stop him from so doing and also to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor.

(C) The court shall allow great latitude to the accused in making his defence: he must abstain from any remarks contemptuous or disrespectful towards the court, and from coarse and insulting language towards others, but he may for the purposes of his defence impeach the evidence and the motives of the witnesses and prosecutor, and charge other persons with blame and even criminality subject. If he does so, to any liability which he may thereby incur. The court may caution the accused as to the irrelevance of his defence, but shall not, unless in special cases, stop his defence solely on ground of such irrelevance.

NOTE

(A) 1. As to the duties of the prosecutor, see Memoranda pp. 408-410.
As to addresses by the prosecutor, see rr. 46, 47 and notes.

2. The prosecutor is an officer whose duty, it is to see that justice is done, not a partisan intent on securing a conviction independently of the justice of the case. He should therefore put before the court facts which show the true character of the offence, and must be careful to prove affirmatively any facts tending to show the innocence of the earlier termination of the absence, to tell the court the information which he possesses, of provocation which might mitigate punishment.

It occasionally happens that a soldier charged with desertion was to the knowledge of the prosecutor, arrested or rendered an involuntary absentee at a date earlier than the termination of his absence as alleged in the particulars of the charge. In such circumstances it is the duty of the prosecutor, although he has no direct evidence to prove the earlier termination of the absence, to tell the court the information which he possesses, and to invite them to act upon such information by recording a special finding under Rule 51 (D).

The prosecutor must not introduce matters of aggravation into the evidence against the accused unless they are relevant to the charge against him.

(B) As to relevancy, see Pt. I, ch. V, paras. 12-25. Generally speaking, anything which tends to show that the accused committed the offence charged, or to show the true character of the offence is relevant.

(C) See also notes 5 and 6 to r. 47. If the accused charges other persons with blame or criminality, the court should caution him that he may be incurring a liability to be charged subsequently with knowingly by making a false accusation [I. A. A. 36 (*a*)].

The case must be very special indeed to justify the court in stopping the accused in his defence, or in excluding on the ground of irrelevancy, evidence offered by him, or to justify any further proceedings against him on account of his defence.

67. Procedure on trial of accused persons together.—Where two or more accused persons are tried together and any evidence as to the facts of the case is tendered by any one or more of them, the evidence and addresses on the part of or on behalf of all the accused persons shall be taken before the prosecutor replies, and the prosecutor shall make one address only in reply as regards all the accused persons.

68. Separate charge-sheets.—(A) The convening officer may direct any charges against an accused person to be inserted in different charge-sheets, and when he so directs, the accused shall be arraigned and until after the finding tried, upon each charge-sheet separately, and accordingly the procedure in Rules 38 to 51, both inclusive, shall, until after finding, be followed in respect of each charge-sheet, as if it contained the whole of the charges against the accused.

(B) The trials upon the several charge-sheets shall be in such order as the convening officer directs.

(C) When the court have tried the accused upon all the charge-sheets they shall, in the case of the finding being "Not guilty" on all the charges, proceed as directed by Rule 52, and in case of the finding on any one or more of the charges being "Guilty" proceed as directed by Rules 44 and 53 to 56, both inclusive, in like manner in each case as if all the charges in the different charge-sheets had been contained in one charge-sheet, and the sentence passed shall be of the same in one charge-sheet effect as if all the charges had been contained.

(D) If the convening officer directs that, in the event of the conviction of an accused person upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets, the court in such event may, without trying the accused upon any of the subsequent charge-sheets, proceed as before directed by (*c*).

(E) Where a charge-sheet contains more than one charge, the accused may, before pleading, claim to be tried separately in respect of any charge or charges in that charge-sheet, on the ground that he shall be embarrassed in his defence if he is not so tried separately; and in such case the court, unless they think his claim unreasonable shall arraign and try the accused in like manner as if the convening officer had inserted the said charge or charges in different charge-sheets.

(F) If a plea of "Guilty" to any charge in a charge-sheet has been recorded as the finding of the court, the provisions of Rule 44 (B) and (C) shall not be complied with until after the court have arrived at their findings on all the charge-sheets.

NOTE

(A) 1. Most of the ordinary cases which come before courts-martial are so simple in their facts that an accused person is not likely to be embarrassed by being tried upon several charges at the same time. But if the charges are complicated, or if the alleged offences were committed at different times, or if different sets of witnesses are required to prove the different charges, embarrassment is likely to arise, and in such cases the convening officer should cause the charges to be inserted in separate charge-sheets, numbered consecutively in the order in which he directs them to be tried.

It is difficult to lay down for the guidance of convening officers any definite rules as to the placing of the charges in different charge-sheets; much will depend upon the circumstances of each particular case. But the following general principles may be laid down:—

(*a*) Alternative charges must not be placed in diffrent charge-sheets.

(*b*) A series of offences forming part of one escapade should normally be placed in a single charge-sheet; *e.g.*, escape from confinement followed by resistance to escort upon re-arrest and gross insubordination to the guard commander after re-committal to confinement. Multiplicity of charges arising out of the same transaction should, however, be avoided though in some cases it is necessary to allege a series of offences, *e.g.*, to prove some particular intent, or to guide the court in determining the proper punishment to be awarded.

(*c*) Repeated instances of offences of the same or similar character should be included in a single charge-sheet; *e.g.*, a series of barrack-room thefts from comrades during a short space of time.

(*d*) Offences of different descriptions should be entered in separate charge-sheets except where they form part of or are relevant to one transaction, or where the facts of each case are simple; *e.g.*, where a soldier is charged with desertion and with using criminal force to his superior officer after he had been handed over by the escort, the charges should normally be inserted in separate charge-sheets, unless the facts are simple. But if immediately before the alleged desertion, the accused made away with his army clothing, a charge in respect of the latter offence is relevant to the intent of the accused in leaving his unit and should be inserted in the same charge-sheet as the charge of desertion.

Even if the convening officer has directed all charges to be inserted in a single charge-sheet, the accused under para. (E) of this rule has the right to apply for separate trial.

2. Where the accused is arraigned on separate charge-sheets, the court must arrive at their finding upon one charge-sheet before the next charge-sheet is proceeded with.

For form of proceedings, see para. 29 of Memoranda on p. 407.

3. Where any evidence given upon the trial of an accused on one charge-sheet is required to be given on the trial of the same accused person on a subsequent charge-sheet, it must be given afresh, but the witness giving such evidence need not be sworn again.

(B) Generally speaking, the convening officer will regulate the order for the trial of different charge-sheets according to the date of the respective offences. But where the gravity of the various offences differs, it may be desirable to insert the charge involving the gravest offence in the first charge-sheet, as, if the accused is convicted, he will be sufficiently punished without trying him in respect of the minor offences; and see para. (D) of this rule. Occasionally it will be desirable to direct that a charge which necessitates the calling of a large number of witnesses should be inserted in the first charge-sheet so that the attendance of such witnesses can be dispensed with after the trial on that charge-sheet has been completed.

(C) After the finding of the court upon all the charge-sheets has been arrived at, the procedure will be the same as if all the charges had been inserted in one charge-sheet. Unless, therefore, the convening officer directs that the accused need not be tried upon any subsequent charge-sheet, the court will not proceed to sentence until they have arrived at a finding on all the charge-sheets, and will then award one sentence in respect of them all.

(D) It will often be unnecessary, if the accused is convicted of a grave charge contained in one charge-sheet, to proceed with any other or minor offences contained in the other charge-sheets. On the other hand, it may be desirable to try the accused upon the other charge-sheets in order that a more severe sentence may be awarded, if justified.

The powers given to the convening officer under this paragraph cannot be exercised by the prosecutor on his own initiative or by the court.

(E) The court should always, unless they think the claim to be unreasonable, accede to a demand to be tried separately in respect of any particular charge.

(F) Under this paragraph, where an accused has pleaded guilty to a charge entered in one of several charge sheets, the summary or abstract of evidence relating thereto and any statement which he may make in mitigation of punishment will not be read or recorded until after the finding of the court on all the charge-sheets has been arrived at. But for this provision, the fair trial of the accused upon the other charge-sheets might be prejudiced, especially if he stated, in mitigation of punishment, anything which might point to his guilt on any charge in a charge-sheet which has not yet been tried.

69. Sitting in closed Court.—(A) When a court-martial sits in closed court on any deliberation amongst the members or otherwise, no person shall be present except the members of the court, the judge-advocate, and any officers under instruction; and the court may either retire, or may cause the place where they sit to be cleared of all other persons not entitled to be present.

(B) Except as above-mentioned, all the proceedings, including the view of any place, shall be in open court and in the presence of the accused.

NOTE

(A) If more convenient the court may withdraw for deliberation.

(B) 1. All the members of the court and the accused must be present at the "view": the prosecutor, counsel or defending officer should also be present.

2. This rule does not affect the power of the court to exclude any person, other than the accused, who interferes with the proceedings—a power which every court possesses as necessary for the proper conduct of its proceedings. A court-martial has inherent power to sit *in camera* if necessary for the proper administration of justice.

70. Continuity of trial and adjournment of Court.—(A) When a court is once assembled and the accused has been arraigned the court shall continue the trial from day to day and sit for a reasonable period on every day unless it appears to the court that an adjournment is necessary for the ends of justice, or that such continuance is impracticable.

(B) A court may adjourn from time to time, and from place to place, and may, when necessary, view any place.

(C) A court-martial, in the absence of a judge-advocate (if such has been appointed for that court-martial), shall not proceed, and, if necessary, shall adjourn.

(D) The senior officer on the spot may also, for military exigencies, adjourn or prolong the adjournment of the court.

(E) If the time to which an adjournment is made is not specified, the adjournment shall be until further orders from the proper military authority; and, if the place to which an adjournment is made is not specified, the adjournment shall be to the same place or to such place as may be specified in further orders from the proper military authority.

NOTE

(A) 1. It is very important that a trial, once begun, should proceed without interruption to its conclusion. This rule, therefore, requires the court to sit from day to day unless an adjournment is necessary for the ends of justice.

2. Apart from specific provisions under the Rules, an adjournment should be allowed for obtaining the opinion of the confirming authority or of the Deputy or Assistant Judge Advocate General of the command on any point of law or procedure for enabling the accused to prepare his defence, the prosecutor to prepare his reply or the judge-advocate to prepare his summing-up.

The court should not, as a rule, permit an adjournment to enable the prosecutor to call new witnesses, unless the necessity for their presence at the trial could not reasonably have been foreseen. The court should adjourn if they consider that the accused has not had sufficient opportunity for procuring the attendance of any witnesses whom he desires to call, or where it would be unjust to the accused not so to adjourn.

The reasons for any adjournment must be entered in the proceedings (see Variations, p. 383), and either announced in court in presence of the accused, or communicated to the prosecutor and accused.

3. (1) Prolonged sittings unduly strain the attention of members of the court and may operate unfairly upon the accused, who should never be required to make his defence at the close of a prolonged sitting. Sittings of six or seven hours will be found as a rule quite long enough. Under Indian Military law, trials by court-martial may be held at any time.

(2) Where civilian witnesses are present, the court should, if reasonably possible, complete their evidence before adjourning.

(B) This meets the case where a view is necessary, or where a court-martial is held on the line of march, or where an adjournment to a hospital for the purpose of taking the evidence of a sick witness is rendered necessary.

As to view, see r. 69 and notes.

(c) As to procedure on death of judge-advocate or his inability to attend, see r. 90. Where the absence of the judge-advocate is due to temporary causes, the court should adjourn until he is able to attend.

(d) These military exigencies can seldom occur except on active service.

70-A. Suspension of trial.—(*1*), Where, in consequence of anything arising while the court is sitting, the court is unable by reason or dissolution as specified in section 65 of the Act, or otherwise, to continue the trial, the president, or, in his absence, the senior member present, will immediately report the facts to the convening authority.

(*2*) Where a court-martial is dissolved before the finding, or, in case of a finding of guilty, before the sentence, the proceedings are null, and the accused may be tried before another court-martial.

71. Proceedings on death or illness of accused.—In case of the death of the accused, or of such illness of the accused as renders it impossible to continue the trial, the court shall ascertain the fact of the death or illness by evidence, and record the same, and adjourn, and transmit the proceedings to the convening authority.

NOTE

1. See I. A. A. 65 (*2*). "Impossible to continue" means to continue within a reasonable time having regard to all the circumstances.

2. Oral evidence of the fact of the death or illness will be taken on oath or affirmation. Also, a medical certificate should always, where possible, be obtained, stating that the illness of the accused renders his presence in court impracticable, or dangerous to himself or others and also the time when, in the opinion of the medical officer, the accused will be able to be present.

72. Death, retirement or absence of president.—(a) In the case of the death, retirement on challenge or unavoidable absence of the president, the next senior officer shall take the place of the president and the trial shall proceed if the court is still composed of not less than the smallest number of officers of which it is required by law to consist.

(b) A member of a court who has been absent while any part of the evidence on the trial of an accused person is taken, shall take no further part in the trial by that court of that person, but the court will not be affected unless it is reduced below the legal minimum.

(c) An officer shall not be added to a court-martial after the accused has been arranged.

NOTE

(a) See I. A. A. 65 (*1*) and notes.

(c) As to arraignment, see note to r. 38.

73. Taking of opinions of members of court.—(a) Every member of a court must give his opinion by word of mouth on every question which the court has to decide, and must give his opinion as to the sentence, notwithstanding that he has given his opinion in favour of acquittal.

(b) The opinions of the members of the court shall be taken in succession, beginning with the junior in rank.

NOTE

1. Opinions must be given orally; see also r. 50 (b). The oath or affirmation taken by members of the court operates, save as therein provided to prevent the opinions of individual members from being disclosed; see r. 35.

2. I. A. A. 81 requires all decisions to be passed by an absolute majority except in the case of a sentence of death which requires a two-thirds majority (I. A. A. 87). The president has no second or casting vote in the case of a sentence of death; nor where there is an equality of votes on a challenge, or finding or sentence.

3. In order to obtain an absolute majority in respect of the sentence, every member must vote, even if he had voted for an acquittal on the finding. It is desirable that the nature of the punishment to be awarded should first be considered.

The procedure to be adopted will best be illustrated by the following example:—

At a general court-martial consisting of seven members, three are in favour of a sentence of transportation, two in favour of imprisonment, and two in favour of dismissal (without imprisonment). The most lenient punishment will be first put to the vote and will be rejected by 5 votes to 2. The next most lenient punishment will then be put to the vote, *viz.*, imprisonment. All seven members must vote again and the two members who had previously voted in favour of dismissal will naturally give their votes for imprisonment rather than transportation. The result will be an absolute majority of 4 votes to 3 in favour of imprisonment. The quantum or length of the imprisonment to be awarded will be arrived at in the same manner, the most lenient proposal being put to the vote first.

It is improper to strike an average between the various sentences suggested by the members of the court, but it may often happen that, in the course of further discussion, members who had originally made different proposals will arrive at a unanimous decision as to the proper sentence to be awarded.

(B) 1. The opinion of each member on the finding must be taken separately upon each charge upon which the accused is arraigned [see r. 50 (B)].

2. "Junior in rank" means junior in the rank in which they take their seats (see r. 63).

74. Procedure on incidental question.—If any objection on any matter of law, evidence, or procedure is raised by the prosecutor or by or on behalf of the accused during the trial, the prosecutor or the accused or counsel or the defending officer (as the case may be) shall have a right to answer the same and the person raising the objection shall have the right of reply.

NOTE

This rule will apply to such questions as the admissibility of evidence, the propriety of any question or the recalling of a witness. It will also apply to a submission, which may always be made by or on behalf of the accused at the close of the case for the prosecution, that no case has been made out justifying the court in putting the accused upon his defence; see note (A) 1 to r. 47.

75. Swearing of court to try several accused persons.—(a) A court may be sworn or affirmed at one time to try any number of accused persons then present before it, whether those persons are to be tried collectively or separately, and each accused person shall have power to object to the members of the court, and shall be asked separately whether he objects to any member.

(B) In the case of several accused persons to be tried separately, the court, upon one of those persons objecting to a member, may, according as they think fit, proceed to determine that objection or postpone the case of that person and swear or affirm the members of the court for the trial of the others alone.

(C) In the case of several accused persons to be tried separately, the court, when sworn or affirmed, shall proceed with one case, postponing the other, cases, and taking them afterwards in succession.

(D) Where several accused persons are tried separately by the same court upon charges arising out of the same transaction, the court may, if they consider it to be desirable in the interests of justice, postpone consideration of any sentence to be awarded to any one or more of such accused persons until the trials of all such accused persons have been completed.

NOTE

(A) Notwithstanding that, under this rule, the members of the court, are sworn only once to try the persons before them, they will be a separate court for the trial of each case, and the swearing of the court will be mentioned in the proceedings of each case.

(B) 1. When, in consequence of an objection raised by one or several persons jointly charged, a new officer serves, the other accused persons, who had previously raised no objection to the members of the court, will have the right to object to the new officer.

2. Where two or more accused persons are tried separately by the same court and the objection to the members of the court, will have the right to object to the new officer. of the court for the trial of the accused who did not object to be tried by him.

(C) The finding and sentence [except where the court decides to act under para. (D) of this rule] must be arrived at before the next case is tried.

For form of proceedings, see para. 16 of Memoranda on p. 406.

(D) It is very desirable that the court should, where several persons are separately tried and convicted in respect of the same transaction, be in a position to apportion the proper sentences to be awarded to all the accused persons.

Inasmuch as a sentence of transportation or imprisonment will under I. A. A. 106 commence upon the day upon which it is eventually signed, the court, in awarding sentence, should take into consideration in favour of an accused person any postponement of sentence which has been occasioned through the operation of this paragraph.

76. Swearing of interpreter and shorthand writer.—(3) At any time during the trial an impartial person may, if the court think it necessary, and shall, if either the prosecutor or the accused request it on any reasonable ground, be sworn or affirmed to act as interpreter.

(B) An impartial person may at any time of the trial, if the court think it desirable, be sworn or affirmed to act as a shorthand writer.

(C) Before a person is sworn or affirmed as interpreter or shorthand writer the accused shall be informed of the person who is proposed to be sworn or affirmed, and may object to the person as not being impartial; and the court, if they think that the objection is reasonable, shall not swear or affirm that person as interpreter or shorthand writer.

NOTE

(A) 1. An interpreter or shorthand writer is usually sworn at the commencement of the trial.

2. For the occasions when an interpreter must be employed, see r. 77 and note.

An interpreter may either be appointed by the convening officer [r. 27 (C)] or by the court under this rule. If a member of the court is appointed interpreter, he must take the interpreter's oath (or affirmation) in addition to the oath prescribed for a member of the court in Rule 35. A member should not normally act as an interpreter where the trial is likely to be prolonged.

3. For form of oath or affirmation, see r. 36.

(C) The same procedure will be followed as in the case of an objection to a member of the court.

77. Evidence when to be translated.—When any evidence is given in a language which any of the officers composing the court, the judge-advocate, the prosecutor or the accused does not understand, that evidence shall be interpreted to such officer or person in a language which he does understand. If an interpreter in such language has been appointed by the convening officer, and duly sworn or affirmed, the evidence shall be interpreted by him. If no such interpreter has been appointed and sworn or affirmed, an impartial person shall be sworn or affirmed by the court as required by Rule 76. When documents are put in for the purpose of formal proof, it shall be in the discretion of the court to cause as much to be interpreted as appears necessary.

NOTE

As the charge-sheet and documentary evidence as to character will be in English, an interpreter in the language of the accused person should be appointed in every case in which

the accused does not know enough English to understand these documents. Whoever interprets any evidence must be sworn or affirmed as an interpreter before doing so (see r. 76 and notes).

78. Record in proceedings of transactions of court-martial.—(A) At a court-martial the judge-advocate, or, if there is none, the president shall record, or cause to be recorded in the English language, all transactions of that court, and shall be responsible for the accuracy of the record (in these rules referred to as the proceedings); and if the judge-advocate is called as a witness by the accused, the president shall be responsible for the accuracy of the record in the proceedings of the evidence of the judge-advocate.

(B) The evidence shall be taken down in a narrative form in as nearly as possible the words used; but in any case where the prosecutor, the accused person, the judge-advocate, or the court considers it material, the question and answer shall be taken down verbatim.

(C) Where an objection has been taken to any question or to the admission of any evidence or to the procedure of the court, such objection shall, if the prosecutor or accused so requests or the court think fit, be entered upon the proceedings together with the grounds of the objection, and the decision of the court thereon.

(D) Where any address by, or on behalf of, the prosecutor or the accused, is not in writing, it shall not be necessary to record the same in the proceedings further or otherwise than the court think proper, except that –

(1) the court shall in every case make such record of the defence made by the accused as will enable the confirming officer to judge of the reply made by, or on behalf of, the accused to each charge against him; and

(2) the court shall also record any particular matters in the address by, or on behalf of the prosecutor or the accused, which the prosecutor or the accused, as the case may be, requires.

(E) The court shall not enter in the proceedings any comment or anything not before the court, or any report of any fact not forming part of the trial; but if any such comment or report seems to the court necessary, the court may forward it to the proper military authority in a separate document, signed by the president

NOTE

(A) 1. The record, where no shorthand writer is employed, must be taken in a clear and legible hand or typed. Interlineations and corrections must be avoided as much as possible; if made they should be initialled by the president (or judge-advocate). If desired, a typed copy may be substituted for the original manuscript record; if so substituted it must be checked with the original by the officer responsible for the accuracy of the proceedings. The pages should be numbered and the various sheets fastened together, sheets not used being removed. Sufficient space must be left below the signature of the president for the decision of the confirming authority. The place and date of the signing of the sentence by the president must be inserted.

See Memoranda for guidance of courts-martial, paras. 14-35, pp. 406-408.

2. No corrections or additions may be made to the proceedings of a court-martial after promulgation. When an obvious oversight has been made in the record, such as the omission of the words "the president and members are duly sworn", a certificate, signed by the president, to the effect that they were sworn should be attached. But see note 1 to r. 56 as to signing and dating the sentence after promulgation.

(B) 1. The material effect of the question and answer will be written down; *e.g.*, where the question is "What did the accused do next?" and the answer is "He left the room"; the evidence, as recorded, would read "The accused then left the room".

Documentary evidence will be read by the president or judge-advocate, it should then be marked with a distinguishing letter or figure and attached to the proceedings. In many cases it will be sufficient to attach copies of documents which must, however, be compared with the originals by the court and certified under the hand of the president to be true copies (see note 2 to r. 56).

If a shorthand writer is employed the evidence is usually taken down *verbatim* by him. If the evidence of a witness is not given in English, the material effect of questtion and answer interpreted in English will be recorded.

2. The rule applies to questions and answers given in cross-examination and re-examination as well as in examination-in-chief.

(E) The court can make in a separate document any remark they think proper on the conduct of any person who appeared before them, or on the manner in which a particular witness has given his evidence, or on the manner in which the prosecution has been conducted; also, if they think the evidence shows that the accused has committed some offence not charged, *e.g.*, if he is charged with desertion in August, and the evidence shows that he deserted in June, they must acquit him, but may report separately the offence of June.

The court can scarcely be too guarded in expressing censure on individuals not before them for trial; indeed, cases justifying such expression will be rare and exceptional.

It will usually be desirable to make a note at the time of any matter upon which the court intend to make any such comment or report, although it will not be correct to enter such matter in the proceedings.

79. Custody and inspection of proceedings.—The proceeding shall be deemed to be in the custody of the judge-advocate (if any), or, if there is none, of the president, but may, with proper precautions for their safety, be inspected by the members of the court, the prosecutor and accused, respectively, at all reasonable times before the court is closed to consider the finding.

80. Transmission of proceedings after finding.—The proceedings shall be at once sent by the person having the custody thereof to such person as may be directed by the order convening the court, or, in default of any such direction, to the confirming officer.

NOTE

1. As to custody of the proceedings, see r. 79.

2. For procedure where a member of the court has become confirming officer, see r. 62.

3. The proceedings of courts-martial, when despatched by post, should invariably be sent under registered cover.

Defending Officer, Friend of Accused and Counsel.

81. Defending officer and friend of accused.—(A) At any general or district court-martial, if an accused person is not represented by counsel, he may be represented by any officer subject to military law who shall be called "the defending officer" or assisted by any person whose services he may be able to procure and who shall be called "the friend of the accused".

(B) It shall be the duty of the convening officer to ascertain whether an accused person not otherwise represented desires to have a defending officer assigned to represent him at his trial and, if he does so desire, the convening officer shall use his best endeavours to ensure that the accused shall be so represented by a suitable officer. If owing to military exigencies, or for any other reason, there shall in the opinion of the convening officer, be no such officer available for the purpose, the convening officer shall give a written notice to the president of the court-martial, and such notice shall be attached to the proceedings.

(C) The defending officer shall have the same rights and duties as appertain to counsel under these rules and shall be under the like obligations.

(D) The friend of the accused may advise the accused on all points and suggest the questions to be put to the witnesses, but he shall not examine or cross-examine the witnesses or address the court.

NOTE

(A) 1. Under r. 22 (A) the accused, after he has been ordered to be tried by court-martial, is to be allowed free communication with his "friend", defending officer, or legal adviser.

2. As to the duties of the defending officer, see Memoranda, pp. 410-411.

(B) 1. Every effort should be made to secure the services of a competent officer and he should be allowed time and opportunity for properly preparing the defence of the accused.

2. There is power under r. 25 to dispense with this paragraph in the event of military exigencies, etc.

(C) *i.e.*, the defending officer must conduct the case as representing the accused, see rr. 83 (c), 85 and 86.

82. Counsel allowed in certain general and district courts-martial.—(A) Subject to these rules, counsel shall be allowed to appear on behalf of the prosecutor and accused at general and district courts-martial if the Commander-in-Chief in India or the convening officer declares that it is expedient to allow the appearance of counsel thereat, and such declaration may be made as regards all general and district courts-martial held in any particular place, or as regards any particular general or district court-martial and may be made subject to such reservation as to cases on active service, or otherwise, as seems expedient.

(B) Save as provided in Rule 81, the rules with respect to counsel shall apply on to the courts-martial at which counsel are under this rule, allowed to appear.

NOTE

(A) For qualifications of counsel, see r. 87 (B).

There is no restriction as to the number of counsel engaged in a case. Counsel for the defence, though not bound to such strict impartiality as the prosecutor must nevertheless recollect that he is assisting in the administration of justice and must not be guilty of any unfairness or want of candour in his conduct of the case. In his address he will have the same liberty as the accused [see r. 66 (C)]: but he should exercise more restraint in commenting on the acts of persons not before the court.

83. Requirements for appearance of counsel. (A) An accused person intending to be represented by counsel shall give to his commanding officer or to the convening officer the earliest practicable notice of such intention and, if no sufficient notice has been given, the court may, if they think fit, on the application of the prosecutor, adjourn to enable him to obtain counsel on behalf of the prosecutor at the trial.

(B) If the convening officer so directs, counsel may appear on behalf of the prosecutor, but in that case, unless the notice in (A) has been given by the accused, notice of the direction for counsel to appear shall be given to the accused at such time (not in any case less than seven days) before the trial, as would, in the opinion of the court, have enabled the accused to obtain counsel to assist him at the trial.

(C) The counsel, who appears before a court-martial on behalf of the prosecutor or accused, shall have the same right as the prosecutor or accused for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court, to put in any plea, and to inspect the proceedings, and shall have the right otherwise to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person and in such case that person shall not have the right himself to do any of the above matters except as regards the statement allowed by Rules 47 (B) (ii) (a) and 48 (ii) (a) or except so far as the court permit him so to do.

(D) When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined and re-examined as any other witness, and Rule 46 (C) and (D) shall not apply.

NOTE

(B) When the convening officer intends to appoint or apply for the services of an officer of the Judge-Advocate-General's Department or an officer holding legal qualifications to act as prosecutor, similar notice should be given to the accused, to enable him, if he so desires, to obtain counsel to represent him at the trial.

84. Counsel for prosecution.—The counsel appearing on behalf of the prosecutor shall have the same duty as the prosecutor, and is subject to be stopped and restrained by the court in the manner provided by Rule 66(B).

NOTE

Counsel appearing on behalf of the prosecutor should always make an opening address, and should state therein the substance of the charge against the accused and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into unnecessary detail.

85. Counsel for accused.—The counsel appearing on behalf of the accused has the like rights, and is under the like obligations as are specified in Rule 66(C) in the case of the accused.

If the court ask counsel for the accused a question as to any witness or matter, he may decline to answer, but he must not give to the court any answer or information which is misleading.

86. General rules as to counsel.—Counsel, whether appearing on behalf of the prosecutor or of the accused, shall conform strictly to these rules and to the rules of criminal courts in India relating to the examination, cross-examination, and re-examination of witnesses, and relating to the duties of counsel.

NOTE

1. See Pt. I, ch. V, paras. 101-118, especially para. 110 as to injurious questions.

2. Counsel should not state as a fact any matter which is not proved, or which he does not intend to prove in evidence, nor should he state what is his own opinion as to any matter of fact before the court. In a question to a witness he should not assume that facts have been given in evidence which have not been so given, or that particular answers have been given contrary to the fact.

3. Counsel should treat the court and judge-advocate with due respect, and should, while regarding the exigencies of his case, bear in mind the requirements of military discipline in the respectful treatment of any superior officer of the accused who may attend as a witness.

87. Qualifications of counsel.—(A) Neither the prosecutor nor the accused has any right to object to any counsel if properly qualified.

(B) Counsel shall be deemed properly qualified if he is a legal practitioner authorized to practise with right of audience in a Court of Sessions in British India, or if, in any part of His Majesty's dominions other than British India, he is recognised by the convening officer as having in that part rights and duties similar to those of such a legal practitioner in British India and as being subject to punishment or disability for a breach of professional rules.

88. (Omitted.)

Judge-Advocate

89. Disqualification of judge-advocate.—An officer who is disqualified for sitting on a court-martial, and any other person who would have been so disqualified had he been an officer, shall be disqualified for acting as judge-advocate at that court-martial.

NOTE

1. As to the appointment of a judge-advocate at a general or district court-martial, see I. A. A. 78. Omission to appoint a judge-advocate at a general court-martial will invalidate the proceedings.

2. As to disqualification, see r. 29 (B) and notes.

A judge-advocate should be free of all suspicion of bias or prejudice. He should have had experience of the practice and procedure of courts-martial and a knowledge of the general principles of law and of the rules of evidence.

90. Death, illness, or absence of judge-advocate.—If the judge-advocate dies, or is unable to attend from illness, or from any cause whatever, the court shall adjourn and the president shall report the circumstances to the convening authority; and in the case of death, or, if in any other case the convening officer is of opinion that it is inexpedient to delay the continuance of the trial, the court shall be dissolved and the accused may be tried against before another court.

The court will in no circumstances proceed in the absence of a judge-advocate who has been duly appointed.

91. Powers and duties of judge-advocate.—The powers and duties of a judge-advocate are as follows :—

(A) The prosecutor and the accused, resepctively, are at all times, after the judge-advocate is named to act on the court, entitled to his opinion on any question of law relative to the charge or trial, whether he is in or out of court, subject, when he is in court, to the permission of the court.

(B) At a court-martial he represents the judge-advocate-General.

(C) He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he shall inform the convening officer and the court of any informality or defect in the charge, or in the constitution of the court, and shall give his advice on any matter before the court.

(D) Any information or advice given to the court on any matter before the court shall, if he or the court desire it, be entered in the proceedings.

(E) At the conclusion of the case he shall, unless both he and the court consider it unnecessary, sum up the evidence and give his opinion upon the legal bearing of the case, before the court proceed to deliberate upon their finding.

(F) The court, in following the opinion of the judge-advocate on a legal point, may record that they have decided in consequence of that opinion.

(G) The judge-advocate has, equally with the president, the duty of taking care that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance or incapacity to examine or cross-examine witnesses or otherwise, and may, for that purpose, with the permission of the court, call witnesses and put questions to witnesses which appear to him necessary or desirable to elicit the truth.

(H) In fulfilling his duties the judge-advocate must be careful to maintain an entirely impartial position.

NOTE

(E) See r. 49 and note.

(F) Upon any point of law or procedure which arises upon the trial, the court should be guided by the opinion of the judge-advocate, and not disregard it, except for very weighty reasons. The court are responsible for the legality of their decisions, but they must consider the grave consequences which may result from their disregard of the advice of the judge-advocate on any legal point. If a court-martial, acting without jurisdiction or in excess of jurisdiction, convict an officer or soldier, the members of the court may be held liable in damages by a civil court and such laibility—or at least the amount of the damages—may depend upon the question whether they exercised a *bona fide* judgment, and the fact that they accepted the advice of the judge-advocate, even if such advice was held to be wrong, might practically exonerate the members from liability.

(G) 1. For duty of president, see r. 65 (B) and note.

2. Permission to call and question witnesses should never be refused unless the court consider that the judge-advocate is acting improperly or in such a manner as to obstruct the proceedings. The court should record their reason for refusing permission.

SECTION 3.—SUMMARY COURTS-MARTIAL.

92. Proceedings.—The officer holding the trial, hereinafter called the court, shall record, or cause to be recorded, in the English language, the transactions of every summary court-martial.

NOTES

See r. 78 and notes which apply *mutatis mutandis* to this rule.

93. Evidence when to be translated.—When any evidence is given in a language which the court or the accused does not understand, that evidence shall be interpreted to the court or accused as the case may be in a language which it or he does understand. The court shall, for this purpose, either appoint an interpreter, or shall itself take the oath or affirmation prescribed for an interpreter at a summary court-martial. When documents are put in for the purpose of formal proof, it shall be in the discretion of the court to cause as much to be interpreted as appears necessary.

NOTES

1. See note to r. 77.

Any evidence not understood by the officers attending the trial should also be translated to them.

2. The commanding officer should, as a general rule, take the interpreters oath or affirmation himself, in addition to the oath or affirmation prescribed in Rule 95 for the court. In the rare cases where the commanding officer does not know the language of the accused he should appoint a competent interpreter. Whoever interprets any evidence must be sworn or affirmed as an interpreter before doing so ; but see r. 135.

94. Assembly.—When the court, the interpreter (if any), and the officers attending the trial are assembled, the accused shall be brought before the court, and the oaths or affirmations prescribed in Rule 95 taken by the persons therein mentioned.

NOTES

The accused cannot object to the court or interpreter.

95. Swearing or affirming of court and interpreter.—(A) The court shall make oath or affirmation in one of the following forms or in such other form to the same purport as may be according to its religion or otherwise binding on its conscience.

Form of oath.

"I swear by Almighty God that I will duly administer justice, according to the Indian Army Act, without partiality, favour or affection, and if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases."

Form of affirmation.

"I solemnly affirm, in the presence of Almighty God, that I will duly administer justice,"—etc.,—as in the form of oath.

(B) After which the court, or some person empowered by it, shall administer to the interpreter (if any) an oath or affirmation in one of the following forms, or in such other form to the same purport as the court ascertains to be according to his religion or otherwise binding on his conscience.

Form of oath.

"I swear by Almighty God that I will faithfully interpret and translate, as I shall be required to do touching the matter before this court-martial."

Form of affirmation.

"I solemnly affirm, in the presence of Almighty God, that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial."

(C) After the oaths and affirmations have been administered all witnesses will withdraw from the court.

NOTES

1. See notes to rr. 35 and 37 which apply *mutatis mutandis* to the oaths and affirmations referred to in this rule.

2. See I. A. A. 64. The "court" is the officer holding the trial. Two other officers must attend the trial, but these officers do not form part of the court and are not, as such, sworn or affirmed.

96. Swearing of court to try several accused persons.—(A) A summary court-martial may be sworn or affirmed at the time to try any number of accused persons then present before it whether those persons are to be tried collectively or separately.

(B) In the case of several accused persons to be tried separately, the court, when sworn or affirmed, shall proceed with one case postponing the other cases and taking them afterwards in succession.

(C) Where several accused persons are tried separately upon charges arising out of the same transaction, the court may, if it considers it to be desirable in the interests of justice, postpone consideration of any sentence to be awarded to any one or more such accused persons until the trials of all such accused persons have been completed.

NOTES

See notes to r. 75 which apply *mutatis mutandis* to this rule.

97. Arraignment of accused.—(A) After the court and interpreter (if any) are sworn or affirmed as above-mentioned, the accused shall be arraigned on the charges against him.

(B) The charges on which the accused is arraigned shall be read and, if necessary, translated to him, and he shall be required to plead separately to each charge.

NOTES

(A) 1. As to framing charges, see rr. 18-20 and notes. Where, under I. A. A. 74, the sanction of superior authority is necessary for the trial of a charge by summary court-martial, such sanction should be entered at the foot of the charge-sheet and signed by the superior authority or a staff officer.

2. "Arraignment" consists of (1) calling upon the accused by his number, rank, name and description as given in the charge-sheet and asking him "Is that your number, rank, name and unit (or description)?"; (2) reading the charge to him; and (3) asking him whether he is guilty or not guilty.

Where two or more persons are jointly charged and tried for the same offence, each is separately arraigned. Where there are more charge-sheets than one against an accused, he must be arraigned and tried upon the first charge-sheet before arraignment upon the second or subsequent charge-sheets; see rr. 68 and 112.

(B) 1. The charge-sheet, after being read to the accused, will be annexed to the proceedings.

2. The plea of the accused must be taken on all the charges in a charge-sheet. This applies to alternative charges if the accused has been arraigned upon them [see, however, r. 101 (c)].

98. Objection by accused to charge.—The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules.

NOTES

1. *e.g.*, a charge laid under I. A. A. 35 (*e*) of losing by neglect the property of a comrade would not disclose an offence under that section of the Act.

2. See rr. 18 to 21 and notes.

3. For procedure where it appears that the accused is, by reason of insanity, unfit to take his trial, see r. 131.

99. Amendment of charge.—(A) At any time during the trial if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, it may amend the charge-sheet so as to correct that mistake.

(B) If on the trial of any charge it appears to the court at any time before it has begun to examine the witnesses, that in the interests of justice any addition to, omission from, or alteration in, the charge is required, it may amend such charge and may, after due notice to the accused, and with the sanction of the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the accused if the amended charge requires such sanction, proceed with the trial on such amended charge.

NOTES

1. See notes to r. 40.

2. See I. A. A. 74 and notes. If the amended charge is one requiring reference to superior authority and the officer holding the trial considers that there is grave reason for immediate action and that such reference cannot be made without detriment to discipline, he should attach an explanatory memorandum (r. 116) to the proceedings and, after giving the accused sufficient notice of the amendments, proceed with the trial.

100. Special pleas.—If a special plea to the general jurisdiction of the court, or a plea in bar of trial, is offered by the accused, the procedure laid down for general and district courts-martial when disposing of such pleas shall, so far as may be applicable, be followed, but no finding by a summary court-martial on either of such pleas shall require confirmation.

NOTES

See rr. 41 and 43 and notes.

101. General plea of "Guilty" or "Not guilty".—(A) The accused person's plan—"Guilty" or "Not guilty" (or if he refuses to plead or does not plead intelligibly either one or the other, a plea of "Not guilty")—shall be recorded on each charge.

(B) If an accused person pleads "Guilty", that plea shall be recorded as the finding of the court; but before it is recorded, the court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence (if any) or otherwise that the accused ought to plead not guilty.

(C) Where an accused person pleads guilty to the first of two or more charges laid in the alternative, the court may, after sub-rule (B) of this rule has been complied with and before and accused is arraigned on the alternative charge or

charges, withdraw such alternative charge or charges without requiring the accused to plead thereto, and a record to that effect shall be made upon the proceedings of the court.

NOTES

See notes to r. 42 which apply *mutatis mutandis* to this rule.

102. Procedure after plea of "Guilty".—(A) Upon the record of the plea of "Guilty," if there are other charges in the same charge-sheet to which the plea is "Not guilty", the trial shall first proceed with respect to those other charges, and, after the finding on those charges, shall proceed with the charges on which a plea of "Guilty" has been entered ; but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or may, instead of trying him, record a finding of "Guilty" upon any one of the alternative charges to which he has pleaded "Guilty" and a finding of "Not Guilty" upon all the other alternative charges.

(B) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the court shall read the summary of evidence, and annex it to the proceedings, or if there is no such summary, shall take and record sufficient evidence to enable it to determine the sentence, and the reviewing officer to know all the circumstances connected with the offence. This evidence shall be taken in like manner as is directed by these Rules in the case of a plea of "Not guilty".

(C) After such evidence has been taken, or the summary of evidence has been read, as the case may be, the accused may address the court in reference to the charge and in mitigation of punishment and may call witnesses as to his character.

(D) If from the statement of the accused, or from the summary of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "Guilty", the court shall alter the record and enter a plea of "Not guilty", and proceed with the trial accordingly.

(E) If a plea of "Guilty" is recorded and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under (B) and (C) shall take place when the findings on the other charges in the same charge-sheet are recorded.

(F) When the accused states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same.

NOTES

See notes to r. 44.

103. Withdrawal of plea of "Not guilty".—The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not guilty" and plead "Guilty", and in such case the court shall at once, subject to a compliance with Rule 101 (B), record a plea and finding of "Guilty", and shall, so far as is necessary, proceed in manner directed by Rule 102.

104. Procedure after plea of "Not guilty".—After the plea of "Not guilty" to any charge is recorded the evidence for the prosecution will be taken. At the close of the evidence for the prosecution the accused shall be asked if he has anything to say in his defence, and may address the court in his defence, or may defer such address until he has called his witnesses.

The accused may then call his witnesses, including also witnesses to character.

NOTES

1. For form of proceedings, see pp. 382-385.

2. For general provisions as to witnesses and evidence, see rr. 120-129.

3. As to the record in the proceedings of transactions of the court, see generally r. 78.

The evidence will be taken by question and answer, or the witness may be asked to tell his own story, questions being subsequently asked to make good any omissions. It will, as a rule, be recorded in a narrative form; but where the accused or the court considers it material, the question and answer will be taken down *verbatim*. The material effect of the question and answer will be written down, *e.g.*, where the question is "what did the accused do next?" and the answer is "he left the room", the evidence as recorded would read "the accused then left the room". Documentary evidence after being read should be marked with a distinguishing letter or figure and attached to the proceedings (see also note 2 to r. 56).

4. It is open to the accused, at the close of the case for the prosecution, to submit that the evidence given for the prosecution has not established a *prima facie* case against him and that he should not, therefore, be called upon for his defence. If the court is satisfied that it is well founded, the accused must be acquitted.

5. The utmost liberty consistent with the interests of parties not before the court and with the dignity of the court itself should be allowed to the accused in making his defence [see r. 66 (c) and note], and the court should, if necessary, adjourn to allow him time for its preparation. He has the privilege of making statements which are unsupported by evidence (see note 6 to r. 47), and he cannot be questioned by the court upon his statement or address except when it is desired to supplement the defence or to bring out more clearly the points which the accused urges in his favour.

It should be remembered that an accused person cannot give evidence on oath, and therefore any statement made by him must be carefully considered. Though not given on both and subject to the test of cross-examination, it will often be of value, particularly if it is in any respect corroborated by evidence from other sources.

105. Witnesses in reply to defence.—The court may, if it thinks it necessary in the interests of justice, call witnesses in reply to the defence.

NOTES

1. This is an extreme measure and should only be resorted to when the accused has made or elicited from his witnesses some statement material to his defence, which could not reasonably have been foreseen when the case for the prosecution was being investigated. See also note to r. 129.

2. As to reference by accused to a Government officer at a trial for desertion, etc., see I. A. A. 92.

106. Verdict.—After all the evidence, both for prosecution and defence, has been heard, the court shall give its opinion as to whether the accused is guilty or not guilty of the charges.

NOTES

1. The court need not be closed and the finding may be pronounced at once. On the other hand the officer holding the trial may clear the court to consider the evidence, or to discuss any point with the officers attending the trial, or may adjourn the court to allow himself time for nature consideration or reference as to any doubtful point.

2. See also notes to r. 50 which apply *mutatis mutandis* to this rule.

107. Finding.—(A) The finding on every charge upon which the accused is arraigned shall be recorded, and except as mentioned in these rules shall be recorded simply as a finding of "Guilty", or of "Not guilty", or of "Not guilty and honourably acquit him of the same".

(B) When the court are of opinion as regards any charge that the facts proved do not disclose the offence charged or any offence of which he might under the Act legally be found guilty on the charge as laid, the court shall acquit the accused of that charge.

(C) When the court is of opinion as regards any charge that the facts found to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence

stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of "Not guilty" record a special finding.

(D) The special finding may find the accused guilty on a charge subject to the statement of exceptions or variations specified therein.

NOTES

See notes to r. 51.

108. Procedure on acquittal.—If the finding on each of the charges in a charge-sheet is "Not guilty", the court shall date and sign the proceedings, the findings will be announced in open court, and the accused will be released in respect of those charges.

109. Procedure on finding of "guilty".—(A) If the finding on any charge is "Guilty", the court may record of its own knowledge, or take evidence of and record, the general character, age, service, rank, and any recognised acts of gallantry, or distinguished conduct of the accused, and previous convictions of the accused either by a court-martial, or a criminal court, any previous punishments awarded to him by an officer exercising authority under section 20 of the Act, the length of time he has been in arrest or in confinement on any previous sentence, and any military decoration, or military reward, of which he may be in possession or to which he is entitled.

(B) If the court does not record the matters mentioned in this rule of its own knowledge, evidence on these matters may be taken in the manner directed in Rule 53 for similar evidence at general and district courts-martial.

NOTES

See notes to r. 53.

110. Sentence.—The court shall award one sentence in respect of all the offences of which the accused is found guilty.

NOTES

1. See notes to r. 54.

2. Sentences, unless for one year exactly, should, if for one month or upwards, be recorded in months. Sentences consisting partly of months and partly of days should be recorded in months and days. A month means a calendar month.

3. See first para. of Note 3 to section 107.

4. For the date a sentence of dismissal awarded by a court-martial takes effect, see r. 154. Sentences of imprisonment combined with dismissal should as a rule, be carried out by confinement in a civil prison.

5. Sentences of simple imprisonment are inexpedient and inconvenient of execution.

6. As to suspension of sentences of imprisonment, see section 3 of the Indian Army (Suspension of Sentences) Act.

(Form of proceedings, pp. 388-390).

111. Signing of proceedings.—The Court shall date and sign the sentence and such signature shall authenticate the whole of the proceedings.

NOTES

It is essential that the date of the sentence should be inserted, as under I. A. A. 106 a term of imprisonment is reckoned to commence on the day on which the sentence and proceedings were signed by the court.

112. Charges in different charge-sheets.—When the charges at a trial by summary court-martial are contained in different charge-sheets, the procedure laid down for general and district courts-martial when trying charges contained in different charge-sheets, shall, so far as may be applicable, be followed.

NOTES

As to insertion of charges in separate charge-sheets and procedure, see r. 68 and notes.

113. Clearing the court.—(A) The officer holding the trial may clear the court to consider the evidence or to consult with the officers, attending the trial.

(B) Except as above-mentioned, all the proceedings, including the view of any place, shall be in open court, and in the presence of the accused.

See notes to r. 69.

114. Adjournment.—A summary court-martial may adjourn from time to time, and from place to place, and may, when necessary, view any place.

NOTES

See generally notes to r. 70.

115. Friend of accused.—In any summary court-martial an accused person may have a person to assist him during the trial, whether a legal adviser or any other person. A person so assisting him may advise him on all points and suggest the questions to be put to witnesses, but shall not examine or cross-examine witnesses or address the court.

116. Memorandum to be attached to proceedings.—An explanatory memorandum is to be attached to the proceedings when a summary court-martial tries, without reference, an offence which should not ordinarily be so tried.

NOTES

See I. A. A. 74 and notes. This explanation should invariably be attached. If the officer holding the trial loses sight of the law and tries without reference any of the offences mentioned in I. A. A. 74 without considering whether grave reasons for immediate action exist or not, the trial is illegal.

117. Promulgation.—The sentence of a summary court-martial shall (except as provided in Rule 118) be promulgated, in the manner usual in the service, at the earliest opportunity after it has been pronounced and shall be carried out without delay after promulgation.

NOTES

See generally notes to r. 58.

118. Promulgation to be deferred in certain circumstances.—When the officer holding the trial has less than five years' service, the sentence of a summary court-martial shall not (except on active service) be promulgated or carried out until approved by superior authority as provided in section 101 of the Act.

NOTES

The officer to whom the sentence is referred cannot in any way alter the finding or remit, mitigate, or commute the sentence, but if he considers the sentence too severe he should inform the officer holding the trial of his views and direct him to modify the sentence, which order should be obeyed as a matter of discipline. The original sentence must not be carried out until the case is finally settled.

The provisions of this Rule do not affect the date from which the sentence takes effect; see I. A. A. 106 and r. 154.

119. Review of proceedings.—The proceedings of a summary court-martial shall, immediately on promulgation, be forwarded (through the deputy or assistant judge-advocate-general of the command in which the trial is held) to the officer authorised to deal with them in pursuance of section 102 of the Act. After review by him they will be returned to the accused person's corps for preservation in accordance with Rule 132.

NOTE

See I. A. A. 102. The proceedings of a summary court-martial will not be set aside on merely technical grounds. The words "merits of the case" refer to cases where the charge discloses no offence, or where the evidence is insufficient to support the charge, or where there is some material irregularity in procedure which, in the opinion of the reviewing authority, has led to injustice. But where the accused is not misled by any defect in the charge and the statement of offence and the particulars taken together disclose an offence under the Act and supply the accused with sufficient information of

the particulars of the charge which he has to meet, the evidence on which the accused is convicted is given on oath or affirmation and is legally admissible and reasonably sufficient to support the charge, and the accused has not been prejudiced by any irregularity in procedure and has been allowed to call his witnesses and to cross-examine the witnesses against him, the proceedings may legally be upheld, the irregularities calling for no more than a remark for future guidance.

SECTION 4.—GENERAL PROVISIONS.

Witnesses and evidence.

120. Calling of all prosecutor's witnesses.—The prosecutor or, in the case of trials by summary court-martial, the court is not bound to call all the witnesses whose evidence is in the summary or abstract of evidence or whom the accused has been informed they intend to call, but they should ordinarily call such of them as the accused desires, in order that he may cross-examine them, and shall, for this reason, so far as practicable, secure the attendance of all such witnesses.

NOTES

1. As to giving to the accused the summary or abstract of evidence, see r. 22 (B).

2. It will be noted that the prosecutor is not required to call any witness at the trial who was called by the accused at the taking of the summary of evidence.

3. It is not necessary for the prosecutor to examine at length a witness for the prosecution called at the request of the accused and tendered for cross-examination by the accused under this rule.

121. Calling of witness whose evidence is not contained in summary.—If the prosecutor or, in the case of a summary court-martial, the court intends to call a witness whose evidence is not contained in any summary or abstract of evidence given to the accused, notice of the intention shall be given to the accused a reasonable time before the witness is called together with an abstract of his proposed evidence; and if such witness is called without such notice or abstract having been given, the court shall, if the accused so desire it, either adjourn after taking the evidence of the witness, or allow the cross-examination of such witness to be postponed, and the court shall inform the accused of his right to demand such adjournment or postponement.

It will be noted that this rule applies only in the case of witnesses called for the prosecution and not in the case of witnesses called by the accused or by the court under r. 129 (D).

NOTE

122. List of witnesses for accused.—The accused shall not be required to give to the prosecutor or court a list of the witnesses whom he intends to call, but it shall rest with the accused alone to secure the attendance of any witness whose evidence is not contained in the summary or abstract, and for whose attendance the accused has not requested steps to be taken as provided by Rule 23(A).

NOTE

A member of the court, the judge-advocate and prosecutor are competent witnesses for the defence, and may be sworn at any stage of the proceedings, but an officer should not be detailed to serve as a member of, or act as prosecutor or judge-advocate at, a court-martial if his evidence is likely to be required. A witness for the prosecution cannot serve as a member of the court or act as judge-advocate at the trial of the case in which he is a witness [see rr. 29 (B) and 89].

123. Procuring attendance of witnesses.—(A) In the case of trials by general or district court-martial the commanding officer of the accused, the convening officer, or, after the assembly of the court, the president, shall take proper steps to procure the attendance of the witnesses whom the prosecutor or accused desires to call, and whose attendance can reasonably be procured, but the person requiring the attendance of a witness may be required to undertake to defray the cost (if any) of their attendance.

(B) The court shall, in the case of trials by summary court-martial, take proper steps to procure the attendance of the witnesses whom the accused desires to call and whose attendance can reasonably be procured, but the accused may be required to undertake to defray the cost (if any) of their attendance.

NOTES

1. See I. A. A. 84 as to summoning witnesses.

For form of summons, see p. 397.

Witnesses who are subject to military law should be ordered by the proper authority to attend without the issue of a formal summons.

2. An accused person can have no technical ground of complaint if the attendance of a witness from distant parts cannot be procured, but it is the duty of the commanding or convening officer, or, after the assembly of the court, the president or, in the case of trial by summary court-martial, the court, to take all reasonable steps to secure the attendance of any witness whom there is any ground to suppose to be material to the defence, and Rule 124 makes provision for the adjournment of the court if the attendance of such witness is essential.

3. The power to require, the person calling a witness to undertake to defray the cost of his attendance is given in order to prevent an unreasonable demand by prosecutors or accused persons for the attendance of witnesses. In the case of the prosecutor, the cost will usually be defrayed as part of the expenses of the prosecution. In the case of the accused, this provision should not be allowed to interfere with the calling of a witness who appears to be material. The absence of a material witness might afterwards be held to invalidate the proceedings of a court-martial, even though, if the witness had been called, the court would probably have arrived at the same decision, inasmuch as it is impossible to tell what effect the evidence of such a witness might have had upon the court.

As to expenses of witnesses, see Passage Regulations, India.

4 If a civilian witness has in his possession or under his control any books, accounts, letters, returns, papers or other documents which are considered necessary for the trial, care must be taken in summoning him to require him to bring them with him; the witness would be justified in declining to acknowledge a mere oral request.

5. For action where a civilian witness, who has been duly summoned and whose expenses have been tendered, makes default in attending, see r. 136 (c) and notes. As to privilege from arrest under civil or revenue process of a witness summoned to attend before a court-martial, see I. A. A. 118.

124. Procedure when essential witness is absent.—If such proper steps as mentioned in the preceding rule have not been taken as to any witness, or if any witness whose attendance could not be reasonably procured before the assembly of the court is essential to the prosecution or defence, the court shall—

(*a*) take steps to procure the issue of a commission for the examination of such witness; or

(*b*) if it is a general or district court-martial, adjourn and report the circumstances to the conveying officer; or

(*c*) if it is a summary court-martial, adjourn to enable the witness to attend, or adopt such other course as appears to the officer holding the trial best calculated to do justice.

NOTE

1. See I. A. A. 85 and notes. Only the Judge-Advocate-General in India or the Deputy Judge-Advocate-General of a Command can issue a commission and then only when action is initiated by a court-martial. An Assistant Judge-Advocate-General cannot issue a commission. Cases in Commands in which there is not a Deputy Judge-Advocate-General must be referred to the Judge-Advocate-General in India.

2. At a summary court-martial the court may, for instance, acquit the accused forthwith, or order his release without prejudice to his subsequent trial should the witness become available.

125. Withdrawal of witnesses from court.—During the trial a witness, other than the prosecutor, shall not, except by special leave of the court, be permitted

to be present in court while not under examination and if, while he is under examination, a discussion arises as to the allowance of a question, or the sufficiency of his answers, or otherwise as to his evidence, he may be directed to withdraw.

NOTES

1. It is customary to have all witnesses present in court while the members of the court are being sworn, but they should withdraw before the arrangement. This does not, of course, apply to the prosecutor if a witness.

Permission to remain in court while not under examination may reasonably be given, *e.g.*, to expert or professional witnesses, provided that no objection is made by or on behalf of the accused.

2. If any such discussion arises as is mentioned in the rule, the court should generally order the witness to withdraw, as his answer might be influenced by the discussion.

126. Oath or affirmation to be administered to witnesses.—An oath or affirmation shall be administered to every witness, before he gives his evidence by a member of the court, the judge-advocate, or some other person empowered by the Court in one of the following forms or in such other form to the same purport as the Court ascertains to be according to the religion or otherwise binding on the conscience of the witnesses.

Form of oath.

"I swear by Almighty God that what I shall state shall be the truth, the whole truth, and nothing but the truth."

Form of Affirmation.

"I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."

NOTES

1. For manner of administering and taking oaths and affirmations, see notes to rr. 35 and 37.

The following is a translation into Urdu of the above affirmation:—

Main Khudā-Tààla ko hàzir-o-nàzir jànkar (Parmeshwar ko jàn mànkar) imàn se (dhram se) iqràr kartà (bachan detà) hun, kih jo kuchh kahungà sach kahunga.

The following is a translation into Pushto :—

Zah Pàk Khudài Taàlà ta hàzir au nàzir ganram au la imian sara iqràr kawam che har tsa wàyam rikkhtiyà wàyam au baghair la rikkhtiya na ba nor tsa na wàyam.

Sikhs are sworn on the Granth. The words of the oath are as follows:—

Main Sri Gurü Granth Sàhib ji ki sauggnd khàkar kahtà hum, kih jo kuchh kahunga sach kahunga.

2. As to power of dealing with recalcitrant witnesses, see I. A. A. 38 (in the case of persons subject to the Indian Army Act) and Rule 136 (in other cases).

127. Mode of questioning witness.—(A) Every question shall be put to a witness orally by the officer holding the trial, by the prosecutor, by or on behalf of the accused, or by the judge-advocate, and the witness will forthwith reply, unless an objection is made by the court, judge-advocate, prosecutor, or accused, in which case he shall not reply until the objection is disposed of. The witness shall address his reply to the court.

(B) The evidence of a witness as taken down shall be read to him after he has given all his evidence and before he leaves the court, and shall, if necessary, be corrected.

(C) If the witness denies the correctness of any part of the evidence when the same is read over to him, the court may instead of correcting the evidence, record the objection made to it by the witness.

(D) If the evidence is not given in English and the witness does not understand that language the evidence as recorded shall be interpreted to him in the language in which it was given, or in a language which he understands.

(E) Where evidence is recorded by shorthand writer, it shall not be necessary to read the evidence of the witness to him under sub-rule (b) or (d), if, in the opinion of the court and the Judge-Advocate, if any (such opinion to be recorded in the proceedings) it is unnecessary so to do, but nevertheless if any witness so desires, his evidence shall be read to him.

NOTES

(A) 1. The court and judge-advocate must carefully listen to the actual questions put by the prosecutor and by or on behalf of the accused, as well as to the form in which such questions are put, and they must intervene before the witness replies, if, in their opinion, any question is improper or "leading". If either the prosecutor or the accused, or the officer or counsel representing him, considers that a particular question about to be put by him may be objected to, he should submit the propriety of the question to the decision of the court, having first informed the witness that he must not make his reply until the decision of the court has been given.

2. See Pt. I, ch. V, paras 86 *et seq.*

A witness is first examined by the person calling him, then cross-examined by the opposite party, after which he may be re-examined by the party calling him on matters raised by the cross-examination. The court should, if requested by either party, allow the cross-examination of a witness by that party to be postponed, especially if his evidence comes as a surprise; see also r. 121 where a witness is called whose evidence is not contained in the summary or abstract of evidence. A request for postponement should not be acceded to, if, in the opinion of the court, it is made for purposes of obstruction.

(B) When the evidence of a witness has been read to him, he should be asked whether it is correct. Any material alteration or explanation should be inserted at the end of the record of his evidence, and not by way of interlineation or erasure.

If the witness makes any explanation or correction, the prosecutor and accused or counsel or defending officer may respectively examine him respecting the same.

128. Questions to witnesses by court or judge-advocate.—(A) The president, the judge-advocate (if any), or the officer holding the trial and, with the permission of the court, any member of the court may address a question to a witness while such witness is giving his original evidence and before he withdraws.

(B) Upon any such question being answered, the president, the judge-advocate (if any), or the officer holding the trial, shall also put to the witness any question relative to that answer which the prosecutor or the accused or counsel or the defending officer may request him to put and which the court deem reasonable.

NOTES

(A) It will be noted that this rule applies only to the original evidence of a witness and not to any evidence given by him on being recalled. As to recalled witnesses, see r. 129.

It is desirable that any questions should be put after the conclusion of the examination, cross-examination and re-examination (if any) of the witness; but questions may properly be put to a witness during his examination in order that his evidence may be clearly recorded.

(B) The president, judge-advocate or officer holding the trial should always, under the provisions of this rule, put any question which they are requested by the prosecutor, or by or on behalf of the accused, to put and which does not seem unreasonable. It is to be noted that members of the court other than the president are not empowered, in the circumstances mentioned in this paragraph, to put questions.

129. Re-calling of witnesses and calling of witnesses in reply.—(a) At the request of the prosecutor or of the accused, a witness may, by leave of the court, be recalled at any time before the closing address of or on behalf of the accused (or at a summary court-martial at any time before the finding of the court) for the purpose of having any question put to him through the president, the judge-advocate (if any), or the officer holding the trial.

(b) The court may, if they consider it expedient, in the interests of justice, so to do, allow a witness to be called or recalled by the prosecutor, before the closing address of or on behalf of the accused, for the purpose of rebutting any material statement made by a witness for the defence or for the purpose of giving evidence on any new matter which the prosecutor could not reasonably have foreseen.

(c) Where the accused has called witnesses to character, the prosecutor before the closing address of or on behalf of the accused, may call or re-call witnesses for the purpose of proving a previous conviction or entries in the defaulters' book against the accused.

(d) The court may call or re-call any witness at any time before the finding, if they consider that it is necessary for the ends of justice.

NOTES

(a) The president, judge-advocate or officer holding the trial should also put to a witness recalled under the provisions of this paragraph any further questions which they consider necessary in view of the answer given.

(b) Paras. (b) and (c) of this rule are inapplicable to summary courts-martial when there is no prosecutor. Para. (d) will, however, admit of the officer holding the trial calling or re-calling witnesses in similar circumstances when the ends of justice require it. See also r. 105.

(d) The power given under this provision of calling or recalling a witness should only be exercised in exceptional circumstances, *e.g.*, where it appears for the first time from the evidence given at the trial that a person, who has not been called either by the prosecutor or on behalf of the defence, was present at, and probably witnessed, the occurrence which forms the subject of the charge which is being tried. Witnesses should not be called or recalled under this provision in order to supplement any negligent conduct on the part of the prosecution. If witnesses are called or recalled under this provision, the prosecutor and the accused should be invited to put or suggest any relevant questions which in their opinion should be put by the court. If new evidence is given after the closing address by or on behalf of the accused, the court should permit the accused or his representative to make a further address upon the new matter which has been elicited (if any).

Addresses.

130. Addresses may be in writing.—All addresses by the prosecutor and the accused and the summing-up of the judge-advocate may either be given orally or be in writing, and, if in writing, shall be read in open court.

NOTE

Nevertheless the summing-up of the judge-advocate should invariably be in writing.

Insanity.

131. Provision as to finding of insanity.—Where the court finds either that the accused is of unsound mind and consequently incapable of making his defence or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the pesident or the officer holding the trial shall date and sign the finding; and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted to the confirming officer, or the prescribed officer, as the case may be, to whom the case is reported under sub-section (1) of section 103A of the Act.

NOTE

1. See I. A. A. 103A and notes.
2. For form of finding, see p. 387.
3. For "prescribed officer", see r. 169(1).

Preservation of proceedings.

132. Preservation of proceedings.—(a) The proceedings of a court-martial (other than a summary court-martial) shall, after promulgation, be forwarded, as

circumstances require, to the office of the Judge-Advocate-General in India, and there preserved for not less in the case of a general court-martial, *than seven years*, and in the case of any other court-martial, *than three years*.

(B) The proceedings of a summary court-martial shall be preserved for not less than three years, with the records of the corps or department to which the accused belonged.

133. Right of person tried to copies of proceedings.—Every person tried by a court-martial shall be entitled on demand, at any time after the confirmation of the finding and sentence, when such confirmation is required, and before the proceedings are destroyed, to obtain from the officer or person having the custody of the proceedings, a copy thereof, including the proceedings upon revision, if any, upon payment for the same of a sum not exceeding eight annas for the first two hundred words, and half that rate for each subsequent two hundred words, or part thereof.

134. Loss of proceedings.—(A) If, before confirmation, the original proceedings of a court-martial, which require confirmation, or any part thereof, are lost, a copy thereof, if any, certified by the president of or the judge-advocate at the court-martial may be accepted in lieu of the original.

(B) If there is no such copy, and sufficient evidence of the charge, finding, sentence, and transactions of the court can be procured, that evidence may, with the assent of the accused, be accepted in lieu of the original proceedings, or part thereof lost.

(C) In any case above in this rule mentioned, the finding and sentence may be confirmed, and shall be as vaild as if the original proceedings, or part thereof, had not been lost.

(D) If the accused refuses the assent referred to in sub-rule (B), he may be tried again, and the finding and sentence of the previous court of which the proceedings have been lost shall be null.

(E) If, after confirmation or in any case where confirmation is not required, the original proceedings of a court-martial or any part thereof are lost, and there is sufficient evidence of the charge, finding, sentence, and transactions of the court and of the confirmation (if required) of the finding and sentence, that evidence shall be a valid and sufficient record of the trial for all purposes.

NOTES

(A) 1. Confirmation is not complete until finding and sentence have been promulgated; see r. 58.

2. As to annexure to the proceedings of original documents, see note 2 to r. 56.

(B) The evidence may be obtained by the president or some member of the court writing out from memory the substance of the charge, finding, sentence and transactions of the court, which should be authenticated by the signatures of the members. A copy of the charge, however, should always be procured if possible.

As soon as it is known that the proceedings have been lost, steps should be taken to obtain and preserve the best evidence available.

Irregular Procedure when no injustice is done.

135. Validity of irregular procedure in certain cases.—Whenever it appears that a court-martial had jurisdiction to try any person and make a finding and that there is legal evidence or a plea of guilty to justify such finding, such finding and any sentence which the court-martial had jurisdiction to pass thereon may (if confirmation is necessary) be confirmed, and shall, if so confirmed, and in all cases where confirmation is not necessary, be valid, notwithstanding any deviation from these rules, or notwithstanding that the charge-sheet has not been signed by the commanding officer or the convening officer, provided that the charges have,

in fact, before trial been approved by the commanding officer and the convening officer or notwithstanding any defect or objection, technical or other, unless it appears that any injustice has been done to the offender, and where any finding and sentence are otherwise valid they shall not be invalid by reason only of a failure to administer an oath or affirmation to the interpreter or shorthand writer; but nothing in this rule shall relieve an officer from any responsibility for any wilful or negligent disregard of any of these rules.

NOTES

1. The rule is intended to enable proceedings of a court-martial to be validly confirmed although there may be a technical objection to the charge or charges. For example, where the charge is bad for duplicity and it is obvious that no injustice was done because the accused pleaded guilty and never took objection to the charge, the proceedings can be validly confirmed notwithstanding that defect. But before acting upon this rule the confirming officer must be satisfied that the accused has not suffered any injustice through any deviation from the Rules, or through any defect or objection. Whether or not a deviation, etc., is of a substantial kind will often depend upon the circumstances. The court should not allow any technicality to interfere with the accused in the making of his defence.

2. The confirming officer should always direct the attention of all officers concerned to deviations and defects which have been observed and for which they are responsible.

3. It may be convenient to note here that if, after confirmation, the charges are declared to be invalid, the trial must be treated as null, the conviction set aside, the person convicted relieved of all consequences of his trial and the record of the conviction erased.

As to the substitution of valid finding and sentence for invalid finding and sentence, see I. A. A.s 103 and notes thereto.

4. As to review of summary courts-martial, see I. A. A. 102 and note to r. 119.

Offences of Witnesses and others.

136. Offences of witnesses and others.—When any court-martial is of opinion that there is ground for inquiring into any offence specified in section 38 of the Act and committed before it or brought under its notice in the course of its proceedings, or into any act done before it or brought under its notice in the course of its proceedings which would, if done by a peson subject to the Act, have constituted such an offence, such court-martial may proceed as follows, that is to say—

(A) If the person who appears to have committed the offence is subject to the Act, the court may bring his conduct to the notice of the proper military authority, and may also order him to be place in military custody with a view to his punishment by any officer exercising authority under section 20 of the Act or to his trial by court-martial.

(B) If the person who appears to have done the act is subject to the Army Act, the court may bring his conduct to the notice of the proper military authority.

(C) If the person who appears to have done the act is subject neither to the Act nor to the Army Act, then in the case of acts which would, if done by a person subject to the Act, have constituted an offence under clause (a) of section 38 of the Act, the officer who summoned the witness to appear or the president or officer holding the court, as the case may be, may forward a written complaint to the nearest Magistrate of the first class having jurisdiction, and in the case of acts which would, if done as aforesaid, have constituted an offence under clause (b) or clause (c) of the said section, the Court, afte making any preliminary enquiry that may be necessary, may send the case to the nearest Magistrate of the first class having jurisdiction for enquiry or trial in accordance with section 476 of the Code of Criminal Procedure, 1898.

NOTES

(A) 1. An act includes an illegal omission. See I.A.A. 7 (22) and Indian Penal Code, s. 32.

2. When a person subject to the Indian Army Act commits an offence under clause (A) or (B) of section 38, or when a corresponding offence is committed by a person subject to the (British) Army Act or by a civilian, courts-martial will often act wisely in accepting an apology sufficient to vindicate their dignity instead of resorting to the more severe measures here indicated. As already pointed out (r. 65, note) the best course to adopt when a person, other than the accused, interrupts the proceedings will ordinarily be to order his exclusion from the court.

3 Courts-martial should exercise the greatest discretion in instituting proceedings or in taking measures which may result in the institution of proceedings, against a person subject to the Indian Army Act for the offence specified in clause (c) of section 38, or against a person subject to the (British) Army Act, or a civilian for a corresponding offence. It is not enough that the court-martial has by its verdict shown that it did not believe the witness, for it may have thought him to be mistaken or, on the balance of probabilities, it may have accepted another version of what took place. Before instituting proceedings as indicated in this rule against a witness the court should be satisfied that there are good grounds for believing that the witness has wilfully given false evidence on some point which is material to the issue, and that his conviction is likely. The credit of another witness is a point material to the issue.

When it is likely that a witness will be prosecuted for giving false evidence the exact words used, in the language in which the evidence was given, should be recorded. See r. 78 (B) and note.

4 In the case of a person subject to the Indian Army Act, the court-martial may, in its discretion, either merely report his conduct to the proper military authority, or may in addition order him into military custody pending disposal of his case.

If a person is so ordered into custody this fact should be mentioned in the report; and it then becomes the duty of the officer receiving the report to see that the case is promptly investigated in accordance with section 124 (*3*) of the Indian Army Act. The report should be in sufficient detail to place the officer in full possession of the facts and enable him to exercise his discretion whether to order trial by court-martial if he is competent to do so, or to direct other summary disposal of the case, or to refer it to superior authority.

As to "proper military authority", see r. 2 (A). This will depend on the status of the offender, and the authority under whose orders the court has been convened.

In the case of a summary court-martial the officer holding the trial would ordinarily report to the officer commanding the district or brigade, and a general or district court-martial would report to the convening officer, observing in each case the usual channel of correspondence.

5. As explained in the notes to I.A.A. 38, the members of a court-martial reporting an offender under this rule are individually disqualified [r. 29 (B) (iii) and (v)] from trying him on charges arising out of their report. Thus although there is no restriction similar to that contained in section 28 of the (British) Army Act, the result is practically the same, and the officer to whom the case is finally referred if he decides on trial must convene a new court for the purpose. For similar reasons it is undesirable that a commanding officer should try by summary court-martial a person under his command who has offended against his authority when holding a summary court-martial or when sitting as a member of a general or district court-martial. He could, save in grave emergency, only do so with the sanction of superior authority, which should, therefore, as a rule, be withheld—I.A.A. 74, proviso (*b*).

(B) 1. Over a person subject to the (British) Army Act a court-martial convened or, assembled under the Indian Army Act has, as such, no authority and cannot as a court order him into military custody. This clause, therefore, enables the court merely to report offences of contempt or of giving false evidence committed by such persons to the proper military authority for disposal under the Army Act. The president (if a British officer) has, however, in his individual capacity, authority over such an offender, if his junior in rank and may, in that capacity, order such offender into military custody under the provisions of section 45 of the Army Act. This individual authority should be rarely exercised and, as a rule, only when justified by cases of gross disrespect or violence towards the court.

2. If the trial of a person against whom action has been taken under para. (B) of this rule is ordered, the charge can only be framed under section 40 of the Army Act as a court-martial convened under the Indian Army Act is not a "court-martial" for the purposes of charges under section 28 of the (British) Army Act.

For the converse case, *i.e.*, when a person subject to the Indian Army Act commits contempt or gives false evidence before a court-martial convened under the (British) Army Act, see notes to I.A.A. 38.

(c) 1. This paragraph deals with civilian offenders; sections 195 and 476 of the Code of Criminal Procedure provide for the institution of proceedings for certain offences against the Indian Penal Code on the written complaint of the public servant concerned or of the court before which the offence complained of was committed. A court-martial is a "criminal court" for the purpose of the above sections and is also a "court of justice" for the purposes of the Indian Penal Code. See Code of Criminal Procedure, section 6 and Indian Penal Code, section 20. The effect of this is that all the acts and omissions which are punishable under I.A.A. 38, clause (*a*), when committed by persons subject to that Act, are, when committed by civilians, offences under sections 174, 175, 178, and 179 of the Indian Penal Code, for which the officer who summoned the witness to appear or the officer conducting the proceedings of the court-martial, as the case may be, can institute proceedings under section 195, sub-section (*1*), clause (*a*), of the Code of Criminal Procedure: and that all acts and omissions which are punishable under I.A.A. 38, clauses (*b*) and (*c*), when committed by persons subject to that Act are, when committed by civilians, offences under sections 193, 194 and 228 of the Indian Penal Code for which the aggrieved court-martial can institute proceedings under section 476 of the Code of Criminal Procedure. Before instituting such proceedings the officer [in the case of offences corresponding to those in I.A.A. 38, clause (*a*)] and a court-martial [in the case of offences corresponding to those in I.A.A. 38, clauses (*b*) and (*c*)] must *prima facie* be satisfied that a definite offence has been committed by some definite person or persons against whom proceedings in a criminal court are to be taken. It is not sufficient that the circumstances may raise some sort of a suspicion against someone. In such a case the officer or the court-martial, as the case may be, should either allow the matter to drop, or should make or hold a preliminary enquiry to see who is to be prosecuted and for what. A court's decision to institute proceedings must be a judicial one, *i.e.*, either based on what the court has itself heard or seen and considered, or on evidence taken before it and considered. Similarly an officer's decision to institute proceedings must be a reasonable one, based on sufficient grounds.

The report to the magistrate may be in letter form, and should be sufficiently detailed to place him in full possession of all the materials on which the decision to prosecute was based. It should set forth the name and identity of the person accused and of the witnesses who can substantiate the accusation. A narrative of the events complained of should be included in the report and a record of the evidence taken in the preliminary inquiry (if any) attached.

2. In the case of a person subject to the Air Force Act the proper course is to report the offence to the proper Air Force authority, though proceedings could be taken under para. (c) of this rule. Neither a court martial convened or assembled under the Indian Army Act nor, ordinary, a "British officer" in his individual capacity can order a person subject to the Air Force Act into air force custody; when, however, by reason of the application of section 184A of the Air Force Act, the British officer has powers as if he were an Air Force officer in relation to the person subject to the Air Force Act, he could, if necessary, order that person into air force custody.

3. If a case arises in which it appears necessary to resort to the provisions of section 476 of the Code of Criminal Procedure when outside of British India, the officer of the court-martial, as the case may be, should, in the first instance, ascertain that the civilian concerned is amenable to the laws of British India. Pending a decision on this point the court-martial should content itself with excluding him from the room in which its proceedings are held, if such a course appears to be necessary. For list of places which, though in India are not in British India, see notes to I.A.A. 41. In such places the local political officer will generally be the person empowered to administer British Indian criminal law as against person subject thereto, and should be consulted as to whether any civilian whom it is proposed to prosecute is subject to his jurisdiction.

SECTION 5.—SUMMARY GENERAL COURTS-MARTIAL.

The foregoing rules in this Chapter shall not, save as hereinafter mentioned, apply to summary general courts-martial which shall be subject to the following rules :—

137. Convening the court and record of proceedings.—(A) The court may be convened and the proceedings of the court recorded in accordance with the form in the Third Appendix to these rules, with such variations as the circumstances of each case may require.

(B) The officer convening the court shall appoint or detail the officers to form the court, and may also appoint or detail such officers as waiting members

as he thinks expedient. Such officers should have held commissions for not less than one year, but, if any officers are available who have held commissions for not less than three years, they should be selected in preference to officers of less service.

(C) The provost-marshal, an assistant provost-marshal, or an officer who is a prosecutor or witness for the prosecution shall not be appointed a member of the court, but subject to sub-rule (B) any other available officer may be appointed to sit.

NOTES

1. In the convening order the members and waiting members (if any) may be appointed by name, or only their ranks and units may be mentioned. In the latter event, the ranks, names, etc., of the members of the court as constituted will be recorded in the proceedings.

2. If necessary, an officer of less than one year's standing may legally sit as a member. The requirement, therefore, that members of the court should have held commissions for not less than one year does not justify a court in substituting a waiting member for a member with less than a year's commissioned service who has been detailed or appointed by the convening officer.

3. The convening order must be signed personally by the convening officer.

138. Charge.—The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Act.

139. Trial of several accused persons.—The court may be sworn at the same time to try any number of accused persons then present before it, but, except as provided in Rule 24, the trial of each accused person will be separate.

140. Challenges.—(A) The names of the president and members of the court shall be read over to the accused who shall thereupon be asked if he objects to be tried by any of these officers.

(B) Any objection will be decided as provided for in section 80 of the Act and rules 34 and 75—the vacancies being filled from among the waiting members (if any) or by fresh members being appointed by the convening officer.

141. Swearing or affirming the court.—(A) As soon as the court is constituted with the proper number of officers who are not objected to, or the objections to whom have been overruled, an oath or affirmation shall be administered to every member in such of the forms laid down in Rule 35 as shall be appropriate, or in such other form to the same purport as the court ascertain to be according to his religion or otherwise binding on his conscience.

(B) If a judge-advocate or an interpreter has been appointed, the appropriate oath or affirmation, as laid down in Rule 36, shall be administered to him.

(C) All oaths and affirmations shall be administered by a member of the court or by some person empowered by the court to do so.

142. Arraignment.—When the court are sworn or affirmed, the president shall state to the accused then to be tried, the offence with which he is charged, with, if necessary, an explanation giving him full information of the act or omission with which he is charged and shall ask the accused whether he is guilty or not guilty of the offence.

NOTES

1. As to objection by accused to charge, see r. 39, which by Rule 150 is applied, so far as practicable, to a summary general court-martial. As to responsibility of president, see r. 65.

2. As to general plea of "Guilty" or "Not guilty", see r. 42 and notes: as to procedure after plea of "Guilty", see r. 44. Both these rules are, by Rule 150, applied, so far as practicable, to a summary general court-martial.

A plea of "Guilty" will not be accepted by the court if the charge or charges upon which an accused is arraigned render him liable, on conviction, to be sentenced, to death. If such plea is offered, the court will enter a plea of "Not guilty" and proceed with the trial accordingly. See r. 42 (D) which in all cases will be applied to a summary general court-martial.

143. Plea to jurisdiction.—If a special plea to the general jurisdiction is offered by the accused, and is considered by the court to be proved, the court shall report the same to the convening officer.

NOTE

See r. 41, which by Rule 150 is applied, so far as practicable, to a summary general court-martial, and notes.

144. Evidence.—(A) The witnesses for the prosecution will be called and the accused shall be allowed to cross-examine them and to call any available witnesses for his defence.

(B) An oath or affirmation as laid down in Rule 126 shall be administered to every witness, before he gives his evidence, by one of the persons specified in that rule.

NOTE

(A) Although by Rule 150 only a limited number of the foregoing rules are applied, so far as practicable, to summary general courts-martial, the procedure to be adopted at a summary general court-martial should be the same as at a general or district court-martial.

145. Defence.—The accused shall be asked what he has to say in his defence, and shall be allowed to make his defence. He may be allowed to have any person to assist him during the trial, whether a legal adviser or any other person.

NOTES

1. See note to r. 144.

As to the rights of the accused to prepare his defence, see r. 22, which by Rule 150 is applied, so far as practicable, to a summary general court-martial.

2. See rr. 81-87. If the person assisting is an officer subject to military law or a counsel [see r. 87 (B)] he may be allowed full privileges of address, etc.

146. Record of the evidence and defence.—The president of the court shall take down or cause to be taken down a brief record of the evidence of the witnesses at the trial and of the defence of the accused ; the record so taken down shall be attached to the proceedings :

Provided that, if it appears to the convening officer that military exigencies or other circumstances prevent compliance with this provision, he may direct that the trial may be carried on without any such brief record being taken down.

If the accused pleads "Guilty" the summary or abstract of evidence, if any, may be read and attached to the proceedings, and it shall not be necessary for the Court to hear witnesses for the prosecution, respecting matters contained in the summary or abstract of evidence so read.

NOTE

It would hardly ever be necessary for the convening officer to give such a direction as is mentioned in the proviso. If he does so, he must record it in his order convening the court and state shortly the exigencies or other circumstances which appear to him to prevent compliance with this rule.

147. Finding and sentence.—The court shall then be closed to consider its finding. If the finding on any charge is "Guilty" the court may receive any evidence as to previous convictions and character which is available. The court shall then deliberate in closed court as to its sentence.

NOTE

As to voting of members, see I.A.A. 81.

For votes required before a sentence of death can be passed, see I.A.A. 87.

148. Proceedings after sentence or finding.—(A) If the proceedings do not require confirmation, the result shall be announced in open court and the sentence carried into effect as soon as possible.

(B) If the proceedings require confirmation they shall be transmitted without delay to the confirming officer and the sentence (if any) carried out as soon as possible after his confirmation has been received.

NOTE

(A) 1. As to when confirmation is necessary, see I.A.A. 98.

2. If a sentence of imprisonment not requiring confirmation is passed, the president, when passing sentence, must consider the provisions of section 3 (*l*) of the Indian Army (Suspension of Sentences) Act (see part III). The notes to that section should also be consulted.

(B) 1. *e.g.*, if the sentence is one of transportation or imprisonment, it shall be carried out unless the sentence has been suspended or the confirming officer has directed that the offender be not committed pending the orders of a superior military authority as to suspensions of sentence.

2. See also I.A.A. 49A as to retention to serve in the ranks of a person sentenced on active service to transportation, imprisonment or dismissal.

149. Adjournment.—(A) A summary general court-martial may adjourn from time to time and from place to place and may when necessary view any place.

(B) The proceedings shall be held in open court, in the presence of the accused, except on any deliberation among the members when the court may be closed.

150. Application of rules.—The foregoing rules—15 (Disposal of the charge or adjournment for taking down the summary of evidence), 16 (Remand of accused), 17 (Procedure on charge against Indian commissioned officer), 22 (Rights of accused to prepare defence), 23 (Warning of accused for trial), 25 (Suspension of rules on the ground of military exigencies or the necessities of discipline), 39 (Objection by accused to charge), 41 (Special plea to the jurisdiction), 42 (General plea of "Guilty" or "Not guilty"), 43 (Plea in bar), 44 (Procedure after plea of "Guilty"), 50 (Consideration of finding), 51 (Form and record of finding), 53 (Procedure on conviction) 58 (Promulgation), 59 (Mitigation of sentence on partial confirmation), 61 (Confirmation notwithstanding informality in, or excess of, punishment), 65 (Responsibility of president), 66 (Power of court over address of prosecutor and accused), 80 (Transmission of proceedings after finding), 81 (Defending officer and friend of accused), 131 (Provision as to finding of insanity), 89-91 (Judge-Advocate), 132 (Preservation of proceedings), 133 (Right of persons tried to copies of proceedings), 134 (Loss of proceedings), 135 (Validity of irregular procedure in certain cases), shall, so far as practicable, apply as if a summary general court-martial were a district court-martial.

NOTE

See also rr. 133, 140 (B), 141 and 144 (B).

151. Evidence of opinion of convening officer.—Any statement in an order convening a summary general court-martial as to the opinion of the convening officer shall be conclusive evidence of that opinion, but this rule shall not prejudice the proof at any time of any such opinion when not so stated.

SECTION 6.—EXECUTION OF SENTENCES.

152. Committal warrants.—A warrant for the committal of a person sentenced by a court-martial to a prison under the provision of section 107 of the Act shall be in one of the forms given in the Fourth Appendix to these Rules. Such warrant shall be signed by the commanding officer of the prisoner or by any higher authority or his staff officers.

153. Warrants under section 109 of the Act.—Any warrant issued under the provisions of section 109 of the Act shall be in one of the forms given in the Fourth Appendix to these rules, and shall be signed by the officer making the order in pursuance of which such warrant is issued, or by his staff officer.

154. Sentence of Cashiering or Dismissal.—A sentence of cashiering or dismissal awarded by a court-martial shall take effect from the date on which the sentence is promulgated to the person under sentence, or except in the case of an Indian commissioned officer from such subsequent date as may be specified by the commanding officer at the time of such promulgation :

Provided that, when dismissal is combined with imprisonment, which is carried out in a military prison or in military custody or with field punishment, the dismissal shall not take effect until the date on which the prisoner is duly released from a military prison or military custody, or until the completion of the field punishment, unless such field punishment is remitted by competent authority :

Provided also that, when cashiering or dismissal is combined with transportation or with imprisonment which is carried out in a civil prison, the cashiering or dismissal shall not take effect until the date on which the prisoner is received into a civil prison.

NOTES

1. Under I.A.A. 17, a discharge certificate must be furnished to every enrolled person who is dismissed from the service (see also r. 11). An Indian commissioned officer, not being an enrolled person, is not furnished with a discharge certificate.

2. A sentence of cashiering or dismissal awarded by a court-martial to an Indian commissioned officer takes effect from the date of promulgation, or, when combined with transportation or with imprisonment, from the date on which the prisoner is received into a civil prison. The sentence is notified in the Gazette of India.

3. It may sometimes be expedient for a commanding officer, in order to keep a person sentenced to dismissal (other than an Indian commissioned officer) subject to military law for a short period, to specify a date subsequent to the date of promulgation. If he considers such action desirable he must do so at the time of the promulgation of the sentence to the person and he should record the date he specifies in the minute of promulgation. When a commanding officer exercises this option of specifying a subsequent date, the date specified must be strictly limited by the requirements of the case. For instance, in the case of a person sentenced out of India to dismissal alone, or to dismissal combined with imprisonment which is carried out locally either in military custody or for special reasons in local civil custody (section 108 of the Act), the subsequent date might be "date of disembarkation" or "date of embarkation" according to whether the intention is to despatch the person to India on a transport or by a private vessel. It is obviously desirable to keep the person subject to military discipline while travelling on a transport or until he can be despatched to India. If the person is to be sent by a transport the commanding officer can enter in the discharge certificate "date of disembarkation" as the date from which the dismissal takes effect.

4. The effect of the second proviso is that a prisoner under sentence of cashiering or dismissal combined with imprisonment which is carried out in a civil prison or with transportation remains subject to the Act until he is received into a civil prison in India The commanding officer should enter on the discharge certificate the date of admission into a civil prison as the date from which the dismissal takes effect, or, in the case of an Indian commissioned officer, report the date of admission to the proper military authority.

154A. Custody of person under sentence of death.—When a person is sentenced by a court-martial to suffer death and such sentence has been confirmed, the Commanding Officer for the time being of such person may, if he thinks fit, by a warrant in one of the forms in the Fifth Appendix commit the said person for safe custody in a civil prison pending the carrying out of the sentence.

154B. Carrying out of sentences of death.—Upon the receipt of an order to carry out a sentence of death, the officer to whom the order is issued shall :—

(i) If the person sentenced has been committed to a civil prison under rule 154A, obtain custody of his person by issuing a warrant in one of the forms in the Fifth Appendix ;

(ii) Inform the person sentenced as soon as possible that the sentence has been confirmed and of the date on which the sentence will be carried out;

(iii) Proceed to carry out the sentence as required by the order and in accordance with any general or special instructions which may from time to time be given by or under the authority of the Commander-in-Chief in India.

154C. Procedure on commutation of sentence of death.—If a sentence of death is commuted under the Act or if the person sentenced to death is pardoned and

(i) if he has been committed to a civil prison under a warrant issued under rule 154-A a further warrant in one of the forms given in the Fifth Appendix to these Rules shall be issued by the Commanding Officer of such person.

(ii) if he has been detained in military custody, any warrant which may be necessary to give effect to the sentence as so commuted, shall be issued in one of the forms given in the Fourth Appendix to these Rules.

SECTION 7.—FIELD PUNISHMENT.

155. Field Punishment.—(1) A court-martial or an officer exercising authority under section 20 of the Act may, for the purpose of awarding field punishment under the Act, sentence an offender for a period not exceeding, in the case of a court-martial, three months, and in the case of such an officer, twenty-eight days, to one of the following punishments, namely :—

(*a*) Field Punishment No. 1.

(*b*) Field Punishment No. 2.

(2) Where an offender is sentenced to field punishment No. 1, he may, during the continuance of his sentence, unless the court-martial or the officer, as the case may be, otherwise directs, be punished as follows :—

(a) He may be kept in irons, that is to say in fetters or hand-cuffs or both fetters and hand-cuffs, and may be secured so as to prevent his escape.

(b) When in irons, he may be attached for a period or periods not exceeding two hours in any one day to a fixed object, but he must not be so attached during more than three out of any four consecutive days, nor during more than twenty-one days in all.

Explanation (1).—The offender must be attached so as to be standing firmly on his feet which, if tied, must not be more than twelve inches apart, and it must be possible for him to move each foot at least three inches. If he is tied round the body there must be no restriction of his breathing. If his arms or wrists are tied, there must be six inches of play between them and the fixed object. His arms must hang either by the side of his body or behind his back.

Explanation (2).—For the purposes of this punishment, irons should be used when available, but straps or ropes may be used in lieu of them when necessary. Any straps or ropes used for this purpose must be of sufficient width to inflict no bodily harm, and leave no permanent mark on the offender.

(*c*) He may be subject to the like labour, employment and restraint, and dealt with in like manner as if he were undergoing a sentence of rigorous imprisonment.

(3) Where an offender is sentenced to field punishment No. 2, the provisions of sub-rule (2) with respect to field punishment No. 1 shall apply in his case except that he shall not be liable to be attached to a fixed object as provided in clause (*b*) of that sub-rule.

(4) Every portion of a field punishment shall be inflicted in such a manner as is calculated not to cause injury or leave any permanent mark on the offender and a portion of a field punishment must be discontinued upon a report by a responsible medical officer that the continuance of that portion would be prejudicial to the offender's health.

(5) Field punishment will be carried out regimentally when the unit to which the offender belongs or is attached is actually on the move, but when the unit is halted at any place where there is a provost-marshal the punishment will be carried out under the orders of that officer.

(6) When the unit to which the offender belongs or is attached is actually on the move, an offender awarded field punishment No. 1 shall be exempt from the operation of clause (*b*) of sub-rule (2), but all offenders awarded field punishment shall march with their unit, carry their arms and accoutrements, perform all their military duties as well as extra fatigue duties, and be treated as defaulters.

CHAPTER V

COURTS OF INQUIRY

Losses or theft of arms

156. Court of Inquiry when rifles, etc., are lost or stolen.—(A) Whenever any weapon or part of a weapon, which forms part of the equipment of a half squadron, battery, company or other similar unit, and in respect of the loss or theft of which a fine may be imposed under rule 157 is lost or stolen, a court of inquiry shall be assembled, under the orders of the officer commanding the army, army corps, division or independent brigade, to investigate the circumstances under which the loss or theft occurred.

(B) The officer who assembled the court shall direct it to record an opinion as to the circumstances of the loss or theft.

157. Collective fine may be imposed.—(A) The officer commanding the army, army corps, division or independent brigade shall then record his opinion on the circumstances of the loss or theft, and may impose for each weapon or part of a weapon lost or stolen collective fines to the extent hereinunder specified on the Viceroy's commissioned officers, warrant officers, non-commissioned officers, and men of such unit or upon so many of them as he considers should be held responsible for the occurrence—

	Rs.
Medium Machine Gun	1,800
Lock Breech	300
Barrel	150
Light Machine Gun	1,500
Magazine	50
Barrel Assembled	300
Block Breech	100
2" Mortar Barrels	200
3" Mortar Barrels	200
Base Plate	100
Rifle	800
Bolt	100
Bayonet	15
Discharger Grenade	30
Projector Grenade	100
Carbine	800
Barrel	100
Block Breech	200
Magazine	50
Pistol Revolver	300
Grenades	50
Gun Machine Besa 7·92	2,100
Barrel	800
Block Breech	100
Gun Machine Besa 15 MM	6,000
Barrel	1,000
Block Breech	200

(B) Such fine will be assessed as a percentage on the pay of the individuals on whom it falls.

NOTE

See I. A. A. 21 and note.

The effect of this rule is to give the officer imposing the fine a wide discretionary power in determining the amount to be levied on the individuals specified. The fines set out in sub-paragraph (A) are maxima, and it will be for the competent authority to decide, having regard to such considerations as the circumstances of the laws, the pay of the individuals concerned, the vocabulary price of the weapon or component lost and the prevalence of such losses, as to what proportion of the maximum fine should be imposed in each particular case.

Regulations for courts of inquiry other than courts of inquiry held under Section 126 *of the Act.*

158. Courts of Inquiry.—(A) A court of inquiry is an assembly of officers or of officers and warrant or non-commissioned officers directed to collect evidence, and if so required to report with regard to any matter which may be referred to them.

(B) A court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps.

(C) The court may consist of any number of officers of any rank, or of one or more officers together with one or more warrant or non-commissioned officers. The members of the court may belong to any branch or department of the service, according to the nature of the investigation.

(D) The court shall be guided by the written instructions of the authority who assembled the court. The instructions shall be full and specific, and shall state the general character of the information required. They shall also state whether a report is required or not.

(E) Previous notice should be given of the time and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry except a prisoner of war who is still absent.

(F) Save in the case of a prisoner of war who is still absent, whenever any inquiry affects the character or military reputation of a person subject to military law, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation, and producing any witnesses in defence of his character or military reputation. The president of the court shall take such steps as may be necessary to ensure that any such person so affected, and not previously notified, receives notice of and fully understands his rights, under this rule.

(G) It is the duty of a court of inquiry to put such questions to a witness as they think desirable for testing the truth or accuracy of any evidence he has given, and otherwise for eliciting the truth.

(H) When a court of inquiry is held on prisoners of war, and in any other case in which the officer who assembled the court has so directed, the evidence shall be taken on oath or affirmation, in which case the court shall administer the same oath or affirmation to witnesses as if the court were a court-martial.

The officer who assembled the court shall, when the court is held on a returned prisoner of war or on a prisoner of war who is still absent, direct the court to record their opinion whether the person concerned was taken prisoner through his own wilful neglect of duty, or whether he served with or under,

or aided the enemy; he shall also direct the court to record their opinion in the case of a returned prisoner of war, whether he returned as soon as possible to the service, and in the case of a prisoner of war still absent whether he failed to return to the service when it was possible for him to do so. The officer who assembled the court shall also record his own opinion on these points. In other cases the court shall give no opinion on the conduct of any person unless so directed by the officer who assembled the court.

(I) The members of the court shall not themselves be sworn or affirmed, but when the court is a court of inquiry on recovered prisoners of war the members shall make the following declaration :

I, A. B., do declare upon my honour that I will duly and impartially inquire into and give my opinion as to the circumstances in which.....became a prisoner of war, according to the true spirit and meaning of the Regulations of the Army ; and I do further declare, upon my honour, that I will not on any account, or at any time disclose or discover my own vote or opinion or that of any particular member of the court, unless required to do so by competent authority.

(J) The court may be re-assembled as often as the officer who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witness, or recording further information.

(K) The whole of the proceedings of a court of inquiry shall be forwarded by the president to the officer who assembled the court.

(L) The proceedings of a court of inquiry, or any confession, statement, or answer to a question made or given at a court of inquiry, shall not be admissible in evidence against a person subject to military law, nor shall any evidence respecting the proceedings of the court be given against any such person except upon the trial of such person for wilfully giving false evidence before that court.

(M) Any person subject to the Act who is tried by court-martial in respect of any matter or thing which has been reported on by a court of inquiry, and, unless the Commander-in-Chief in India sees reason to order otherwise, any person so subject whose character or military reputation is, in the opinion of the said Commander-in-Chief, affected by anything in the evidence before, or in the report of a court of inquiry under this or, the following rule, shall be entitled to a copy of the proceedings of the court, including any report made by the court on payment at the rate laid down in Rule 133 for copies of the proceedings of courts-martial.

NOTES

(A) 1. See generally as to court of inquiry, R. A. I. For disqualification of members of courts of inquiry for serving on subsequent courts-martial see r. 29 (B) (iii). As to privilege of report of court and that of witnesses, see Pt. I, ch. V, paras 94-96.

2. A court of inquiry has no power to compel the attendance of civilian witnesses.

(C) The court should normally consist of three members.

(F) Whenever it appears possible that the character or military reputation of an officer or soldier may be affected as the result of the court of inquiry, the authority who assembles the court will take all necessary steps to secure that the provisions of this rule are observed. The ultimate responsibility of ensuring that they are observed in every case will, however, rest upon the president of the court, and should it transpire during the sitting of the court that the character or military reputation of any officer or soldier is affected by the evidence put forward, the president, will immediately arrange for such officer or soldier to be afforded the full facilities of the rules, adjourning the court if necessary for the purpose of securing his attendance.

(H) As to the authorities who can remit the forfeiture of pay and allowances incurred by absence as a prisoner of war, see r. 165 (C). If the officer who assembles the court is not one of these authorities, he should forward the proceedings with his recommendation, to one of these authorities. A court of inquiry on a prisoner of war who is still absent

may be assembled in order to assist the authorities prescribed in rr. 165 (c) and 166, in determining what remission of forfeiture of pay and allowances shall be ordered and what provision under section 52A of the Act, shall be made for the dependants of such prisoner of war. A second court of inquiry must be assembled as soon as possible after the return of the prisoner of war. See R. A. 1.

Regulations for courts of inquiry under section 126 of the Act for the purpose of determining the illegal absence of persons subject to that Act.

159. Courts of Inquiry as to illegal absence under section 126 of the Act.—(A) A court of inquiry under section 126 of the Act shall, when assembled, require the attendance of such witnesses as they think sufficient to prove the absence and other facts specified as matters of inquiry in that section.

(B) They shall take down the evidence given them in writing and at the end of the proceedings shall make a declaration of the conclusions at which they have arrived in respect of the facts they are assembled to inquire into.

(C) The commanding officer of the absent person shall enter in the court-martial book of the corps or department a record of the declaration of the court, and the original proceedings will be destroyed.

(D) The court of inquiry shall examine all witnesses who may be desirous of coming forward on behalf of the absentee, and shall put such questions to them as may be desirable for testing the truth or accuracy of any evidence they have given and otherwise for eliciting the truth, and the court in making their declaration shall give due weight to the evidence of all such witnesses.

(E) A court of inquiry shall administer the same oath or affirmation to the witnesses as if the court were a court-martial, but the members of such court shall not themselves be sworn or affirmed.

NOTES

(A) 1. See notes to I. A. A. 126.

2. See note (A) 1 to r. 158.

The court declare that (*number, rank, name*) illegally absented himself for a period of 60 clear days, excluding the day on which the absence commenced and that on which the court assembles.

(B) 1. The court in making their declaration will follow the wording shown below. An exact reproduction of the declaration will be entered in the court-martial book. It should be free from alteration or erasure.

DECLARATION.

The court declare that (*number, rank, name*) illegally absented himself without leave (or other sufficient cause) at (*station or place*) on the ; that he is still so absent, and that on the (*date on which the inventory of kit was taken*) he was deficient, and that he is still deficient of the following articles (value of equipment and public clothing to be stated).

Name of President and members. } { President. Members.

2. In framing a charge of losing by neglect under I. A. A. 35 (*e*), the date of taking the inventory should be assigned.

3. Before a court of inquiry are entitled to find deficiencies, they will require evidence—

(1) that the absentee has been at some time previously in possession of a complete kit, or, at any rate, of the articles alleged to be deficient;

(2) that an inventory of his kit has been taken, and at the taking of the inventory certain specified articles were deficient;

(3) that none of the articles have since been recovered (any articles recovered will, of course, be omitted).

4. When the declaration is to be produced in evidence at a court-martial, a copy will be made on I. A. F. D-918 which is admissible under I. A. A. 91A (*4*), and will be produced instead of the court-martial book. I. A. F. D-918 must be a correct extract from the court-martial book and free from alteration or erasure.

(E) As to form of oath, see r. 126.

CHAPTER VI.

PRESCRIBED OFFICERS, AUTHORITIES AND OTHER MATTERS

159-A. Prescribed officers under Section 4 of the Act.—The prescribed officers for the purpose of section 4 of the Act shall be the officer commanding the army command, army corps, division, district, L. of C. Area, Brigade Area, L. of C. Sub-Area, Base Sub-Area or Beach Group with which the person subject to the Act under section 2, sub-section (1) clause (c) is for the time being serving.

160. Conditions prescribed under section 7 (*1*) and (*2*) of the Act.—In the Act and in these Rules the expression "British Officer" in relation to a person subject to the Act includes a person holding a commission in His Majesty's Naval Forces or His Majesty's Air Force and the expression 'Indian Commissioned officer' in relation to a person subject to the Act includes a person holding a commission in the Indian Air Force when the person subject to the Act is serving under any of the following conditions, namely :—

(*a*) When he is a member of a body of His Majesty's Military Forces acting with a body of His Majesty's Naval Forces or His Majesty's Air Force which is on active service.

(*b*) When he is a member of a body of His Majesty's Military Forces acting with a body of His Majesty's Naval Forces or His Majesty's Air Force under or within any Command whatsoever within which or in any area or place in which, by reason of regulations made by the Army Council and Air Council, or of orders, made in pursuance of such regulations, section 184A of the Army Act or a portion thereof or section 184A of the Air Force Act or a portion thereof applies generally or in which both of those sections or portions of both of those sections apply generally.

(*c*) When he is being conveyed on any vessel employed as a transport or troopship.

(*d*) When he is serving in or is a patient in any hospital or medical unit in which any officer of His Majesty's Naval Forces or His Majesty's Air Force is on duty or is a patient.

(*e*) When he is serving in any place in which, or with any body of His Majesty's Military Forces with which, there is present any officer of his Majesty's Air Force who is subject to military law.

(*f*) When he is a member of a body of His Majesty's Military Forces acting in an emergency with a body of His Majesty's Naval Forces or His Majesty's Air Force and an order in writing is made by the officers commanding the two bodies concerned stating that an emergency exists and that it is necessary for officers of His Majesty's Naval Forces or His Majesty's Air Force to exercise command over persons subject to the Act.

A copy of every Order made under this condition shall forthwith be sent to the Central Government.

(g) When he is serving in any place in which, or with any body of His Majesty's Military Forces with which, there is present any officer of His Majesty's Naval Forces or His Majesty's Air Force and the Central Government has by special order declared that it is necessary for officers of His

Majesty's Naval Forces or His Majesty's Air Force to exercise command over persons subject to the Act in that place or with that body of military forces.

Explanation.—For the purposes of clauses (*a*), (*c*), (*d*), (*f*) and (*g*) of this rule, the expression "His Majesty's Air Force" includes the Indian Air Force.

161. "Corps" prescribed under section 7(9) of the Act.—(A) Each of the following separate bodies of persons subject to the Act shall be a "Corps" for the purposes of Chapter II and section 30(c) of the said Act and of Chapters II and III of these Rules :—

(i) Each bodyguard.

(ii) The Armoured Corps including Training Centres, Horsed Cavalry Regiments and non-combatants.

(iii) * * * *

(iv) The Royal Regiment of Indian Artillery.

(v) The Royal Corps of Watchers.

(vi) The Corps of Royal Indian Engineers, including non-combatants.

(vi-a) The Defence of India Corps.

(vii) The Road Construction Corps.

(viii) The Corps of Indian Electrical and Mechanical Engineers.

(ix) The Indian Army Ordnance Corps.

(x) The Proof and Experimental Establishment, Balasore.

(xi) * * * *

(xii) The Corps of Indian Signals including non-combatants.

(xiii) Each regiment or each ungrouped battalion (as the case may be) of Indian Infantry, or, in the case of Grouped Gorkha Regiments, each group of Indian Infantry including non-combatants.

(xiii-a) Each Indian and Gorkha Parachute Battalion.

(xiv) The Royal Indian Army Service Corps.

(xiv-a) The Army in India Catering Corps.

(xv) * * * *

(xv-a) The Indian Army Medical Corps.

(xv-b) The Indian Army Dental Corps.

(xvi) The Indian Remount Veterinary and Farms Corps.

(xvii) The Corps of British Cavalry, comprising the Indian personnel of British Cavalry units including non-combatants.

(xviii) The Corps of British Infantry, comprising the Indian personnel of British Infantry units including non-combatants.

(xviii-a) The Royal Armoured Corps, comprising the Indian personnel of the Royal Armoured Corps, including non-combatants.

(xix) * * * *

(xix-a) The Indian Observer Corps.

(xx) The Indian Pioneer Corps.

(xx-a) The Indian Canteen Corps.

(xxi) The Labour Corps (Special List).

(xxi-a) The Corps of Military Police (India).

(xxi-aa) The Corps of Indian Army Physical Training Instructors.

(xxi-b) The Intelligence Corps (India).

(xxi-c) The Ministry of Defence Security Corps.

(xxi-d) The Frontier Defence Corps.

(xxii) Any other separate body of persons subject to the Act, employed on any service and not attached to any of the above corps or to any department.

(B) Every British or Indian unit in which a court-martial book is maintained shall be a "corps" for the purposes of section 126 of the Act and Rule 159.

(C) For the purposes of every other provisions of the Act and of these rules each of the following separate bodies shall be "corps" :—

(*i*) Every battalion.

(*ii*) Every company which does not form part of a battalion.

(*iii*) Every regiment of cavalry, armoured corps, or artillery.

(*iv*) Every squadron or battery which does not form part of a regiment of cavalry, armoured corps, or artillery.

(*v*) Every reserve centre, training centre, depot centre or regimental centre.

(*vi*) Every other separate unit composed wholly or partly of persons subject to the Act.

1. The effect of this rule is that each of the bodies specified in para. (A) is a "corps" for the purposes of enrolment, attestation, dismissal and discharge, *i.e.*, for all purposes connected with a person's service in the Army. For all other purposes (except those of section 126) the bodies mentioned in para. (C) are "corps".

2. The effect of rule 7, read with the prescribed forms of enrolment, is that every person enrolled under the Act must be enrolled either in some corps, as defined in para. (A) of this rule, or in some department as defined in section 7 (*11*) of the Act.

3. A "group" in paras. (C) (iv) and (vi) means the batteries grouped together under an officer exercising a lieutenant-colonel's command.

"Depot" in clause (C) (xvi) does not include a sub-depot of a Supply Depot Company.

162. Prescribed officers under section 14 of the Act.—The prescribed officer for the purposes of section 14 of the Act shall, as regards Indian Military Medical pupils, be the Director-General, Indian Medical Service, and the Surgeon-General or the Inspector-General of Civil Hospitals of the province within which the School to which the medical pupil belongs is situated and as regards personnel of the Intelligence Corps (India) enrolled under the Act, whether attested or not, the Commandant, Intelligence Corps (India).

163. Prescribed officers under section 19 of the Act.—The authorities empowered to reduce a warrant officer or a non-commissioned officer to a lower grade or to the ranks shall, on active service, include the officer commanding the forces in the field.

164. Prescribed officers under section 49A of the Act.—The prescribed officer for the purposes of section 49A of the Act shall be the officer commanding the forces in the field, or, in the case of a sentence which he confirms or could have confirmed or which did not require confirmation, the officer commanding the army, army corps, division, brigade or any detached portion of His Majesty's Forces within which the trial was held.

165. Prescribed authorities under section 52 of the Act.—Any penal deduction from the pay and allowances of a person subject to the Act, made under Chapter VII thereof, may be remitted as hereinafter provided :—

(A) Any penal deduction from the pay and allowances of any such person may be remitted by the Central Government.

(B) The commanding officer of any such person, other than an Indian Commissioned officer, who has been absent without leave for a period not exceeding five days may, unless the person is convicted by a court-martial on a charge for such absence, remit the forfeiture of pay and allowances to which that absence renders him liable.

(C) A forfeiture of pay and allowances incurred by any such person owing to his absence as a prisoner of war may (unless it shall have been proved before a court of enquiry that he was taken prisoner through his own wilful neglect of duty, or that he served with or under, or aided, the enemy, or that he did not as soon as possible, return to the service) be remitted by the Commander-in-Chief in India, by the officer commanding an army, army corps, division or independent brigade, or by the officer commanding the forces in the field.

166. Prescribed authorities under section 52A of the Act.—The prescribed authorities for the purposes of section 52A of the Act shall be :

In the case of officers of the Indian Medical Service and the Indian Medical Department.—The Director General, Indian Medical Service.

In the case of civilian personnel of the Posts and Telegraphs Department who are subject to the Act.—The Director General, Posts and Telegraphs.

In all other cases.—The officer not below the rank of Lieutenant-Colonel commanding a Training Battalion, Training Centre, Depot or Record Office who maintains the accounts of the individual, or any higher authority.

166A. Prescribed authorities under section 52B of the Act.—The prescribed authorities for the purposes of section 52B of the Act shall be

In the case of officers of the Indian Medical Service including those seconded to the Indian Army Medical Corps and the Indian Medical Department.—The Director-General, Indian Medical Service.

In the case of officers of the Indian Army Medical Corps excluding officers seconded from the Indian Medical Service.—The Director of Medical Services.

In the case of civilian personnel of the Posts and Telegraphs Department who are subject to the Act.—The Director-General of Posts and Telegraphs.

In the case of all other Indian Commissioned officers.—The Director of Pay and Pensions.

In all other cases.—The officer not below the rank of Lieutenant-Colonel Commanding a Training Battalion, Training Centre, Depot or Record Office who maintains the accounts of the individual or any higher authority.

167. Prescribed authorities under sections 69 and 70 of the Act.—The prescribed military authority for the purpose of sections 69 and 70 of the Act shall be the officer commanding the army, army corps, division, corps, brigade or station in which the accused person is serving :

Provided that, in cases falling under section 41 of the Act, in which death has resulted, the prescribed military authority shall be the officer commanding the army, army corps, division corps or independent brigade in which the accused person is serving and no lower authority.

168. Prescribed officer under section 102 of the Act.—The prescribed officer for the purposes of section 102 of the Act shall, whenever any division or brigade is temporarily withdrawn from its territorial area, be the officer, not being below the rank of field officer, commanding the corresponding divisional or brigade area, within which the trial is held :

Provided that, when the officer who held the trial is himself the commander of such area, he shall forward the proceedings to superior authority.

When the trial is held on board a ship the prescribed officer shall be the officer commanding the troops on board the ship, or the officer who would have had power to deal with the proceedings had the trial been held at the port of disembarkation :

Provided that, when the officer who held the trial is himself the officer commanding the troops on board the ship, he shall forward the proceedings to the authority at the port of disembarkation.

169. Prescribed officers and manner of custody under section 103A of the Act.—(1) The prescribed officer for the purposes of sub-section (*1*) of section 103A of the Act shall be :—

In the case of a trial by summary court-martial.	The authority empowered to deal with the proceeding of such a court under section 102 of the Act.
In the case of a trial by summary general Court Martial	The convening officer or any authority superior to him.

(2) The prescribed officer for the purposes of sub-section (5) of section 103A of the Act shall be the officer commanding the army, army corps, division or brigade within the area of whose command the accused is in custody or is detained, and, in the case of an accused who has been found by a summary general court-martial to be of unsound mind, shall include the officer who has power to convene a summary general court-martial for the trial of that accused; and, in the case of an accused who has been found by a summary court-martial to be of unsound mind and who is in the custody of or is detained under the charge of, the corps, department or detachment to which he belongs, shall include the commanding officer of that corps, department or detachment:

Provided that where an officer who proposes to act as a prescribed officer under sub-section (5) of section 103A of the Act is under the command of the officer who has taken action in the case under sub-section (3) of that section, he shall ordinarily obtain the approval of such officer before he acts; but, if he is of opinion that military exigencies, or the necessities of discipline, render it impossible or inexpedient to obtain such approval, he may act without obtaining such approval but shall report his action and the reasons therefor to such officer.

(3) For the purposes of sub-section (3) of section 103A of the Act the manner in which an accused person shall be kept in custody shall be as follows :—

The accused shall be confined in such manner as may, in the opinion of the proper military authority, be best calculated to keep him securely without unnecessary harshness, as he is not to be considered as a criminal but as a person labouring under a disease.

170. Prescribed officer under section 112 of the Act.—The prescribed officer for the purposes of section 112 of the Act shall be—

(*a*) As regards persons undergoing sentence in a civil prison or any other place.	The officer commanding the army, army corps, command, division, district, independent brigade or independent brigade area within the area of whose command the prisoner subject to such punishment may for the time be.
(*b*) As regards persons convicted on active service.	The officer commanding the force in the field.

171. Prescribed officer under section 91A of the Act.—The prescribed officer for the purposes of sub-section (*1*) of section 91A of the Act shall be the officer commanding the corps, department or detachment to which the person appears to have belonged or alleges that he belongs or had belonged.

172. Prescribed persons under sections 114, 115 and 116B to 116I of the Act.—(A) The prescribed person for the purposes of sections 114 and 116B to 116I of the Act, shall be the Secretary to the Government of India in the Ministry of Defence.

(B) The prescribed person for the purposes of section 115 of the Act shall be the person referred to in sub-rule (A) and, so long as the commanding officer has under the Act the control of the property of the deceased person or lunatic or of the proceeds of the sale or conversion of such property, shall also include such commanding officer.

173. Prescribed officers under sub-section (2) of section 107 of the Act.—The prescribed officer, under sub-section (*2*) of section 107, for the purpose of directing whether the sentence shall be carried out by confinement in a civil prison or by confinement in a military prison, shall be, in the case of a sentence which has been confirmed, any higher authority than the confirming officer, and, in the case of a sentence which does not require confirmation, the convening officer or any higher authority, or any higher authority to the officer holding the trial.

174. Prescribed manner for appointing a Committee of Adjustment under section 116B of the Act.—(1) A Committee of Adjustment shall consist of three officers. When practicable, the president shall be a person not below the rank of Major.

(2) The Committee shall be appointed by following officers :—

(*a*) if the deceased was serving with his unit, by the officer commanding the unit, not being below the rank of Lieutenant-Colonel; if he is below that rank, then by the station commander;

(*b*) if the death occurred at sea, by the officer commanding the troops on board the ship;

(*c*) in all other cases, except as provided in clause (*b*) of sub-rule (5), by the officer in immediate command.

(3) If the death occurs at sea, and a Committee cannot be assembled on board the ship, it will be assembled as soon as possible after the ship reaches its destination. If the port of disembarkation is a military station, the Committee will be assembled by the officer in immediate command; if it is not a military station, by the general officer in whose command the port is situated.

(4) If the officer authorised by sub-rules (2) or (3) to appoint a Committee is, from any reason, unable to do so, he will apply to superior authority.

(5) In cases where the deceased died while temporarily absent from the country in which he was stationed, then—

(*a*) if the death occurred out of India, a local Committee of Adjustment may also be appointed by the officer in command of the unit or station from which the deceased was temporarily absent to deal with his affairs in that country; and

(*b*) if the death occurred in India, one Committee only shall be assembled, which shall be appointed by the officer who would have appointed the Committee had the deceased not been so temporarily absent.

175. Prescribed manner for appointing a Standing Committee of Adjustment under section 116K of the Act.—(1) The appointment of a Standing Committee of Adjustment shall, in the case of Indian Commissioned Officers who die or desert while on active service, be by order of the Commander-in-Chief, India, or of such officer as he may appoint in this behalf.

(2) The Standing Committee shall consist of three officers. Where practicable the president shall be a person not below the rank of a Major.

APPENDICES

FIRST APPENDIX

This Appendix consists of Enrolment Forms and is not reproduced. A list of forms is given below with the number and year of the Gazette of India, Army Department Notification in which each form was prescribed. The forms that appeared in Army Department Notification 911 of 1911 formed the original First Appendix.

Form No.	To whom applicable	Army Department Notification	Remarks
I. (I.A.F.K.-1162)	Combatants	No. 830 of 1926.	As amended by D.D. Notifications Nos. 824 of 1936, 350 of 1938, 2076 of 1941, 693 of 1942, 30 of 1943 and W.D. Notn. No. 41 of 1946.
II. (I.A.F.K.-1165)	All non combatants including followers.	No. 682 of 1932.	As amended by D.D. Notifications Nos. 824 of 1936, 2076 of 1941, 693 of 1942, 1808 of 1942, 30 of 1943, 440 of 1944, 1910 of 1944 and W.D. Notification No. 41 of 1946.

SECOND APPENDIX

FORMS OF CHARGES

PART I.

Commencement of Charge Sheet

The accused [*rank, name, corps*], an Indian commissioned officer, *or*

The accused [*number, rank, name, corps*], *or*

The accused [*name*] being a person subject to Indian Military Law [as an officer, as a warrant officer, as a non-commissioned officer] under the provisions of section 2 (*1*) (*c*) [and section 3 (*1*)] of the Indian Army Act.

is charged with—

PART II.

Statement of offence.

OFFENCES IN RESPECT OF MILITARY SERVICE.

SECTION 25.

(*a*) Shamefully { abandoning a / delivering up a } { garrison / fortress / post / guard } { committed to his charge. / which it was his duty to defend. }

(*b*) In presence of an enemy { shamefully casting away his { arms. / ammunition. } / intentionally using { words / [*other means*] } { to induce a person subject to military law to abstain / to discourage a person subject to military law } } from acting against the enemy. / misbehaving in such manner as to show cowardice. }

(*c*) (1) { Holding corresponding with / Communicating intelligence to } { the enemy. / a person in arms against the State.

(2) Coming to the knowledge of a { correspondence with / communication of intelligence to } { the enemy / a person in arms against the State } } and omitting to discover it immediately to his commanding or other superior officer.

(*d*) Treacherously making known the watchword to a person not entitled to receive it.

(*e*) (1) { Assisting / Relieving } with { money / victuals / ammunition } { an enemy. / a person in arms against the State.

(2) Knowingly { harbouring / protecting } { an enemy. / a person in arms against the State.

(*f*) { In time of war / During a military operation. } intentionally occasioning { a false alarm in / spreading reports calculated to create } { action. / camp. / garrison. / quarters. } { alarm. / despondency.

(*g*) When a sentry { In time of / over a } { war / alarm / State prisoner / treasure / magazine / dockyard } { sleeping upon his post. / quitting his post } { without being regularly relieved, / without leave.

(*h*) In time of action leaving his { commanding officer / post / party } to go in search of plunder.

(*i*) In time of war quitting his { guard / picquet / party / patrol } { without being regularly relieved. / without leave. }

(*j*) { In time of war / During a military operation } { using criminal force to committing an assault on / forcing a safeguard. / breaking into / plundering / injuring / destroying } { a person bringing { provisions (*other necessaries*) } { to the { camp / quarters } of His Majesty's Forces } / a house [*other place*] / a field. / a garden. / [*other property*]. } for plunder.

(*k*) On active service committing an offence against the { property / person } { of an inhabitant of / of a resident in } the country in which he was serving.

SECTION 26.

(*a*) { Striking / Forcing / Attempting to force } a sentry.

(*b*) In time of peace intentionally occasioning a false alarm in { Camp. / garrison. / cantonment. }

(*c*) { When a sentry / When on guard } { plundering / Wilfully destroying / Wilfully injuring } { property placed under { his charge. / charge of his guard. } }

(*d*) When a sentry in time of peace { sleeping upon his pos / quitting his post } { without being regularly relieved. / without leave. }

MUTINY AND INSUBORDINATION.

SECTION 27.

(*a*) { Beginning / Exciting / Causing / Conspiring with / Joining in } { another person / other persons } to cause a mutiny.

(*b*) Being present at a mutiny and not using his utmost endeavours to suppress the same.

(*c*) { Knowing / Having reason to believe in } the existence of { a mutiny / an intention of mutiny / a conspiracy against the State } and failing to give information thereof without delay to his commanding or other superior officer.

(*d*) { Using / Attempting to use / Committing an assault on } criminal force to } his superior officer { knowing / having reason to believe } him to be such.

(*e*) Disobeying the lawful command of his superior officer.

SECTION 28.

(*a*) Being grossly { insubordinate / insolent } to his superior officer in the execution of his office.

(*b*) Refusing to { Superintend / assist in } the making of a { field work / [*other military work*] } ordered to be made { in quarters. / in the field.

(*c*) (1) Impeding { a provost-marshal. / an assistant provost-marshal. / an officer / a non-commissioned officer / a person } legally exercising authority { under / on behalf of } a provost-marshal.

(2) Refusing when called on to assist in the execution of his duty { a provost-marshal. / an assistant provost-marshal. / an officer / a non-commissioned officer / a person } legally exercising authority { under / on behalf of } a provost-marshal.

DESERTION, FRAUDULENT ENROLMENT AND ABSENCE WITHOUT LEAVE.

SECTION 29.

(1) Deserting the service.

(2) Attempting to desert the service.

SECTION 30.

(*a*) (1) Knowingly harbouring a deserter.

(2) { Knowing / Having reason to believe } that { a person has deserted / a deserter has been harboured by another person } and { failing to give information thereof without delay to his own or some other superior officer. / failing to use his utmost endeavour to cause such deserter to be apprehended.

(*b*) { Knowing / Having reason to believe } { a person to be a deserter and } { procuring / attempting to procure } the enrolment of such person

(*c*) Without having first obtained a regular discharge from his { corps / department } { enrolling himself in } { the same / another } { corps. / department.

(*d*) (1) Absenting himself without leave.

(2) Without sufficient cause overstaying leave granted to him.

(*e*) Having received information from proper authority that the { corps / portion of a corps / department } to which he belongs has been ordered on active service and failing without sufficient cause to rejoin from leave without delay.

(*f*) Without sufficient cause failing to appear at the time fixed at the { parade / place } appointed for { exercise. / duty.

(*g*) Quitting { parade / the line of march } { without sufficient cause. / without leave from his superior officer.

(*h*) In time of peace quitting his { guard / piquet / patrol } { without being regularly relieved. / without leave.

(*i*) Being found, without proper authority, two miles or upwards from camp.

Absenting himself without proper authority from his { cantonment / lines / camp after retreat beating. } after tattoo.

DISGRACEFUL CONDUCT

SECTION 31.

(*a*) Dishonestly { misappropriating / converting to his own use } { money, / provisions, / forage, / arms, / clothing, / ammunition, / tools, / instruments, / equipments, / military stores, } the property of the Crown entrusted to him.

(*b*) Dishonestly { receiving / retaining } { money, / provisions, / forage, / arms, / clothing, / ammunition, / tools, / instruments, / equipments, / military stores, } the property of the Crown { knowing / having reason to believe } the same to have been dishonestly { misappropriated / converted to his own use } by a person to whom it was they were entrusted.

(*c*) Wilfully { destroying / injuring } crown property entrusted to him.

(*d*) Committing theft in respect of the property of { the Crown / a military { mess. / band. / institution. / a person { subject to military law. / serving with / attached to } the army.

(*e*) Dishonestly { receiving / retaining } { knowing / having reason to believe } { it to be stolen, / the property of } { The Crown / a military / a person } { mess. / band. / institution. } { subject to military law. / serving with / atttached to } the army

(*f*) Such an offence as is mentioned in clause (*f*) of section thirtyone of the Indian Army Act. } with intent to { defraud. / cause wrongful gain to a person / cause wrongful loss to a person }

(*g*) (1) Malingering.

(2) { Feigning / Producing } { disease / infirmity } in himself.

(3) Intentionally { delaying his cure. / aggravating his { disease. / infirmity. } }

(*h*) Voluntarily causing hurt to { himself / a person } with intent to render { himself / that person } { unfit for service. }

(*i*) (1) Committing an offence of { a cruel / an indecent / an unnatural } kind.

(2) Attempting to commit an offence of { a cruel / an indecent / an unnatural } kind and doing an act towards its commission.

INTOXICATION.

SECTION 32.

Intoxication.

OFFENCES IN RELATION TO PERSONS IN CUSTODY.

SECTION 33.

Releasing without proper authority / Negligently suffering to escape { a State prisoner / an enemy / a person taken in arms against the State } placed under his charge.

SECTION 34.

(*a*) When in command of a { guard, / picquet, / patrol, } refusing to receive a { prisoner / person } duly committed to his charge.

(*b*) { Releasing without proper authority / Negligently suffering to escape } { a prisoner / a person } placed under his charge.

(*c*) When in military custody leaving such custody before being set a liberty by proper authority.

(*a*)(1) Committing extortion

(2) Exacting without proper authority { carriage / porterage / provisions } from a person.

(*b*) In time of peace,
- committing house-breaking for the purpose of plundering.
- plundering / destroying / damaging { a field. / a garden. / [*other property*] }

(*c*) Designedly / Through neglect { Killing / injuring / making away with / ill-treating / losing } { his horse. / an animal used in the public service. }

(*d*) { Making away with / Being concerned in making away with; } his { arms. / ammunition. / equipments. / instruments. / tools. / clothing. / regimental necessaries. }

(*e*) Losing by neglect his { arms. / ammunition. / equipments. / instruments. / tools. / clothing. / regimental necessaries. }

(*f*) Wilfully injuring
- his { arms. / ammunition. / equipments. / instruments. / tools. / clothing. / regimental necessaries. }
- property belonging to { the Crown. / a military { mess. / band. / institution. } / a person { subject to military law. / serving with / attached to } the army. }

(*g*) { Selling / pawning / Destroying / Defacing } { a medal / a decoration } granted to him

OFFENCES IN RELATION TO FALSE DOCUMENTS AND STATEMENTS.

SECTION 36.

(*a*) Making a false accusation against a person subject to military law knowing such accusation to be false.

(*b*) In making a complaint { under section 117 of the Indian Army Act, / under section 117A of the Indian Army Act, } { knowingly making a false statement affecting the character of a person subject to military law. / Knowingly and wilfully suppressing a material fact. }

(*c*) { Obtaining / Attempting / to obtain } { for himself / for a person } { a pension / an allowance / an advantage / a privilege } { by a false statement which he { knew / believed / did not believe } to be false / by { making / using } a false entry in a { book. / record. } / by making a document containing a false statement. / by omitting to make a { true entry. / document containing a true statement. } }

(*d*) { Knowingly furnishing a false / Omitting / Refusing } through { design / culpable / neglect } to { make / send } a { return / report } of { the number / the state / money / arms / ammunition / clothing / equipments / stores / (*other property*) } { of the men under his / in his { charge / belonging to } } { command. / charge. / the men under his { command. / charge. } / the Crown. / a person in / a person attached to { the army. } }

SECTION 37.

Making a wilfully false answer to a question set forth in the prescribed form of enrolment which was put to him by the enrolling officer before whom he appeared for the purpose of being enrolled.

OFFENCES IN RELATION TO COURTS-MARTIAL.

SECTION 38.

(*a*) When duly summoned to attend as a witness before a court-martial. { intentionally omitting to attend. / refusing to { be sworn. / make affirmation. / answer a question. / { produce / deliver / up } { a book / a document / [*other thing*] } { which he had been duly warned and called upon to { produce. / deliver up. } } } }

(*b*) (1) Intentionally { offering an insult / causing { an interruption / a disturbance } } to a court-martial whilst sitting.

(2) { Using a / Being } { menacing / disrespectful / insubordinate / violent } { word / sign / gesture } in the presence of a court-martial whilst sitting.

(*c*) Having been duly { sworn / affirmed } before { a court-martial / a military court competent to administer an oath or affirmation. } { making a false statement which he / knew / believed / did not believe to be true. } } to be false.

MISCELLANEOUS MILITARY OFFENCES.

SECTION 39.

(*a*) Behaving in a manner unbecoming the position and character of { an officer. / a warrant officer.

(*b*) { Striking / Ill-treating } a person subject to the Indian Army Act being his sub-ordinate in { rank. / position.

(*c*) When in command { at a post / on the march } receiving a complaint that a person under his command has { beaten / maltreated / oppressed } a person, / disturbed { a fair / a market, / a riot, / a trespass, } / committed } and failing to have due reparation made to the injured person or to report the case to the proper authority.

(*d*) By defilling a place of worship [*otherwise*] } intentionally { insulting the religion / wounding the religious feelings. } of a person.

(*e*) Attempting to commit suicide and doing an act towards the commission of the same.

(*f*) Being below the rank of warrant officer and carrying when off duty a { sword / bludgeon / [*other offensive weapon*] } without proper authority { in / about / going to / returning from } { camp. / cantonments. / a town. / a bazar / a town. / a bazar.

(*g*) { Accepting / Obtaining / Agreeing to accept / Attempting to obtain } for himself [*for any other person*] { a gratification / as a } { motive / reward } for procuring { the enrolment of a person. / leave of / absence / promotion / an advantage / an indulgence. } for a person in the service.

(*h*) Neglecting to obey { general / garrison / [*other*] } orders.

(*i*) { An act / An omission. } prejudicial to good order and military discipline.

ATTEMPTS NOT BEFORE PROVIDED FOR.

SECTION 39-A.

Attempting { to ..... (*specify offence attempted*) / to cause ..... (*Specify offence*) *to be* committed. } and doing an act towards the commission of the same.

ABETMENT.

SECTION 40.

Abetment within the meaning of the Indian Penal Code of an offence punishable under the Indian Army Act.

CIVIL OFFENCES.

SECTION 41.

(1) Committing a civil offence, that is to say (*State the offence as described in the Indian Penal Code or other law in force in British India*).

(2) When on a active service.

(3) In a place beyond British India in which the Central Government or the Crown Representative does not exercise jurisdiction by virtue of the Government of India Act, 1935 or of any Order in Council under the Foreign Jurisdiction Act, 1890.

(4) In a Frontier Post specified by the Central Government by notification under section 41 of the Indian Army Act.

committing the offence of

- Murder
- culpable homicide

against a person not subject to military law.

- rape.

SECOND APPENDIX

ILLUSTRATION OF CHARGE.

NOTE.—The following is an illustration of a complete charge-sheet, with statement of offence and particulars, as it would be placed before a district court-martial :—

Charge-Sheet.

The accused No. 240, Sepoy Ali Baksh,—the Punjab Regiment is charged with—

First Charge, Section 27 (c)

Disobeying the lawful command of his superior officer,

in that he,

at Allahabad, on the 28th January 1931, disobeyed the lawful command of his superior officer, Jemadar Futteh Khan of the same regiment, to turn out for Commanding Officer's parade, by not turning out.

Being grossly insubordinate to his superior officer in the execution of his office, Second Charge, Section 28 (a)

in that he,

at Allahabad, on the 28th January 1931, when confined by Jemadar Futteh Khan of the same regiment, on the first charge, said to him "I am a better man than you and will not go to the guard-room by your order", or words to that effect.

A. B.,

Commanding—the Punjab Regiment.

Allahabad,

31st January 1931.

*To be tried by a district court-martial.

X. Y.,

Commanding Allahabad Brigade
(or Staff Officer, who should sign
for Officer Commanding
Allahabad Brigade).

Allahabad,

1st February 1931.

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*When the sanction is accorded for the trial of grave offences by summary court-martial (I. A. A., section 74, proviso) a similar entry should be made on the charge-sheet.

NOTE AS TO USE OF FORMS OF CHARGES.

This note does not form part of the Appendices to the Indian Army Act Rules.

(1) Every charge-sheet will begin as shown in the form in Part I of the Second Appendix (forms of charges), which are given as examples.

The description of an Indian commissioned officer, Viceroy's commissioned officer, warrant officer or person enrolled under the Act by his rank and corps is a sufficient averment that he is an officer, warrant officer or such a person and that he is amenable to military law. In other cases, words must be added to show that the person is amenable to military law. (See Rule 19.)

(2) The commencement of the charge-sheet (according to the form in Part I) will be followed by the charge or charges.

(3) Each charge will consist of two parts : a statement of the offence and a statement of the particulars. [Rule 20(B).]

(4) The statement of the offence will be in one of the forms in Part II.

(5) Where two or more words or expressions occur in Part II of the Second Appendix bracketed together one under the other, the particular word, or expression, should be used which most accurately describes the offence which appears to the officer framing the charge to be capable of proof by legal evidence.

(6) Where the officer framing the charge is doubtful whether the offence so capable of being proved by legal evidence is more accurately described by one word, or expression, or by another, he may frame two or more alternative charges, each charge containing one of the words or expressions which appear to the officer to be applicable to the facts as capable of proof.

(7) Where two or more of the words or expressions bracketed together appear, when coupled together, with the word "and", accurately to describe the offence, the charge may couple together such words or expressions ; but in no case must the charge couple with the word "or" two or more of the words or expressions bracketed together. [See Rule 20 (A).]

(8) For example, a person may be charged with dishonestly misappropriating money, provisions, *and* forage, the property of Government entrusted to his charge : but a charge for dishonestly misappropriating money, provisions or forage will be a bad charge.

(9) In a few cases shown in italics bracketed thus [ ] words may be inserted in the charge which are not in the Act. In these cases, the Act contains a general expression such as "other place", "other property", "or otherwise", and the officer framing the charge must omit these words and insert a description of the place, property or means.

(10) The statement of the offence in each charge will be followed by the appropriate statement of the particulars, commencing with the words "in that he", etc., or "in having", etc., and stating in brief ordinary language what the accused is alleged to have done.

(11) The words "in that he" will be followed by the verb in the past tense; the words "in having" will be followed by the past participle. The sentence stating the particulars will be framed more easily sometimes in the one form, sometimes in the other.

(12) In the case of several charges, the particulars in one charge may refer to the particulars in another [Rule 20 (E)], as, for example "in having done the acts alleged in the particulars to the first charge." or "in that, at the place and time aforesaid, he was deficient of the necessaries abovementioned in the second charge, which it was his duty to have." If the accused is acquitted on any charge in which full particulars were set out, and is convicted on a charge which referred to those particulars, the particulars referred to must be treated as having been set out in full in the charge on which the accused is convicted, and must be set out in full in any record of conviction in which the particulars are set out.

(13) The statement of particulars should specify all the ingredients necessary to constitute the offence : for example if the charge is one for disobeying a lawful command, the "particulars" must state the command, and show that it was given by a superior officer, and also how the accused disobeyed the command.

(14) The "particulars" should always give a general description of the place where the offence was committed, such as the station or town, or "the line of march", and if it is material to the charge and is known, the exact place. The prepositions "near" or "between" may be used (for instance "at or near," "between") to assist in describing a place not exactly known, but they must never be used where the exact place is of the essence of the offence.

(15) The "particulars" should always state the date on which the offence was committed. If the exact date or time is unknown, the offence may be stated as having been committed "on or about" a particular day or time. This must never be done where the time is of the essence of the offence, as, for example, in the case of absence without leave, or being asleep on a post.

(16) In some cases the offence may be stated with the most accuracy as having been committed between two days or between two times ; as for instance, in the case of absence without leave, or of quitting a post. In other cases "between" may be used in consequence of the exact day or exact time not being known.

(17) The words "or near" and "or about" and "between" should never be used unless it is impossible to express the exact place or time, or the exact place or time is clearly unimportant, or unless the word "between" is the most accurate expression of the place or time.

(18) In many cases, as, for instance, where the defence is an *alibi*, the time and place may be of the utmost importance in proving that *alibi*, although it is not the essence of the offence.

(19) There must be added at the end of the "particulars" a statement of any expenses, loss or damage in respect of which the court-martial will be asked to award compensation under section 43 (*h*) of the Act. For example, there may be added to the "particulars" in the case of a charge under section 35 (*h*) that the accused thereby damaged property to the value of ; and other statements may be made according to the facts.

(20) If, however, the expenses, loss or damage were caused by an act, or omission which constitutes another offence, separately specified in the Act, that act or omission should be charged as a separate offence; for example, if a man deserts and is deficient in his regimental necessaries, he should be charged in a separate charge for loss by neglect of his necessaries. It would not be proper to state it as a consequence of the desertion, or to award compensation for it upon a conviction for desertion only.

SPECIMEN CHARGES.

The following specimen charges (which are not, however, prescribed in any Rules) may be found useful.

No. 1.

CHARGE-SHEET.

[*Section* 25 (*b*).]

The accused, No. , Sepoy , Regiment, is charged with—

In presence of an enemy shamefully casting away his arms,

in that he, at , on when on outlying picquet and attacked by the enemy, shamefully cast away his rifle, left his picquet, and ran away.

No. 2.

CHARGE-SHEET.

[*Section* 25 (*b*).]

The accused, No. , Sepoy , Regiment, is charged with—

In presence of an enemy misbehaving in such manner as to show cowardice,

in that he, at , on , when one of the Barrack Guard of his Regiment, misbehaved in the presence of Sepoy , the Barrack Guard sentry who had mortally wounded one sepoy of the guard and seriously wounded another and was firing his rifle in all directions, by abandoning his guard and shamefully running away and hiding himself.

No. 3.

CHARGE-SHEET.

[*Section* 25 (*f*).]

The accused, No. , Sepoy , Regiment, is charged with—

In time of war intentionally occasioning a false alarm in camp,

in that he, at Camp , Field Force, on , by discharging his rifle, intentionally caused a false alarm in the said camp.

No. 4.

CHARGE-SHEET.

[*Section* 25 (*g*).]

The accused, No. , Sepoy , Regiment, is charged with—

When a sentry in time of alarm quitting his post without being regularly relieved,

in that he, at , on after having been posted as sentry on No. Post Guard at 6 p. m., when Sepoy , the Barrack Guard sentry ran amok at 7 p.m. the same evening and was firing his rifle in all directions, quitted his post without being regularly relieved

No. 5.

CHARGE-SHEET.

[*Section* 25(*g*).]

The accused, No. , Sepoy , Regiment, is charged with—

When a sentry over a magazine sleeping upon his post,

in that he, at , on , between 1 and 2 p.m., when sentry on No. Post of the Magazine Guard, was asleep.

No. 6.

CHARGE-SHEET.

[*Section* 25 (*i*).]

The accused, No. , Sepoy , Regiment, is charged with—

In time of war quitting his picquet without leave,

in that he, at . Field Force, on . between 5 and 6 p.m., when on outlying picquet No. . quitted the said picquet without leave.

No. 7.

CHARGE-SHEET.

[*Section 25* (*j*).]

The accused, , a of the Indian Telegraph Department, being a person subject to Indian Military Law as a non-commissioned officer under the provisions of section 2 (1) (c) and section 3 (1) of the Indian Army Act is charged with—

In time of war using criminal force to a person bringing provisions to the camp of His Majesty's Forces.

in that he, at , on , struck with his fist on the face A B who was bringing provisions to the camp of the Field Force.

No. 8.

CHARGE-SHEET.

[*Section* 25 (*k*).]

The accused, No. , Sepoy , Regiment, is charged with—

On active service committing an offence against the person of an inhabitant of the country in which he was serving,

in that he, at , on , when on active service committed rape on of .

No. 9.

CHARGE-SHEET.

[*Section* 25 (*j*).]

The accused, No. , Sepoy , Regiment, is charged with—

In time of war forcing a safeguard,

in that he, at , on , in time of war, forced his way past Havildar into a shop in village in which by orders of the General Officer Commanding, the said Havildar..... had been placed as a safeguard, for the protection of the occupants and the property therein.

No. 10.

CHARGE-SHEET.

[*Section* 25 (*j*).]

The accused, No. , Sepoy , Regiment, is charged with—

During a military operation breaking into a house for plunder,

in that he, at , on , when forming part of a force engaged in military operations against dacoits, broke into the house of in search of plunder.

No. 11.

CHARGE-SHEET.

[*Section* 26 (*a*).]

The accused, No. , Sepoy , Regiment is charged with—

Forcing a sentry,

in that he, at , on , after being warned by the sentry on No. Post Guard not to pass, passed the said sentry.

No. 12.

CHARGE-SHEET.

[*Section* 26 (*c*).]

The accused, No. , Sepoy , Regiment, is charged with—

When on guard, plundering property placed under charge of his guard,

in that he, at , on , when on guard over the canteen of the Regiment, plundered drams of rum value or thereabout, from a cask of rum which had been placed under the charge of his guard.

No. 13.

CHARGE-SHEET.

[*Section* 26 (*d*).]

The accused, No. , Sepoy , Regiment, is charged with—

When a sentry in time of peace, sleeping upon his post,

in that he, at , on , between 1 and 2 a.m. when sentry on No. Post Guard, was asleep.

No. 14.

(Joint trial.)

CHARGE-SHEET.

[*Section* 27 (*a*).]

The accused persons, No. , Havildar Regiment and No. , Sepoy , Regiment (etc.), are charged with—

Joining in a mutiny,

in that they together, at , on , in Company with a number of other sepoys of the Company, Regiment, in a mutinous spirit marched to the orderly room of the said regiment with the object of making a combined representation on a matter of supposed grievance to their commanding officer, and then and there, they, with the exception of Havildar , on seeing the said Havildar marched out of the orderly room in custody, insubordinately took off their belts and threw them on the ground.

No. 15.

(Joint trial.)

CHARGE-SHEET.

[*Section* 27 (*a*).]

The accused persons, No. , Naik , No. Sepoy (Lance-Naik) , and No. , Sepoy , all of the Regiment, are charged with—

Conspiring with other persons to cause a mutiny,

in that they, at , on , agreed together and with Sepoy Regiment (and certain other persons unknown) to cause a mutiny in Company Regiment, to wit, to cause the said Company to refuse to march on the to to which place the said Company was under orders to march.

No. 16.

CHARGE-SHEET.

[*Section* 27 (*c*).]

The accused, No. , Sepoy , Regiment, is charged with—

Knowing the existence of an intention to mutiny and failing to give information thereof without delay to his commanding or other superior officer.

in that he, at , on , having been present when Naik , Driver . and other soldiers of the Battery in his hearing, agreed to cut up and destroy the harness belonging to the said battery, failed to give information thereof to his commanding or other superior officer.

No. 17.

CHARGE-SHEET.

[*Section* 27 (*d*).]

The accused, No. , Sepoy , Regiment, is charged with—

Using criminal force to his superior officer knowing him to be such,

in that he, at , on , struck with his fist on the head Havildar of the same regiment.

No. 18.

CHARGE-SHEET.

[*Section* 27 (*d*).]

The accused, No. , Sepoy , Regiment, is charged with—

Attempting to use criminal force to his superior officer knowing him to be such,

in that he, at , on , threw a stone at Havildar of the same regiment which missed the said Havildar.

No. 19.

CHARGE-SHEET.

[*Section* 27 (*d*).]

The accused, No. , Sepoy , Regiment, is charged with—

Committing an assault on his superior officer having reason to believe him to be such.

in that he, at , on , when ordered by Havildar , Regiment, to leave the lines of the said Regiment, picked up a stone and threatened to throw it at the said Havildar whom he had reason to believe was his superior officer.

No. 20.

CHARGE-SHEET.

[*Section* 27 (*e*).]

The accused, No. , Sepoy , Regiment, is charged with—

Disobeying the lawful command of his superior officer,

in that he, at , on , when ordered by Naik of the same regiment to fall in for fatigue, did not do so.

No. 21.

CHARGE-SHEET.

[*Section* 28 (*a*).]

The accused, No. , Sepoy , Regiment, is charged with—

Being grossly insubordinate to his superior officer in the execution of his office,

in that he, at , on , said to Havildar of the same regiment, who had ordered him to be confined, "I am as good a man as you and will fight you any day you like," or words to that effect.

No. 22.

CHARGE-SHEET.

[*Section* 27 (d).]

The accused, No. , Sepoy , Regiment, is charged with—

Refusing when called on, to assist in the execution of his duty a Provost Marshal,

in that he, at , on when called on by Captain Provost-Marshal of the Field Force, to assist him in arresting an offender, refused to do so.

No. 23.

CHARGE-SHEET.

[*First charge, Section* 29.]

The accused, No. , Sepoy , Regiment, is charged with—

Deserting the service,

in that he, at , on , absented himself from the Regiment, until apprehended by the Frontier Constabulary, at , on .

[*Second charge, Section* 31(*d*).]

Committing theft in respect of the property of the Crown,

in that he, when absenting himself from his regiment at the place and date aforesaid, committed theft by dishonestly taking with him one rifle value and twenty rounds of ball ammunition value , the property of the Crown.

NOTE 1.—As a rule, proof of the date and circumstances in which the period of absence terminated is necessary to enable the court to decide whether the absence constituted desertion or merely absence without leave. Occasionally, however, these facts are not material, and proof of them cannot be obtained without inconvenience to the public service and great delay. In such cases they need not be proved, and should, therefore, not be averted in the particulars of the charge. See Charge Sheet No. 25 below.

NOTE 2.—It is immaterial whether the rifle is the soldier's own or a comrade's. See Indian Penal Code section 27, and illustration (*d*) to section 378.

No. 24.

CHARGE-SHEET.

[*First charge, Section* 29.]

The accused, No. . Sepoy , Regiment, is charged with—

Deserting the service,

in that he, at , on , absented himself from the Regiment, until apprehended by the civil power at , on .

[*Second charge, Section* 35(*e*).]

Losing by neglect his clothing and regimental necessaries,

in that he, at . on , was deficient of one greatcoat (value), one flannel shirt, and one towel

NOTE.—See note 1 to charge-sheet No. 23.

No. 25.

CHARGE-SHEET.

[*Section* 29.]

The accused, No. , Sepoy , Regiment, is charged with

Deserting the service,

in that he, at , on , deserted from the Regiment.

NOTE.—This form may be used when the date and circumstances of the termination of the absence are not material facts, and proof of them cannot be obtained without an unreasonable amount of delay or expense. See Note 1 to Charge Sheet No. 23.

No. 26.

CHARGE-SHEET.

[*Section* 29.]

The accused, No. , Sepoy , Regiment, is charged with—

Deserting the service,

in that he, at , on , when under orders for embarkation for foreign service absented himself from to with intent to avoid such embarkation.

No. 27.

CHARGE-SHEET.

[*Section* 29.]

The accused, No. , Sepoy , Regiment, is charged with—

Deserting the service,

in that he, at , on , having been placed under orders for active service and having been granted leave of absence from to to proceed to , did not rejoin at on the expiry of the said leave but absented himself with intent to avoid such active service.

NOTE.—It will often be advisable to frame an alternative charge for "without sufficient cause overstaying leave granted to him" see charge-sheet No. 33. With respect to a case in which the accused has been apprehended by the civil police. See note 1 to charge-sheet No. 23.

No. 28.

CHARGE-SHEET.

[*Section* 29.]

The accused, No. , Sepoy , Regiment, is charged with—

Attempting to desert the service,

in that he, at , on , attempting to desert the service by attempting to quite the lines of the Regiment disguised as a woman, with the intention of deserting from the said regiment.

No. 29.

CHARGE-SHEET.

[*Section* 30 (*a*).]

The accused, No. , Sepoy , Regiment, is charged with—

Knowingly harbouring a deserter,

in that he, at , on , , concealed in his house Sepoy , Regiment, whom he knew to be a deserter from the said regiment.

No. 30.

CHARGE-SHEET.

[*Section* 30 (*b*).]

The accused, No. , Sepoy , Regiment, is charged with —

Knowing a person to be a deserter and attempting to procure the enrolment of such person,

in that he, at , on , when employed on recruiting duty, brought before Major A. B., an Enrolling Officer, one C. D. whom he knew to be a deserter from the Regiment and attempted to procure the enrolment of the said C. D. into the Regiment.

No. 31.

CHARGE-SHEET.

[*Section 30* (*c*).]

The accused, No. , Sepoy , Regiment, is charged with—

Without having first obtained a regular discharge from his corps enrolling himself in another corps.

in that he, at . on , without having first obtained a regular discharge from the Regiment, enrolled himself in the Regiment.

No. 32

CHARGE-SHEET.

[*Section 30* (*d*).]

The accused, No. , Sepoy , Regiment, is charged with—

Absenting himself without leave,

in that he, at , absented himself without leave from tattoo roll call on till 7-30 A.M. on

No. 33.

CHARGE-SHEET.

[*Section 30* (*d*).]

The accused, No. . Sepoy , Regiment, is charged with—

Without sufficient cause overstaying leave granted to him,

in that he, having granted leave to absence from to to proceed to , failed, without sufficient cause, to rejoin at on the expiry of the said leave.

No. 34.
CHARGE-SHEET.
[*Section 30 (e).*]

The accused, No. , Naik , Royal Indian Army Service Corps, is charged with—

Having received information from proper authority that the corps to which he belongs has been ordered on active service and failing without sufficient cause to rejoin from leave without delay,

in that he, on , while on leave of absence at , having received information from that the Regiment had been ordered on active service, failed, without sufficient cause, to rejoin the said regiment without delay.

No. 35.
CHARGE-SHEET.
[*Section 30 (f).*]

The accused, No. , Sepoy , Regiment, is charged with—

Without sufficient cause failing to appear, at the time fixed, at the place appointed for duty,

in that he, at on , failed without sufficient cause to appear at A.M. at , the place appointed for Commanding Officer's parade.

No. 36.
CHARGE-SHEET.
[*Section 30 (g).*]

The accused, No. , Sepoy , Regiment, is charged with—

Quitting the line of march without leave from his superior officer

in that he, at , on , when on the line of march from to , fell out without leave from the officer commanding his company.

No. 37.
CHARGE-SHEET.
[*Section 30 (h).*]

The accused, No. , Sepoy , Regiment, is charged with—

In time of peace, quitting his guard without leave,

in that he, at , on , when on regimental quarter-guard duty quitted the said guard without leave.

No. 38.
CHARGE-SHEET.
[*Section 30 (i).*]

The accused, No. , Sepoy , Regiment, is charged with—

Being found without proper authority two miles or upwards from camp,

in that he, when his Regiment was encamped at , on was found at , a place two miles or upwards from camp, without proper authority for being at the said place.

No. 39.

CHARGE-SHEET.

[*Section 30 (j).*]

The accused, No. , Sepoy , Regiment, is charged with—

Absenting himself without proper authority from his lines after tattoo,

in that he, at , on , absented himself without proper authority from his lines from P.M. to P.M.

No. 40.

CHARGE-SHEET

[*Section 31 (a).*]

The accused, No. , Naik , Royal Indian Army Service Corps, is charged with—

Dishonestly misappropriating money, the property of the Crown, entrusted to him,

in that he, when on the march from to , between the and , dishonestly misappropriated Rupees out of a sum of Rupess , the property of the Crown, entrusted to him for the daily purchase of bhoosa for feeding camels in his charge.

No. 41.

CHARGE-SHEET

[*Section 31 (a).*]

The accused, , Subedar (Sub-Assistant Surgeon) , Indian Medical Department, is charged with—

Dishonestly misappropriating military stores, the property of the Crown entrusted to him,

in that he, at , between and , dishonestly misappropriated the undermentioned military stores, the property of the Crown, of which he was in charge as Sub-Assistant Surgeon in Sub-Medical charge of No. Field Ambulance, *viz.*:—

value

value

value

No. 42.

CHARGE-SHEET.

[*First charge, Section 31 (a).*]

The accused, No. , Havildar , Regiment, is charged with—

Dishonestly misappropriating ammunition, the property of the Crown, entrusted to him,

in that he, at , on , dishonestly misappropriated twenty rounds of ball ammunition, the property of the Crown, value , which had been entrusted to his charge for the target practice of the casuals of Company, Regiment.

[*Second charge, Section 39 (i). (Alternative).*]

An act prejudicial to good order and military discipline,

in that he, at , on through neglect lost twenty rounds of ball ammunition, the property of the Crown, value , which had been entrusted to him for the target practice of the casuals of Company, Regiment.

No. 43.

CHARGE-SHEET.

[*Section 31 (b).*]

The accused, Jemadar , Regiment, is charged with—

the same to have been dishonestly misappropriated by a person to whom they were entrusted,

in that he, at , on , dishonestly received from Company Quartermaster-Havildar six pieces of flannelette, value , the property of the Crown, which he knew to have been dishonestly misappropriated by the said Company Quartermaster-Havildar to whom they, were entrusted.

No. 44.

CHARGE-SHEET.

[*Section 31 (c).*]

The accused, No. , Sepoy , Regiment, is charged with—

Wilfully destroying the Crown property entrusted to him,

in that he, at , on , wilfully destroyed by breaking it up one heliograph, value , the property of the Crown, which had been entrusted to him for his use as a regimental signaller.

No. 45.

CHARGE-SHEET.

[*First charge, Section 31 (d).*]

The accused, No. , Sepoy , Regiment, is charged with—

Committing theft in respect of the property of a person subject to military law,

in that he, at , on , committed theft in respect of a watch, the property of No. (name), , a sepoy in the same regiment.

[*Second charge, section* 31 (*e*). (*Alternative*).]

Dishonestly receiving, knowing it to be stolen, the property of a person subject to military law,

in that he, at the place and on the day aforesaid, was in possession of a watch stolen from the said which he knew to have been stolen.

No. 46.

CHARGE-SHEET.

[*Section 31 (d).*]

The accused, No. , Sepoy , Regiment, is charged with—

Committing theft in respect of the property of the Crown.

in that he, at , on , committed theft in respect of one M. L. E. Rifle, value , the property of the Crown.

No. 47.

CHARGE-SHEET.

[*First charge, Section 31 (e).*]

The accused, No. , Sepoy , Regiment, is charged with—

Dishonestly retaining, knowing it to be stolen the property of the Crown.

in that he, at , on , was in unlawful possession of twenty fired rifle cartridge-cases, the property of the Crown, which he knew to have been stolen.

[*Second charge, Section 39(i). (Alternative).*]

An act prejudicial to good order and military discipline,

in that he, at , on , was in unauthorised possession of twenty fired rifle cartridge-cases, the property of the Crown.

No. 48.

CHARGE-SHEET.

[*Section 31 (f).*]

The accused, No. , Havildar , Regiment, is charged with—

Such an offence as is mentioned in clause (f) of section thirty-one of the Indian Army Act, with intent to defraud,

in that he, at , on , having received from Lieutenant A, Regiment, a cheque for Rupees payable to the Mess President, Regiment, irregularly cashed the same at the Regimental Treasure Chest, Regiment, and fraudulently misappropriated the proceeds, namely, Rupees

No. 49.

CHARGE-SHEET.

[*Section 31 (f).*]

The accused, No. , Sepoy (Clerk) , Regiment, is charged with—

Such an offence as is mentioned in clause (f) of section thirty-one of the Indian Army Act, with intent to defraud.

in that he, at , on , with intent to defraud, forged the name of Captain , to a post office order for Rupees thirty, and thereby obtained the sum of Rupees thirty.

No. 50.

CHARGE-SHEET.

[*Section 31 (f).*]

The accused, No. , Sepoy , Regiment, is charged with—

Such an offence as is mentioned in clause (f) of section thirty-one of the Indian Army Act, with intent to defraud,

in that he, at , on , with intent to defraud, obtained from , a shopkeeper, three tins of Gold Flake cigarettes, value , by falsely pretending that he, the accused, was an orderly to Captain , Regiment, and that he, the accused, had been sent by the said Captain for the said cigarettes.

No. 51.

CHARGE-SHEET.

[*Section 31 (f).*]

The accused, No. , Sepoy (Lance-Naik) , Regiment, is charged with—

Such an offence as is mentioned in clause (f) of section thirty-one of the Indian Army Act, with intent to cause wrongful loss to a person.

in that he, at , on , having received from No. , Sepoy , of the same Regiment, the sum of Rupees ten (Rs. 10) for the purpose of despatching a money order, did not despatch the money order, but with intent to cause wrongful loss to the said Sepoy , converted the Rupees ten to his own use.

No. 52.

CHARGE-SHEET.

[*Section 31 (f).*]

The accused, No. Havildar . Regiment, is charged with—

Such an offence as is mentioned in clause (f) of section thirty-one of the Indian Army Act, with intent to cause wrongful loss to a person.

in that he, at , on , with intent to cause wrongful loss to Sepoy , debited the said Sepoy in the acquittance roll for of Company, Regiment, with a deduction of Rupees , on account of clothing, which deduction he did not credit to the said sepoy's clothing account.

No. 53.

CHARGE-SHEET.

[*Section 31 (g).*]

charged with—

The accused, No. , Sepoy , Regiment, is

Malingering,

in that he, at , on (between and) with the intention of evading his duties as a soldier counterfeited dumbness.

No. 54.

CHARGE-SHEET.

[*Section 31 (g).*]

The accused, No. , Sepoy , Regiment, is charged with—

Feigning disease in himself,

in that he, at , on , pretended to Captain Indian Medical Service, that he was suffering violent pains in the head and down his back, whereas he was not so suffering.

No. 55.

CHARGE-SHEET

[*Section 31 (g).*]

The accused, No. , Sepoy , Regiment, is charged with—

Intentionally delaying his cure,

in that he, at , on , when under medical treatment for a wound in his leg, removed the bandages from the said wound with intent thereby to delay his cure and did thereby delay his cure.

No. 56.

CHARGE-SHEET.

[*Section 31 (h).*]

The accused, No. , Sepoy , Regiment, is charged with—

Voluntarily causing hurt to a person with intent to render that person unfit for service,

in that he, at , on , at the request of Sepoy , cut off the trigger finger of the said sepoy with intent to render him unfit for service.

No. 57.

CHARGE-SHEET.

[*First charge, Section 31 (i).*]

The accused, No. , Sepoy , Regiment, is charged with—

Committing an offence of an unnatural kind,

in that he, at , on , committed an unnatural offence on the person of , a sepoy in the same regiment.

[*Second charge, Section 31 (i). (Alternative).*]

Attempting to commit an offence of an unnatural kind and doing an act towards its commission.

in that he, at , on , attempted to commit an unnatural offence on the person of , a sepoy in the same regiment, and did an act towards its commission, that is to say (*describe the act*).

No. 58.

CHARGE-SHEET

[*Section 32.*]

The accused, No. , Sepoy , Regiment is charged with—

Intoxication,

in that he, at , on , when on duty (*specify duty*) or having been previously warned for duty (*specify duty*), was intoxicated.

No. 59.

CHARGE-SHEET.

[*Section 33.*]

The accused, No. , Sepoy . Regiment, is charged with—

Negligently suffering to escape a person taken in arms against the State, placed under his charge,

in that he, at , on , when posted as sentry over A B , a person taken in arms against the State, negligently suffered the said A B to escape.

No. 60.

CHARGE-SHEET.

[*Section 34 (a).*]

The accused, No. , Havildar . Regiment, is charged with—

When in command of a guard refusing to receive a person duly committed to his charge,

in that he, at , on , when in command of the quarter guard of the Regiment, refused to receive Sepoy , who had been ordered into confinement by Jemadar and duly committed to his charge.

No. 61.

CHARGE-SHEET.

[*Section 34 (b).*]

The accused, No. , Havildar , Regiment, is charged with—

Releasing without proper authority a person placed under his charge,

in that he, at , on , when in command of the quarter guard of the Regiment, without authority released Sepoy , who was confined in the said quarter guard.

No. 62.

CHARGE-SHEET.

[*Section 34 (c).*]

The accused, Subedar . Regiment, is charged with—

When in military custody leaving such custody before being set at liberty by proper authority,

in that he, at , on , when under close arrest in his quarters, went to the Bazaar.

No. 63.

CHARGE-SHEET.

[*Section 35 (a).*]

The accused, No. , Naik , Regiment, is charged with—

Committing extortion,

in that he, at , on , by threatening to make a false report to the officer commanding their company to the effect that Sepoys and had committed an unnatural offence together, extorted Rupees from each of the said sepoys.

No. 64.

CHARGE-SHEET

[*Section 35 (b).*]

The accused, No. , Sepoy , Regiment, is charged with—

In time of peace committing house breaking for the purpose of plundering

in that he, at , on , broke into the house of for the purpose of plundering.

No. 65.

CHARGE-SHEET.

[*Section 35 (c).*]

The accused, No. , Driver , No. A. T. C. (Mule), Royal Indian Army Service Corps, is charged with—

Designedly ill-treating an animal used in the public service,

in that he, at , between the and , designedly ill-treated mule No. by placing a stone under its saddle, thereby causing a sore back.

No. 66.

CHARGE-SHEET.

[*Section 35 (d)*]

The accused, No. , Sepoy , Regiment, is charged with—

Making away with his clothing,

in that he, at , on , sold his greatcoat (value). to for three rupees.

No. 67.

CHARGE-SHEET.

[*Section 35 (e).*]

The accused, No. , Sepoy , Regiment, is charged with—

Losing by neglect his clothing and regimental necessaries,

in that he, at , on , was deficient of one drill frock, one durrie, and one brass brush.

No. 68.

CHARGE-SHEET.

[*Section 36 (a).*]

The accused, No. , Sepoy . Regiment, is charged with—

Making a false accusation against a person subject to military law knowing such accusation to be false,

in that he, at , on , when appearing before Colonel A B , commanding the Regiment, to answer for an offence, used language to the following effect, that is to say, "Major C, the company commander, takes no interest in his work and is entirely in the hands of the platoon commanders who in their turn take bribes all round and allow no one, without a bribe, to approach the Major Sahib" well knowing the said statement to be false.

No. 69.

CHARGE-SHEET.

[*Section 36 (c).*]

The accused, No. , Sepoy . Regiment, is charged with—

Attempting to obtain for a person a pension by a false statement which he knew to be false,

in that he, at , on , when examined by Major A B, Regiment, who was investigating a claim to family pension preferred by C , inhabitant of , stated that he knew the said C to be father of late Sepoy D , Regiment, well knowing such statement to be false.

No. 70.

CHARGE-SHEET

[*Section 36 (d).*]

The accused, No. , Havildar (Quartermaster-Havildar) . Regiment, is charged with—

Knowingly furnishing a false return of clothing in his charge belonging to a person in the army,

in that he, at , on , in a return of clothing in his charge belonging to Lieutenant-Colonel A B commanding the Regiment, furnished by him to Lieutenant C D , Quartermaster of the said Regiment, showed 154 pairs of white drill shorts, value rupees or thereabouts, as in store on (*date*), which statement was, as he well knew false.

NOTE.—Regimental property is technically the property of the Commanding Officer and should be so described.

No. 71.

CHARGE-SHEET.

[*Section 37.*]

The accused, No. , Sepoy , Regiment, is charged with—

Making a wilfully false answer to a question set forth in the prescribed form of enrolment which was put to him by the enrolling officer before whom he appeared for the purpose of being enrolled,

in that he, at , on , when he appeared before Major A B , an Enrolling Officer, for the purpose of being enrolled for service in the Regiment, to the question put to him, "Have you ever served in His Majesty's Forces?" answered "No" whereas he had served, as he well knew, in the Regiment.

No. 72.

CHARGE-SHEET.

[*Section 38 (b).*]

The accused, No. , Sepoy , Regiment, is charged with—

Intentionally offering an insult to a court-martial whilst sitting,

in that he, at , on ,when being tried by general court-martial, said in a loud tone "It is no use my making any defence, the court have been told by the General to convict me and of course they will" or words to that effect.

No. 73.

CHARGE-SHEET.

[*Section 38 (c).*]

The accused, No. , Sepoy , Regiment, is charged with—

Having been duly affirmed before a court-martial, making a false statement which he knew to be false,

in that he, at , on , when examined as a witness before a court-martial, stated on solemn affirmation that Sepoy , Regiment, the person charged before the said court, was in his, the witness's, company in the lines at , , between 4 and 5 P.M. on , which statement was, as he well knew, false.

No. 74.

CHARGE-SHEET.

[*Section 39 (a).*]

The accused, Lieutenant , Regiment, an Indian commissioned officer, is charged with—

Behaving in a manner unbecoming the position and character of an officer,

in that he, at , on , in payment of his mess account, gave to Major , the mess president, a cheque for Rupees one hundred (Rs. 100) on the Imperial Bank of India (Branch), which was dishonoured when presented, well knowing that he had not sufficient funds in the said Branch to meet the said cheque, and having no reasonable grounds for supposing that the said cheque would be honoured when presented.

No. 75

CHARGE-SHEET.

[*Section 39 (a).*]

The accused, Subedar , Regiment, is charged with—

Behaving in a manner unbecoming the position and character of an officer,

in that he, at , on , when orderly officer of the day, when it was reported to him that Sepoy A B had armed himself with a rifle and ammunition, and run amok defying any one to arrest him, did not go to the spot, nor take any prompt or adequate measures to capture, disarm or shoot down, or cause to be captured, disarmed or shot down the said A B either on receiving the report, or even subsequently when he became aware that the aforesaid A B had fired at and wounded Lieutenant C D of the same regiment.

No. 76.

CHARGE-SHEET.

[*Section 39 (b).*]

The accused, No. , Sepoy , Regiment, is charged with—

Striking a person subject to the Indian Army Act being his subordinate in rank,

in that he, at , on , when drilling a squad of recruits, struck Sepoy of the same Regiment on the shoulder with a pacestick.

No. 77.

CHARGE-SHEET

[*Section 39 (e).*]

The accused, Jemadar (Sub-Assistant Surgeon) , Indian Medical Department, is charged with—

Attempting to commit suicide and doing an act towards the commission of the same,

in that he, at , on , attempted to commit suicide by taking strychnine.

No. 78.

CHARGE-SHEET.

[*Section 39 (g).*]

The accused, Warrant Officer, Class I (Sub-Assistant Surgeon) Indian Medical Department, is charged with—

Accepting for himself a gratification as a motive for procuring leave of absence for a person in the service,

in that he, at , on , accepted the sum of Rupees from Sepoy , Regiment, as a motive for procuring leave of absence for the said sepoy on medical grounds.

No. 79.

CHARGE-SHEET.

[*Section 39 (h).*]

The accused, No. , Havildar , Regiment, is charged with—

Neglecting to obey Regimental orders,

in that he, at , on , neglected to obey Regimental Order No. , dated , which requires the non-commissioned officer in charge of ammunition to return all fired cases to the magazine immediately on his return from the Range, by failing to return the fired cases of the casuals of Company until four hours or thereabouts after his return.

No. 80.

CHARGE-SHEET

[*First charge, Section 39 (i).*]

The accused, No. , Jemadar , Regiment, is charged with—

An act prejudicial to good order and military discipline,

in that he, at , on , when Superintendent at the butts during the repetition of Musketry practice No. , by certain casuals of his regiment, wilfully caused it to be signalled to the firing point that four fair hits had been made on No. 3 target, whereas actually only one fair hit and one ricochet had been made on the said target, as he well knew.

[*Second charge, Section 39 (i). (Alternative.)*]

An omission prejudicial to good order and military discipline,

in that he, at , on , when Superintendent at the butts on the occasion mentioned in the first charge, omitted to exercise proper care in checking the targets, and thereby caused it to be signalled to the firing point that four fair hits had been made on No. 3 target, whereas actually only one fair hit and one ricochet had been made on the said target.

No. 81.

CHARGE-SHEET

[*Section 39 (i).*]

The accused, No. , Havildar , Regiment, is charged with—

An act prejudicial to good order and military discipline,

in that he, at , on or about , improperly wrote and sent to his commanding officer, Lieut.-Colonel , Regiment, an anoymous letter in which he made use of the following words :—

(*set out*)

No. 82.

CHARGE-SHEET.

[*Section 39 (i).*]

The accused, No. , Sepoy , Regiment, is charged with—

An act prejudicial to good order and military discipline,

in that he, at , on , was improperly in possession of a pair of boots, the property of No. , Sepoy , Regiment.

No. 83.

CHARGE-SHEET.

[*Section 39 (i).*]

The accused, No. , Sepoy , Regiment, is charged with—

An act prejudicial to good order and military discipline,

in that he, at , on , struck Sepoy of the same regiment, on the shoulder and head with a stick.

No. 84.

CHARGE-SHEET.

[*Section 39 (i).*]

The accused, No. , Driver , No. M. T. Company, Royal Indian Army Service Corps, is charged with—

An act prejudicial to good order and military discipline,

in that he, at , on , so negligently drove motor lorry No. , the property of the Crown, as to cause the said lorry to be damaged to the amount of Rupees .

No. 85.

CHARGE-SHEET.

[*Section 39 (i).*]

The accused, Captain , Regiment, an Indian commissioned officer, is charged with—

An act prejudicial to good order and military discipline,

in that he, at , between and while the officer commanding Company, Regiment, he was concerned in the care of public money, so negligently performed his duties as to be unable to account for Rupees , part of the said money.

No. 86.

CHARGE-SHEET.

[*Section 39 (i).*]

The accused, Captain , Regiment, an Indian commisioned officer, is charged with—

An omission prejudicial to good order and military discipline,

in that he, at , on or about , having as President of the officers' mess, Regiment, received from Captain , the sum of Rupees eighty (Rs. 80) for and on account of the said mess, omitted to pay the said sum to the credit of the said mess, and thereby caused a loss of Rupees eighty to the said mess.

No. 87.

CHARGE-SHEET.

[*Section 39 (i).*]

The accused, Jemadar , Military Farms Department, is charged with—

An omission prejudicial to good order and military discipline,

in that he, at , between , and when in charge of the Military Grass Farm , omitted to exercise a proper supervision over the operations of stacking and the issue of bhoosa at the said Farm, and thereby caused a loss to the Crown of Rupees or thereabouts.

No. 88.

CHARGE-SHEET.

[*Section 39 (i).*]

The accused, No. , Naik , Regiment, is charged with—

An omission prejudical to good order and military discipline,

in that he, at , on after being duly warned by Havildar to parade the defaulters at 3 P.M. on that day, omitted to do so.

NOTE.—This form of charge is applicable when wilful disobedience is not imputed.

No. 89.

CHARGE-SHEET

[*Section 39A, read with Section 34(b).*]

The accused, No. , Havildar , Regiment, is charged with—

Attempting to release without proper authority a prisoner placed under his charge and doing an act towards the commission of the same.

in that he, at , on , when in command of the quarter guard of the Regiment, attempted to release without authority Sepoy who was confined in the said quarter guard and, with the intention of releasing the said Sepoy , unlocked the door of the prisoner's room.

No. 90.

CHARGE-SHEET.

[*Section 39A, read with Section 27 (a).*]

The accused, No. , *Lance-Duffadar* , Regiment, is charged with—

Attempting to excite a mutiny and doing an act towards the commission of the same,

in that he, at , on attempted to excite the non-commissioned officers and men of Troop, Squadron, Regiment, to combine together and refuse to eat their rations next day and to demand from Lieutenant-Colonel commanding the said regiment that Jemadar be removed from his empolyment as Officer in charge of ration issue and to this end in the lines of the said troop addressed Duffadar , Sowar , Sowar and about ten other men belonging to the said troop in language to the effect following that is to say (*set forth the language used in the endeavour to excite mutiny*).

No. 91.

CHARGE-SHEET.

[*Section 40.*]

The accused, No. , Sepoy , Regiment, is charged with—

Abetment within the meaning of the Indian Penal Code of an offence punishable under the Indian Army Act,

in that he, at , on , when sentry over the Fort Magazine Guard between 3 A.M. and 4 A.M., by omitting to keep on the alert, intentionally aided Sepoy of the same regiment to steal one box of ammunition, value , the property of the Crown, and thereby abetted within the meaning of the Indian Penal Code an offence punishable under section 31 (*d*) of the Indian Army Act.

NOTE.—If there is any doubt as to the assistance being *intentional*, an alternative charge under section 39 (*i*) may be added.

No. 92.

CHARGE-SHEET.

[*Section 41.*]

The accused, No. , Havildar , Regiment, is charged with—

Committing a civil offence, that is to say, sedition,

in that he, at , on , by saying in the presence of Naik , Lance Naik and other non-commissioned officers and men of the Regiment present in the regimental Gurdwara "(*set out the words used*)", or words to that effect, attempted to excite disaffection towards the Government established by law in British India.

No. 93.

CHARGE-SHEET.

[*First charge, Section 41.*]

The accused, No. , Sepoy , Regiment, is charged with—

Committing a civil offence, that is to say, rioting,

in that he, at , on , was a member of an unlawful assembly, which, in prosecution of the common object of such assembly to use criminal force to the civil police, beat the civil police with lathis, thereby committing the offence of rioting.

[*Second charge, section 41 (alternative to first charge.)*]

Committing a civil offence, that is to say, being a member of an unlawful assembly,

in that he, at the place and on the day aforesaid, was a member of an unlawful assembly, the common object of which was to use criminal force to the civil police.

No. 94.

CHARGE-SHEET.

[*Section 41.*]

The accuesd, No. , Sepoy , Regiment, is charged with—

Committing a civil offence, that is to say, murder.

in that he, at , on , by causing the death of Major Regiment, committed murder.

No. 95.

CHARGE-SHEET.

[*Section 41.*]

The accused, No. , Sepoy , Regiment, is charged with—

In a Frontier Post specified by the Central Government by notification under section 41 of the Indian Army Act, committing a civil offence, that is to say, culpable homicide not amounting to murder,

in that he, at , on , by causing the death of a man named , committed culpable homicide not amounting to murder.

No. 96.

CHARGE-SHEET.

[*Section 41.*]

The accused, No. , Driver , No. M. T. Company, Royal Indian Army Service Corps, is charged with—

Committing a civil offence, that is to say, causing death by a rash or negligent act not amounting to culpable homicide,

in that he, near , on , by rashly or negligently driving a motor lorry caused the death of one , a syce.

No. 97.

CHARGE-SHEET.

[*Section 41.*]

The accused, No. , Sepoy , Regiment, is charged with—

Committing a civil offence, that is to say, attempt to murder,

in that he, at , on , fired two shots from a rifle at Captain , Regiment, with intent to kill him, and thereby wounded the said Captain in the right breast and left thigh.

No. 98.

CHARGE-SHEET.

[*Section 41.*]

The accused, No. , Sepoy , Regiment, is charged with—

Committing a civil offence, that is to say, voluntarily causing grievous hurt.

in that he, at , on , voluntarily caused grievous hurt to , by fracturing his arm with a heavy stick.

No. 99.

CHARGE-SHEET.

[*First charge, Section 41.*]

The accused, No. , Sepoy , Regiment, is charged with—

Committing a civil offence, that is to say, theft,

in that he, at , on , committed theft in respect of a tin of ghee, value , from the shop of in the Suddar Bazar, the property of the said .

[*Second charge, section 41 (alternative to first charge).*]

Committing a civil offence, that is to say, dishonestly receiving stolen property,

in that he, at , on , dishonestly received a tin of ghee, value , stolen from the said , knowing or having reason to believe the same to have been stolen.

No. 100.

CHARGE-SHEET.

[*Indian Reserve Forces Act, 1888, Section 6(1)(a).*]

The accused, No. , Sepoy (Reservist) , Regiment, is charged with—

When required in pursuance of a rule under the Indian Reserve Forces Act to attend at a place, failing without reasonable excuse to attend in accordance with such requirements.

in that he, having in pursuance of Indian Reserve Forces Rule 5-A been required by his Commanding Officer, the officer commanding Regiment, to attend at , on , for training, failed without reasonable excuse so to attend.

No. 101.

CHARGE-SHEET.

[*Section 30 (f).*]

The accused No. , Sepoy , Regiment, a person enrolled in the Indian Territorial Force and embodied for training, is charged with—

Without sufficient cause failing to appear, at the time fixed, at the place appointed for duty.

in that he, at , on , the place and time appointed for him to attend annual training, without sufficient cause failed to appear.

FORM OF APPLICATION FOR A COURT-MARTIAL.

Regiment.

Station date 19 .

Application for a Court-Martial.

Sir,

I have the honour to submit charge against No. of the under my command, and request you will obtain the sanction of that a court-martial may be assembled for his trial at

The case was investigated by (*a*)

A court of inquiry was held on (*b*) (date) at (Station).

President Ranks, names and corps

Members

The accused is now at . His general character is (*c*) I enclose the following documents (*d*):—

1. Charge-Sheet (in duplicate) (*e*).

2. Summary of Evidence, original (*f*) and copy / copies

3. Original exhibits (*g*).

4. List of witnesses for the prosecution and defence (with their present stations or addresses) (*g*).

5. List of exhibits (*h*).

6. Correspondence (*g*).

7. Statement as to character (I. A. F. D.-905) and the conduct-sheet of accused (*g*).

8. Statement by accused as to whether or not he desires to have an officer assigned by the convening officer to represent him at the trial [Rule 22 (B)]. (*h*).

I have the honour to be,

SIR,

Your obedient servant,

Signature of Commanding Officer.

To

MEDICAL OFFICER'S CERTIFICATE.

I certify that No. , Regiment, $\frac{\text{is fit}}{\text{unfit}}$ to undergo trial by Court-Martial.

Signature of the Medical Officer.

(*a*) Here insert name of—

(i) Officer who investigated the charges.

(ii) Company, etc., Commander who made preliminary enquiry into the case.

(iii) Officer who took down the Summary of Evidence [Rule 29 (B) (iii)].

(*b*) To be filled in if there has been a Court of Inquiry respecting any matters connected with the charges; otherwise to be struck out [Rule 29 (B) (iii)]

(*c*) To be filled in by the Commanding Officer.

(*d*) Any items not applicable to be struck out.

(*e*) One copy to be sent to the President; one copy to be filed with the application for trial.

(*f*) Original summary of evidence to be sent to the President.

(*g*) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.

(*h*) 5 and 8 to be sent to the President.

THIRD APPENDIX

FORMS AS TO COURTS-MARTIAL.

FORMS FOR ASSEMBLY OF COURTS-MARTIAL.

GENERAL AND DISTRICT.

Form of order for the Assembly of a General (or District) Court-Martial under the Indian Army Act.

Orders by

Commanding the

(*Place* *date*).

The detail of officers as mentioned below will assemble at on the day of for the purpose of trying by a court-martial the accused person (persons) named in the margin (and such other person or persons as may be brought before them.)*

The senior officer to sit as President.

MEMBERS.

WAITING MEMBERS.

JUDGE-ADVOCATE.

is appointed Judge-Advocate.

INTERPRETER.

is appointed Interpreter.

PROSECUTOR.

is appointed Interpreter.

NOTE — These members and the waiting members may be mentioned by name, or the number and ranks and the mode of appointment may alone be named.

†The accused will be warned, and all witnesses duly required to attend.

The proceedings (of which only one copy is required) will be forwarded to—

Signed this day of

**Any opinion of the convening officer with respect to the composition of the court (see Rule 30) should be added here, thus:*

"In the opinion, of the convening officer, it is not practicable to appoint officers of different corps or departments" *or,*

"In the opinion of the convening officer, officers of equal or superior rank to the accused are not, having due regard to the public service, available".

†*Add here any order regarding Counsel—see Rule 82.*

SUMMARY GENERAL.

I. A. F. F.-956.

(See combined form for assembly and proceedings below.)

I. A. F. D.-920.

FORM OF DECLARATION FOR SUSPENSION OF RULES UNDER RULE 25.

In my opinion [*military exigencies, namely (*state them*)] render it (†impossible) to observe the provisions of rule‡ on the trial of by court-martial assembled pursuant to the order of the of

Signed at this day of

A. B.

*(The necessities of discipline.)
†(*or* inexpedient.)
‡State the rule or rules which cannot be observed. (See Rule 5.)

(Instruction.—*This declaration must be signed by the officer whose opinion is given, and will be annexed to the proceedings. It should not be included in the Convening Order but should be a separate document.*)

I. A. F. D.-906.

§FORMS OF PROCEEDINGS OF COURTS-MARTIAL

Form of Proceedings of a General (or District) Court-Martial (including some of the incidents which may occur to vary the ordinary course of procedure, with instructions for the guidance of the Court.)

All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

Proceedings of a Court-Martial, held at on the day of 19 by order of Commanding , dated the day of 19 .

PRESIDENT.

Rank	Name.	Regiment.

MEMBERS.

Rank	Name.	Regiment.
		Judge-Advocate.
		Inspector.

Trial of*

*Here insert No., Rank, Name, Regiment and appointment (if any).

The order convening the Court, the charge sheet, and the summary (*or* abstract) of evidence are laid before the court.

[Instruction.—*All documents relating to the Court, or the matters before it, which are intended to form part of the proceedings (such as an order respecting military exigencies, or a letter answering any question referred to the convening officer) at whatever period of the trial they are received should be read in open Court, marked so as to identify them, signed by the president (judge-advocate), and attached to the proceedings.*]

¶Here insert reason.
**Here insert Rank, Name and Regiment.

The Court satisfy themselves that is not available to serve owing to¶ ** waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules 31 and 32.

NOTE.—*Before certifying that the Court have satisfied themselves as provided by Rules 31 and 32, the President will, in every case where a Court of Inquiry has been held respecting a matter upon which a*

charge against the accused is founded, insert an asterisk after the words "Rules 31 and 32", and enter in red ink and sign a footnote at the bottom of the first page of the proceedings, to the following effect :—

I have satisfied myself that none of the officers detailed as members of this Court has previously served upon any Court of Inquiry respecting the matters forming the subject of the charge (charges) before this Court-Martial.

(Signature of President)

The accused is brought before the Court.

Prosecutor.†

Counsel* or defending officer†

at o'clock the trial commences.

*Qualification to be stated.

†Here state Rank, Name and Regiment (if any).

The order convening the Court is read and is marked signed by the president and attached to the proceedings.

The names of the president and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Do you object to be tried by me as president, or by any of the officers whose names you have heard read over ?

Question by the President to the Accused.

Answered by Accused.

(Instruction.—*The questions are to be numbered throughout consecutively in a single series. The letters Q and A in the margin may stand for Question and Answer respectively.*

VARIATIONS.

CHALLENGING OFFICERS (*Rule* 34).

Answer.—I object to

Question to accused.—Do you object to any other person ?

(*This question must be repeated until all the objections are ascertained.*)

Question to accused.—What is your objection to (*the junior officer objected to*) ?

Answer by accused.—(*set out*).

The accused in support of his objection to , requests permission to call etc., etc. is called into Court, and is questioned by the accused (*set out*).

The Court is closed to consider the objection.

Decision.—The Court disallow the objection.

The Court is re-opened, and the above decision is made known to the accused.

or

Decision.—The Court allow the objection.

The Court is re-opened, and the above decision is made known to the accused.

retires

Fresh Member—‡ takes his place as a member of the Court.

‡Insert Rank Name and Regiment.

(*This only applies in the case of there being a waiting member of the Court.*)

He appears to the Court to be eligible and not disqualified to serve on this court-martial.

Question to accused.—Do you object to be tried by (*the fresh member*)?

Answer.—

(*If he objects the objections will be dealt with in the same manner as the former objection.*)

Question to the accused. What is your objection to (*the junior of the officers objected to*)?

(*This objection will be dealt with in the same manner as the former objection.*)

The Court adjourn for the purpose of fresh members being appointed.

or.

The Court is of the opinion that in the interests of justice and for the good of the service, it is inexpedient to adjourn for the purpose of fresh members being appointed, because (*here state the reasons*).

At o'clock on the Court resume their proceedings, an order appointing fresh officers, is read, marked , and attached to the proceedings.

The Court satisfy themselves with respect to such fresh officers as provided by Rule 31.

(Instruction.—*The procedure as to challenging fresh officers, and the procedure, if any objection is allowed, will be the same as above.*)

The president and members of the Court, as constituted after the above proceedings, are as follows :—

PRESIDENT

Rank	Name	Regiment.

MEMBERS

Rank	Name	Regiment.

The president, members, and judge-advocate are duly sworn (or affirmed) (also any officer under instruction).

[Instructions.—(1) *The witnesses if in Court, other than the prosecutor, should be ordered out of the Court at this stage of the proceedings.*

(2) *Also any interpreter and short-hand writer should be now sworn.*

(3) *A member of the Court appointed interpreter must take the interpreter's oath in addition to the oath administered to him as a member of the Court.*]

Question to the accused.—Do you object to as interpreter?

A.—

Do you object to as short-hand writer?

(**Instruction.**—*In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.*)

CHARGE-SHEET.

The charge-sheet is signed by the president (judge-advocate) marked and annexed to proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Question to the accused.—Are you guilty or not guilty of the (*first*) charge against you, which you have heard read?

A.—

[Instruction.—*When there is more than one charge the foregoing question will be asked after each charge* (*whether alternative or not*) *is read, the number of the charge being stated.*]

(Instruction.—*If the accused pleads guilty to any charge, the provisions of Rule 42* (*B*) *must be complied with, and the fact that they have been complied with must be recorded. Where there are alternative charges and the accused pleads guilty to the less serious charge, the Court, if they decide to proceed upon the more serious charge, will enter after the plea as recorded* : "*The Court proceed as though the accused had not pleaded guilty to any charge*".)

VARIATIONS.

OBJECTION TO CHARGE (*Rule* 39).

The accused objects to the charge on the ground that (*set out*).

The Court is closed to consider their decision.

The Court disallow the objection (*or*, the Court allow the objection, and agree to report to the convening authority).

The Court is re-opened, and the above decision is made known to the accused.

The Court proceed with the trial (*or*, adjourn).

AMENDMENT OF CHARGE (*Rule* 40).

The Court, being satisfied that the name (*or* description) of the accused is and not as stated in the charge-sheet, amend the charge-sheet accordingly,

or,

The Court, before any witnesses are examined, consider that, in the interests of justice, the following addition to (*or* omission from *or* alteration in) the charge is required (*set* out), and adjourn to report their opinion to the convening authority.

PLEA TO THE JURISDICTION (*Rule* 41).

The accused pleads to the general jurisdiction of the Court on the ground that (*set out*).

Do you wish to produce any evidence in support of your plea? Question to the Accused

Witness is examined on oath (*or* affirmation). A.

(Instruction.—*The examination, etc., of the witnesses called by the accused and of any witnesses called by the prosecutor in reply,*

will proceed as directed below in the case of witnesses to the facts at the trial. The prosecutor will be entitled to reply after all the evidence is given.)

The Court is closed to consider their decision.

The Court (*a*) overrule the plea and decide to proceed with the trial;

or (*b*) allow the plea and decide to report to the convening authority, and adjourn ;

or (*c*) are in doubt as to the validity of the plea and decide to refer the matter to the convening authority and adjourn (*or* make the following special decision (*set out*) and decide to proceed with the trial).

The Court is re-opened, and the above decision is made known to the accused.

The Court proceed with the trial (*or adjourn*).

PLEA IN BAR OF TRIAL (*Rule* 43).

Accused, besides the plea of guilty (or, *not guilty*), offers a plea in bar of trial.

Question to the Accused — What are the grounds of your plea ?

A. — Do you wish to produce any evidence in support of your plea ?

Q. — Witness is examined on oath (*or affirmation*).

A.

(Instruction.—*The examination, etc., of the witnesses called by the accused, and of any witnesses called by the prosecutor in reply, will proceed as directed below in the case of witnesses to the facts at the trial. The prosecutor will be entitled to reply after all the evidence is given.*)

The Court is closed to consider their decision.

The Court allow the plea and resolve to adjourn (*or* to proceed with the trial on another charge) (*or* the Court overrule the plea).

The Court is re-opened, and the above decision is made known to the accused.

The Court adjourn (*or* proceed with the trial on another charge) (*or* proceed with the trial).

REFUSAL TO PLEAD [*Rule* 42 (A)].

As the accused does not plead intelligibly (*or* refuses to plead) to the above charge, the Court enter a plea of "not guilty".

The accused having pleaded guilty to the charge the provisions of Rule 42 (B) are here complied with.

PROCEEDINGS ON PLEA OF GUILTY.

*[The Court having been re-opened, the accused is again brought before it, and the charge (charges) to which he has pleaded guilty is (are) read to him again.]

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*To be struck out in case no plea of "not guilty" has been proceeded with.

The accused (number , *rank* *name*... ... ... , *regiment* is found guilty of the charge (*all the charges*)

or,

is found guilty of the charge, and is found not guilty of the charge.

(Instruction.– *If the trial proceeds upon any charge to which there is a plea of not guilty, the Court will not proceed upon the record of the plea of guilty until after the finding on that other charge; and in that case the Court will be re-opened and the charge on which the record is guilty must be read to the accused again.*)

The accused may, in accordance with rule 44 (B), make any statement he wishes in reference to the charge.

The summary (*or* abstract) of evidence is read (orally translated), marked , signed by the president (judge-advocate), and attached to the proceedings.

[Instruction.– *If there is no summary (or abstract) of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case will be taken on a separate sheet as on a plea of not guilty.*]

Do you wish to make any statement in mitigation of punishment? Question to the Accused.

The accused in mitigation of punishment says [*or, if the statement is in writing,* hands in a written statement, which is read (orally translated), marked , signed by the president (judge-advocate), and attached to the proceedings.] A.

(Instruction.– *If the statement of accused is not in writing, the material portion should be taken down in the first person, and as nearly as possible in his own words.*

If counsel or defending officer addresses the Court on behalf of the accused the material portions of his address should be recorded.

In any case any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in mitigation of punishment.)

VARIATIONS.

ALTERATION OF PLEA [*Rule* 44 (D).]

The Court being satisfied from the statement of the accused (*or* the summary of evidence, *or otherwise*), that the accused did not understand the effect of the plea of "guilty" enters in the proceedings: "The Court consider that the accused does not understand the effect of his plea of "guilty", alter the record, and enter a plea of "not guilty"."

(Instruction.—*The Court will then proceed in respect of the charge as on a plea of not guilty.*)

WITNESSES FOR DEFENCE ON PLEA OF GUILTY [*Rule* 44 (*F*)].

The Court give permission to the accused to call witnesses to prove his above statement that (*here specify the statement which is to be proved*).

(Instruction.—*The examination, etc., of witnesses called in pursuance of this permission will proceed in the same manner as on a plea of not guilty.*)

Do you wish to call any witnesses as to character ?

Question to the Accused. A. (Instruction.—*The examination, etc., of witnesses as to character will proceed as in the case of a witness giving evidence as to the facts of the case.*)

PROCEEDINGS ON PLEA OF NOT GUILTY

The prosecutor makes an opening address, *or* hands in a written address, which is read, (orally translated), marked , signed by the president (judge-advocate), and attached to the proceedings.

(Instruction. *Where the address of the prosecutor is not in writing, the Court should record so much as appears to them material, and the record should be attached to the proceedings.*)

The prosecutor proceeds to call witnesses.

* being duly sworn (affirmed)

First witness or prosecution. is examined by the prosecutor.

Cross-examined by the Accused (*or* by Counsel, *or* Defending Officer.)

Re-examined by the Prosecutor.

Questioned by the Court.

[*Instructions.*—(1) *The fact that Rule* 127 (*B*), (*C*), (*D*) has *been complied with must be recorded at the conclusion of the evidence of each witness.*

(2) *If the accused, or his counsel, or defending officer declines to cross-examine a witness that fact must be recorded.*]

VARIATIONS

POSTPONEMENT OF CROSS-EXAMINATION (*Rule* 121).

The Court, at the request of the accused, allow the cross-examination of the witness to be postponed.

OBJECTION TO EVIDENCE OR PROCEDURE (*Rule* 74).

The accused (*or* counsel or defending officer *or* the prosecutor) objects to the following question on the ground that (*set out*).

The Court is closed to consider their decision.

The Court overrule (*or* allow) the objection, and the Court is reopened and the decision announced and the Court proceed with the trial.

**Here insert his number, rank, name, regiment and appointment (if any), or other description.*

EXPLANATION OR CORRECTION OF EVIDENCE [*Rule* 127 (B)].

The witness, on his evidence being read to him, makes the following explanation *or* correction (*set out*).

Examined by the prosecutor as to the above explanation *or* correction.

Examined by (*or* on behalf of) the accused as to the above explanation *or* correction.

The prosecutor and accused (*or* counsel *or* defending officer) decline to examine him respecting the above explanation *or* correction.

---

being duly sworn, (affirmed) is examined by the prosecutor.

(*The examination, etc., of this and every other witness proceeds as in the case of the first witness.*) Second witness for prosecution.

VARIATIONS

ADJOURNMENT

At o'clock the Court adjourn until o'clock on the of 19 , at

On the o'clock, the Court re-assemble, pursuant to adjournment; present the same members as on the of

[Instructions.—(1) *If upon re-assembly a member is absent, and his absence will reduce the Court below the legal minimum and, it appears to the members present that the absent member cannot attend within a reasonable time, the president or senior member present will thereupon report the case to the convening authority.*

(2) *If the judge-advocate is absent, and cannot attend within a reasonable time, the Court will adjourn, and the president will thereupon report the case to the convening authority.* (*See Rule* 90).]

ABSENCE OF MEMBER.

(*Rank , Name , Regiment*) being absent.

A medical certificate (*or letter, or as the case may be*) is produced, read marked , and attached to the proceedings.

The Court adjourn until

or.

There being present . (*not less than the legal minimum*) members, the trial is proceeded with

Examination (cross-examination) of continued.

The prosecution is closed.

DEFENCE.

Do you intend to call any witness in your defence ? Question to the accused.

Is he a witness as to character only ? A.

Instructions to the Court. Q.

A.

(1) *When the answers to the above questions have been recorded the Court will follow the provisions of Rules* 47 *and* 48 *respecting the order of evidence and addresses which is applicable to the circumstances of the case.*

(2) *All addresses by prosecutor, accused, counsel or defending officer, whether recorded by the Court or handed in in writing, will be attached to the proceedings in the order in which they are made. Written addresses will be read to the Court, marked and signed by the President.*

If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the witnesses for the defence (including witnesses as to character) is recorded on a separate page.

Have you anything to say in your defence ?

Question to the accused. A. The accused in his defence says [*See Instruction (1) below*] (*or* hands in a written address, which is read (orally translated) marked , signed by the president (*or* judge-advocate) and attached to the proceedings).

[Instructions. (1) *In this space will be recorded any oral statement or address made by the accused in his defence. (For any additional address which he is entitled to make, see Instructions to the Court above.)*

(2) *If the statement of the accused is not in writing, and is delivered by himself, the material portions should be taken down in the first person and as nearly as possible in his own words.*

Any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]

[Instruction.—*All evidence given upon oath (or affirmation) will be recorded in the following form*] :—

First witness for the defence. being duly sworn (affirmed) is examined by the accused (*or* counsel *or* defending officer).

Cross-examined by the Prosecutor.

Re-examined.

Question by the Court.

*Here insert his number, rank, name, regiment and appointment (if any) or other description.

[Instructions. (1) *The fact that Rule 127 (B), (C), (D) has been complied with should be recorded.*

(2) *If the prosecutor declines to cross-examine, that fact must be recorded.*

(3) *The evidence of witnesses to character will be taken in the same manner as that of witnesses to the facts.*]

VARIATIONS

ADJOURNMENT TO PREPARE DEFENCE

The Court at the request of the accused (*or* counsel *or* defending officer) adjourn until in order to enable him to prepare his defence.

RECALLING WITNESSES (*Rule* 129).

(1) At the request of the prosecutor (*or* of the accused) is recalled and examined on his former oath through the president (*or* judge-advocate) and states as follows (*set out*);

or,

(2) The prosecutor with leave of the Court calls (or recalls) for the purpose of rebutting a material statement made by a witness for the defence. The witness being duly sworn (*or* on his former oath) being examined by the prosecutor states as follows (*set out with any cross-examination, re-examination, etc.*);

or,

(3) The prosecutor calls (*or* recalls) in reply to the witness(es) as to character called by the accused. The witness being duly sworn (*or* on his former oath) being examined by the prosecutor states as follows (*set out with any cross-examination, re-examination, etc.*);

or,

(4) The Court in accordance with Rule 129 (D) calls (*or* recalls) who being duly sworn (*or* on his former oath states in reply to the president (*or* judge-advocate) as follows (*set out*).

[Instruction.—*In (1), (2) and (3) witnesses must be called or recalled before the closing address of or on behalf of the accused. In (4) witnesses may be called by the Court at any time before the finding; in this case the accused or counsel or defending officer should be given the opportunity of asking further question through the Court.*]

ADJOURNMENT TO PREPARE ADDRESSES, ETC.

The Court, at the request of the accused (counsel *or* defending officer) adjourn until to enable the accused counsel or defending officer) to prepare his address.

The Court, at the request of the prosecutor adjourn until. to enable the prosecutor to prepare his reply.

The Court, at the request of the judge-advocate, adjourn to enable him to prepare his summing-up.

The accused (counsel *or* defending officer) makes the following closing address (*or* hands in a written closing address) which is read (orally translated) marked . signed by the president (*or* judge-advocate), and attached to the proceedings.

or

The accused (counsel *or* defending officer) declines to make a closing address.

The prosecutor makes the following reply (*or* hands in a written reply) which is read (orally translated) marked , signed by the president (*or* judge-advocate) and attached to the proceedings,

or,

The prosecutor declines to reply.

Summing-Up.

The judge-advocate hands in a written summing-up, which is read (orally translated), marked , signed by the president, and attached to the proceedings,

or.

The judge-advocate and the Court think a summing-up unnecessary.

[Instructions.—(1) *The occasions when the prosecutor's closing address must precede that of the accused (counsel or defending officer) are given in Rule 47 (B) (i) (b) and 37 (B) (ii) (d).*

(2) *Where the address of the prosecutor (or counsel or the defending officer) is not in writing, the Court should record as much as appears to them material, and so much as the prosecutor (counsel or the defending officer) requires to be recorded.*

Care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.

If the address of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.]

FINDING.

*The Court is closed for the consideration of the finding.

*To be struck out except in cases where trial has taken place on a plea of "not guilty"

(1) *Acquittal on all charges.*

The Court find that the accused (*No.* , *Rank* , *Name* , *Regiment*) is not guilty of the charge (*or*, all the charges) (and honourably acquit him of the same);

Signed at , this day of 19 .

(Judge-Advocate). (President).

(2) *Acquittal on some but not all charges.*

is not guilty of the charge(s) (and honourably acquit him of the same) but is guilty of the charge(s);

(3) *Conviction on all charges.*

is guilty of the charge (*or*, all the charges);

(4) *Special Findings.*

(*a*) is guilty of the charge(s) and guilty of the charge with the exception of the words (*set out*) [*or*, with the exception that (*set out*).]

or,

(*b*) is not guilty of (desertion) but is guilty of (absence without leave).

[Instruction.—*Any special finding permitted by Rule 51 (D) will be framed as far as possible in accordance with (a). Any special finding allowed by Section 86 of the Indian Army Act may be expressed in accordance with (b).*]

(5) *Reference to Confirming Authority* [*Rule* 51 (*C*)].

The Court find as regards the charge that the accused did (*set out the facts which the Court find to be proved*), but doubt whether the facts proved show the accused to be guilty or not of the offence charged [*or* of the offence of (*any offence of which the accused might under the Act legally be found guilty on the charge as laid*)]. They therefore refer to the confirming authority for an opinion and adjourn.

or,

Rule 51 (G).

(*Note.*—This applies only to alternative charges.)

The Court find that the accused did (*set out such particulars of the charge as the Court find to be proved*), but doubt whether such facts constitute in law the offence stated in the , charge or in the charge.

They therefore refer to the confirming authority for an opinion and adjourn.

(*in either case*).

The Court reassemble on the day of 19 . The opinion of the confirming authority is read, marked signed by the president and attached to the proceedings.

The Court now find the accused (*No.* , *Rank* , *Name* , *Regiment*) is (*the finding to be recorded in the usual manner*).

(6) *Insanity.*

The Court find that the accused (*No.* , *Rank* , *Name* , *Regiment*) is of unsound mind and consequently incapable of making his defence.

or,

committed the act (acts) alleged as constituting the offence (offences) specified in the charge (charges) but was by reason of unsoundness of mind incapable of knowing the nature of that act (those acts) (*or* but was by reason of unsoundness of mind incapable of knowing that that act was wrong (those acts were wrong) (*or* contrary to law).

Signed at , this day of 19 .

(Signature.)
Judge-Advocate.

(Signature.)
President.

PROCEEDINGS OF CONVICTION

Before sentence.

*Where the Court is already open it. this sentence will be struck out.

*The Court being re-opened the accused is again brought before

(*Rank* , *Name* , *Regiment*) is duly sworn (*or* affirmed).

Question by President.

What record have you to produce in proof of former convictions against accused and of his character?

I produce a statement certified under the hand of the officer having custody of the regimental (*or other official*) records. Answer by witness.

The statement is read (orally translated), marked signed by the president (judge-advocate), and attached to the proceedings.

Is the accused the person named in the statement you have heard read ? Q.
A.

Have you compared the contents of the above statement with the regimental (*or other official*) records ? Q.
A.

Are they true extracts from the regimental (*or other official*) records and is the statement of entries in the defaulter sheet a fair and true summary of those entries ? Q.
A.

Cross-examined by the accused (*or* by counsel, *or* defending officer).

Re-examined.

or,

The accused declines to cross-examine this witness.

[Instructions.—(1) *If any evidence, other than documentary, is given, the fact that Rule 127 (B), (C), (D) has been complied with will be recorded.*

(2) *Any further question will be put and any evidence produced which the Court require as to any point respecting the character and service of the accused on which the Court desire to have information for the purpose of their sentence.*

(3) *At the request of the accused, or by the direction of the Court the regimental or other official books, or a certified copy of the material entries therein, must be produced for the purpose of comparison with the statement.*

The accused is entitled to call the attention of the Court to any entries in the regimental or other official books, or in the certified copy abovementioned, and to show that they are inconsistent with the statement.

When all the evidence on the above matters has been given the accused may address the Court thereon.

(4) *If by reason of the nature of the service of the accused, the finding of the Court renders him liable to any exceptional punishment, in addition to that to be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must enquire into the nature and amount of that additional punishment.*]

Do you wish to address the Court ? Question to the accused.

The Court is closed for the consideration of the sentence. Answer.

SENTENCE.

[Instruction.—*The provisions of sections 43 to 48 and 73 of the Indian Army Act must be carefully attended to by the Court in passing sentence.*]

The Court sentence the accused (*No.* . *Rank* . *Name* *Regiment*). Sentence.

(Instruction.—*The sentence is to be marginally noted in every case*).

In the case of an Indian commissioned officer :—

Death

(*a*) to suffer death by being (hanged),

Transportation for .

(*b*) to suffer transportation for the term of years (*or* for life),

Rigorous (simple) Imprisonment (and solitary confinement) for .

(c) to suffer rigorous (simple) imprisonment for of which shall be in solitary confinement.

Cashiered.

(*d*) to be cashiered.

(Instruction.—*A sentence of cashiering should precede a sentence of imprisonment or transportation.*)

Dismissal.

(*e*) to be dismissed from the service.

(*f*) to take rank and precedence as if his appointment as bore date the day of

or,

Forfeiture of seniority of rank.

to take precedence in the rank held by him, as if his name had appeared (*a specified number of*) *places, lower in the Indian Army List.*

Forfeiture of service for promotion.

(*g*) to forfeit service for the purpose of promotion.

(Instruction.—*This applies, only in the case of an officer whose promotion depends upon length of service, and a sentence can be inflicted in respect of all or any part of his service).*

Severe reprimand or reprimand.

(*h*) to be severely reprimanded (*or* reprimanded)

Forfeitures.

(*i*) to forfeit (all *or* years, *or* months) past service for the purpose of .

(*j*) to forfeit all arrears of pay and allowances and other public money due to him at the time of his (cashiering *or*) dismissal.

(*k*) (*If on active service*) to forfeit pay and allowances for a period of

Stoppages.

(*l*) to be put under stoppages of pay and allowances until he has made good the sum of in respect of *or* (and) until he has made good the value of the following articles, *viz.*, value , value , etc.

In the case of Viceroy's commissioned officers and other persons subject to the Indian Army Act :—

Death.

(*m*) to suffer death by being shot (hanged).

Transportation for

(*n*) to suffer transportation for a term of years (*or* for life).

Rigorous (simple) Imprisonment (and solitary confinement).

(*o*) to suffer rigorous (simple) imprisonment for (of which shall be in solitary confinement)

(*p*) to be dismissed from the service. Dismissal.

(*q*) (*If under the rank of Warrant Officer, and on active service*) to suffer field punishment No. for Field punishment No. for

(Instruction.—*In the case of a non-commissioned officer, a sentence of reduction to the ranks should precede a sentence of transportation, imprisonment, dismissal or field punishment, although those sentences necessarily involve a reduction to the ranks.*)

(*r*) (*if a non-commissioned officer*). Reduction to

(1) to be reduced to the ranks ; or.

(2) to be reduced to (*a lower rank*).

(*s*) (*If a Viceroy's commissioned officer or a non-commissioned officer*).

(1) to take rank and precedence as if his appointment to the rank of bore date ; Forfeiture of seniority.

or,

to forfeit service for the purpose of promotion ; Forfeiture of service for promotion.

(Instruction.—*This applies only in the case of Viceroy's commissioned officer or a non-commissioned officer whose promotion depends upon length of service*).

or.

(2) to be severely reprimanded (*or* reprimanded) ; Severe reprimand or reprimand

(*t*) to forfeit (all *or* years, *or* months) past service for the purpose of ;

(*u*) to forfeit all arrears of any and allowances and other public money due to him at the time of his dismissal ;

(*v*) (*if on active service*) to forfeit pay and allowances for a period of :

(*w*) to be put under stoppages of pay and allowances until he has made good the sum of in respect of *or* and until he has made good the value of the following articles, *viz.*, value value , etc. Stoppages.

[Instruction. *In the case of a warrant officer, a district court-martial must use one of the following forms either in lieu of, or in addition to, such of the foregoing forms* (*t*), (*u*), (*v*) *and* (*w*) *as relate to forfeitures and stoppages, see Indian Army Act Section 73; a general court-martial may use them in lieu of, or in addition to, the foregoing forms.*]

(*x*) to be dismissed from the service :

or,

(*y*) to be reduced to the ranks :

or.

(*z*) to be reduced to (*a lower grade*) :

or.

to be reduced to an inferior class of warrant officer; that is to say to

or,

(*zz*) to be reduced in the list of his rank as if his appointment thereto bore date the day of

or,

to take rank and precedence as if his appointment to the rank of bore date

to forfeit service for promotion;

or,

(*zzz*) to be severely reprimanded (*or* reprimanded)

RECOMMENDATION TO MERCY.

The Court recommend the accused to mercy on the ground that (*set out*).

Signature.

Signed at , this day of 19

(Signature.) (Signature.)

Judge-Advocate . *President.*

REVISION

At on the day of , at o'clock, the Court re-assemble by order of for the purpose of reconsidering their

Present, the same members as on the

(Instruction.—*If a member is absent and the absence will reduce the Court below the required minimum, and it appears to the members present that such absent member cannot attend within a reasonable time, the president, or, in his absence, the senior member present, shall thereupon report the case to the convening authority.*)

The letter (order *or* memorandum) directing the reassembly of the Court for the revision, and giving the reasons of the confirming authority for requiring a revision of the finding (finding and sentence) (*or* sentence) is read, marked , signed by the president (judge-advocate), and attached to the proceedings.

(Instruction.—*If the confirming authority so orders, additional evidence may be taken on revision*).

The court having attentively considered the observations of the confirming authority, and the whole of the proceedings:

(*a*) do now revoke their finding and sentence, and find the accused to

or,

(*b*) do now revoke their sentence, and now sentence the accused, etc., etc.,

or,

(*c*) do now respectfully adhere to their sentence (*or* finding and sentence.)

Signed at , this day of 19 .

Judge-Advocate President

CONFIRMATION.

Confirmed,

Confirmed. I direct that the sentence of (rigorous) imprisonment shall be carried out by confinement in military custody,

or,

I vary the sentence so that it shall be as follows and confirm the finding and the sentence as so varied,

or,

I confirm the finding and sentence of the Court, but mitigate (remit, *or*, commute

or,

(*Where the confirming officer desires partly to reserve his confirmation*)

I confirm the finding of the Court on the and charges and reserve for confirmation by superior authority the finding on the and charges, and the sentence :

or,

I confirm the findings of the Court, but reserve the sentence for confirmation by superior authority ;

or,

I confirm the findings of the Court, and the sentence of the Court as to , and reserve the sentence so far as it for confirmation by superior authority ;

or,

(*Where the finding is not confirmed.*)

Not confirmed (*the reasons for non-confirmation may be stated.*)

or,

(*Where a plea in bar of trial had been offered under Rule 43.*).

The finding of the Court that the plea in bar of trial is proved (*or not* proved) is confirmed (*or* not confirmed).

(*Where the Court find that the accused is of unsound mind and consequently incapable of making his defence or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law.*)

Confirmed (*or* not confirmed.)

Signed at , this day of 19 .

(Signature of confirming authority).

(Instruction.—*Any remarks of the confirming authority should be separate from and form no part of the proceedings.*)

PROMULGATION.

Promulgated and extracts taken at this day of 19

(Signature of officer in charge of documents)

(Instruction.—*Proceedings which are not confirmed must be promulgated.*)

I.A.F.D. 907

FORM OF PROCEEDINGS OF A SUMMARY COURT-MARTIAL.

Proceedings of a Summary Court-Martial held at on the day of 19 by commanding the for the trial of all such accused persons as he may duly have brought before him.

PRESENT.

Commanding the

Attending the trial.

Interpreter.

(1) The Officers assemble at the and the trial commences at o'clock M.

The accused No. of the is brought ("called" if a non-commissioned officer) into Court, , the Court is duly sworn (affirmed).

is duly sworn (affirmed) as Interpreter.

[Instruction.—*If the commanding officer of the accused* (i.e., *the Court*) *acts as interpreter, he must take the interpreter's oath in addition to the oath prescribed for the Court.*]

All witnesses are directed to withdraw from the Court.

The charge-sheet is read, (translated) and explained to the accused, marked , signed by the Court and attached to the proceedings.

(Instruction.—*The sanction of superior authority for trial by summary court-martial should be entered, with the date and signature of the staff officer, at the foot of the charge-sheet, when such sanction is necessary. See I.A.A. Sec. 74.*)

ARRAIGNMENT.

Question to accused. *By the Court.*—How say you are you guilty, or not guilty of the charge preferred against you?

A. Are you guilty or not guilty of the charge?

Question. [Instruction.—*If the accused pleads "Guilty" adopt* (2) *and omit* (3), (4) *and* (5); *if he pleads "Not Guilty" adopt* (3) *and* (4) *or* (5) *and omit* (2); *if he pleads "Guilty" to some charge or charges and "Not*

A. *Guilty" to others* (*not alternative*) *adopt* (3), (4) *or* (5), *and* (2).]

PROCEEDINGS ON PLEA OF GUILTY.

(2) The accused (*No.* , *Rank* , *Name* *Regiment*) is found guilty of the charge (all the charges).

or,

is found guilty of the charge, and is found not guilty of the charge.

(Instruction.—*If the trial proceeds upon any charge to which there is a plea of not guilty, the Court will not proceed upon the record of the plea of guilty until after the finding on those other charges; and in that case the charge on which the record is guilty must be read to the accused again.*)

The summary of evidence is read (translated), explained, marked , signed by the Court and attached to the proceedings.

[Instruction.—*If there is no summary of evidence, sufficient evidence to enable the Court to determine the sentence and to enable the reviewing officer to know all the circumstances connected with the case will be taken as in paragraph (3). No address will be allowed.*]

VARIATION

The Court being satisfied from the statement of the accused (*or* the summary of evidence, *or otherwise*) that the accused did not understand the effect of the plea of "guilty" alters the record and enters a plea of "not guilty".

[Instruction.—*The Court will then proceed in respect of this charge as in paragraph (3).*]

Do you wish to make any statement in reference to the charge or in mitigation of punishment ? — Question to accused.

The accused says — A.

Do you wish to call any witnesses as to character ? — Question to accused.

[Instructions.—(1) *The examination of witnesses as to character will proceed as in paragraph (3).* — A.

(2) *Evidence as to character and particulars of service will be taken as in paragraph (6).*]

PROCEEDINGS ON PLEA OF NOT GUILTY

PROSECUTION.

(3) being sworn (affirmed) is examined by the Court

Prosecution 1st witness. Relbigion to be recorded, (Hindu, eusalman, M h). Sikhs should Siksworn.

Cross-examined by the accused.

Re-examined by the Court.

[Instructions.—(1) *The fact that Rule 127 (B), (C), (D), has been complied with must be recorded at the conclusion of the evidence of each witness.*

(2) *If the accused declines to cross-examine a witness the fact must be recorded.*]

VARIATION.

POSTPONEMENT OF CROSS-EXAMINATION *Rule* 121).

The Court, at the request of the accused, allow the cross-examination of the witness to be postponed

The Prosecution is closed.

Question to accused. Do you intend to call any witnesses in your defence?

A.

DEFENCE

Defence 1st witness. The accused is called upon for his defence and states :—

being duly sworn (affirmed) is examined by the accused.

Cross-examined by the Court.

Re-examined by the accused.

[Instruction.—*The fact that Rule 127 (B), (C), (D) has been complied with must be recorded at the conclusion of the evidence of each witness.*]

The defence is closed.

REPLY

Reply 1st witness. being duly sworn (affirmed) is examined by the Court.

Q

A.

VERDICT OF THE COURT.

Acquittal on all charges.

(4) I am of opinion on the evidence before me that the accused No. , of the , is not guilty of the charge, (*or* all the charges) (and honourably acquit him of the same.)

The verdict is read out and the accused released. He is to return to his duty.

Signed at this day of 19 .

Commanding the holding the trial.

The trial closes at o'clock M.

Acquittal on some but not all charges.

(5) I am of opinion on the evidence before me that the accused No. of the is not guilty of the charge(s) (and honourably acquit him of the same) but is guilty of the charge(s).

Conviction on all charges.

is guilty of the charge (all the charges).

Special Findings (*I. A. A. Section* 86 *and Rule* 107).

is guilty of the charge(s) and guilty of the charge with the exception of the words (*set out.*)
is not guilty of (desertion) but is guilty of (absence without leave).

PROCEEDINGS BEFORE SENTENCE.

(6) The following Minutes by the Court are read and explained.

[Instruction.—*If the Court does not record the accused person's convictions and character of its own knowledge, evidence as to these matters will be taken as in the Form of Proceedings for a General* (*or District*) *Court-Martial.*]

It is within my own knowledge, from the records of the that the accused has been previously convicted by Court-Martial or Criminal Court (A separate statement giving full particulars of any previous conviction to be annexed when necessary).

That the following is a fair and true summary of the entries in his defaulter sheet exclusive of convictions by a Court Martial or a Criminal Court.

	Within last 12 months.	Since Enrolment.
For	times	times
For	times	times

That he is at present undergoing sentence.

That, irrespectively of this trial, his general character has been

That his age is
his service is
and his rank is
that he has been in arrest (confinement) for days

That he is in possession of the following military decorations and rewards:—

(*Any recognised acts of gallantry or distinguished conduct should also be entered here.*)

SENTENCE BY THE COURT.

Taking all these matters into consideration, I now sentence the accused No. of the Sentence.

(*a*) to suffer rigorous (simple) imprisonment for (of which shall be in solitary confinement) [and I direct that the sentence of (rigorous) imprisonment shall be carried out by confinement in military custody.] Rigorous (Simple) Imprisonment and solitary confinement for

(*b*) to be dismissed from the service. Dismissal.

(*c*) (*if on active service*) to suffer field punishment No. for Field Punishment No. or

(*d*) (*if a non-commissioned officer*)—

Reduction. (1) to be reduced to the ranks,

or,

(2) to be reduced to (a lower rank),

or,

(3) to take rank and precedence as if his appointment to the rank of bore date

Forfeiture of seniority. (4) to forfeit service for the purpose of promotion.

Instruction.—*This applies only in the case of a non-commissioned officer whose promotion depends upon length of service.*)

Severe reprimand or reprimand. (*e*) to be severely reprimanded (*or* reprimanded).

Forfeitures. (*f*) to forfeit past service for the purpose of ; to forfeit all arrears of pay and allowances and other public money due to him at the time of his dismissal ;

(*if on active service*) to forfeit pay and allowances for a period of

Stoppages. (*g*) to be put under stoppages of pay and allowances until he has made good the sum of in respect of *or* (and) until he has made good the value of the following articles, *viz.*, value, value, etc.

Signed at , this day of 19 .

Commanding the holding the trial.

The trial closes at o'clock M.

Remarks by Reviewing Officer.

(Indian Army Act, Section 102.)

FORMS OF SUMMONS TO WITNESSES.

(*a*) In the case of a Summary of Evidence

To

I.A.F.D. 919-A. Whereas a charge of having committed an offence triable by court-martial has been preferred before me against (No. , Rank , Name , Unit), and whereas I have directed a summary of the evidence to be taken in writing at (place) on the day of at o'clock in the noon; I do hereby summon and require you (name) , to attend as a witness at the said place and hour (and to bring with you the documents hereinafter mentioned, namely,).

Whereof you shall fail at your peril.

Given under my hand at on the day of 19 .

(Signature)

Commanding Officer of the accused.

(*b*) In the case of a Court-Martial

To

Whereas a Court-Martial has been ordered to assemble at on the day of 19 , for trial of of the regiment, I do hereby summon and require you A. B. to attend, as a witness the sitting of the said Court at on the day of at o'clock in the forenoon (and to bring with you the documents hereinafter mentioned, namely,), and so to attend from day to day until you shall be duly discharged, whereof you shall fail at your peril. I.A.F.D. 919-B.

Given under my hand at on the day of 19 .

(Signature).

Convening Officer (*or* Judge-Advocate *or* President of the Court *or* Commanding Officer of the Accused).

FORM FOR ASSEMBLY AND PROCEEDINGS OF A SUMMARY GENERAL COURT-MARTIAL

I.A.F.F. 956

A.—ORDER CONVENING THE COURT.

At (place) this day of 19 .

*(1) *Beginning of Form in case falling under clause (a) of section 62 of the Indian Army Act.*

Whereas it appears to me an officer empowered in this behalf by an order of the Central Government / Commander-in Chief in India that the Person / Persons named in the annexed schedule, and being subject to Indian Military law, has / have committed the offence / offences in the said schedule mentioned;

*(2) *Beginning of Form in cases falling under clause (b) of section 62 of the Indian Army Act.*

Whereas it appears to me the / an officer commanding the forces in the Field empowered in this behalf by the officer commanding the force in the Field on active service that the person / persons named in the annexed schedule, and being subject to Indian Military law, has / have committed the offence / offences in the said schedule mentioned;

---

*Only one of these will be used, the two which are inapplicable being struck out.

*(3) *Beginning of Form in cases falling under clause (c) of section 62 of the Indian Army Act.*

Whereas it appears to me an officer now in command of being a detached portion of His Majesty's Troops upon active service that the person/persons named in the annexed schedule, and being subject to Indian Military law, has/have committed the offence/offences in the said schedule mentioned and whereas I am of opinion that it is not practicable with due regard to discipline and the exigencies of the service that the said offence/offences should be tried by an ordinary general court-martial;

(4) *End of form applicable to all cases.*

"*The members and waiting members (if any) may be appointed by name, or only their ranks and units may be mentioned. In the letter event, the ranks, names, etc, of the members of the court, as constituted, will be recorded in the proceedings.

I hereby convene a summary general court martial to try the said person/persons and to consist of*".

[*Here enter the special order (if any) under Rule* 146 *and any order under section 98 (1) (c) of the Indian Army Act.*]

(*Signature of convening officer.*)

B.—CERTIFICATE OF PRESIDENT AS TO PROCEEDINGS.

I certify that the above Court assembled on the day of 19 , and duly tried the person/persons named in the said schedule, and that plea, finding and sentence in the case of such/each such person were as stated in the third and fourth columns of that schedule.

I further certify that the members of the Court, the witnesses and the interpreter were duly sworn or affirmed.

Signed at (place) this day of 19 .

(*Signature of President.*)

*Only one of these will be used, the two which are inapplicable being struck out.

C.—CONFIRMATION.

(In cases in which confirmation is required by section 98 of the Indian Army Act.)

I have dealt with the finding/findings and sentence/sentences in the manner stated in the last column of the said schedule, and, subject to what I have there stated I hereby confirm the above finding/findings and sentence/sentences.

Signed at (place) this day of 19 .

(*Signature of confirming officer.*)

D.—PROMULGATION.

Promulgated and extracts taken at this day of 19

(*Signature of officer in charge of documents.*)

SCHEDULE

Date 19 .

Name of alleged offender.* 1	Offence charged. 2	Plea 3	Finding, and if convicted sentence † 4	How dealt with by confirming officer.‡ 5
Ram Bux (Bannia) . . .	Theft of Crown Property .	Guilty . . .	Guilty, Rigorous imprisonment for.....	Confirmed. I remit ------ A——— B———.
262 Sepoy Jhanda Singh,——— Regiment.	Breaking into house for plunder.	Not Guilty . .	Guilty. Field punishment No. I for two months.	
564 Sowar Hussein Khan,——— Regiment.	Sleeping on post in time of war.	Not Guilty . .	Guilty. Death by being shot to death. Recommended to mercy.	Confirmed, but commuted to field punishment No. I for three months. A.———B.———
Person accompaning force (name unknown), white jacket and trousers, scar on right cheek.	Impeding Provost-marshal .	Not Guilty . .	Not Guilty . . .	Confirmed. A.———B.———
Sepoy in uniform of——Regiment (name unknown).	Civil offenc Rape . .	Not Guilty . .	Guilty. Transportation for life.	Confirmed. A.———B.———

A———.B———.
Convening officer.

C———D———.
President.

*If the name of the person charged is unknown, he may be described as unknown, with such addition as will identify him.

†Recommendation to mercy to be inserted in this column.

‡If Confirmation is not required this column should be left blank. See Indian Army Act, section 98

MEMORANDA FOR THE GUIDANCE OF OFFICERS CONCERNED WITH COURTS-MARTIAL.

The following memoranda as to courts-martial are intended for the guidance of commanding and convening officers and others with a view to securing uniformity of practice and to avoiding some common mistakes.

These memoranda do not form part of the Appendices to the Indian Army Act Rules.

Summary of Evidence.

1. The officer detailed to record a summary of evidence should—

(*a*) Make himself acquainted with all the circumstances of the case and the testimony of the witnesses who gave evidence before the commanding officer, and carefully consider whether any additional evidence is relevant and necessary [see Rule 15 (D).]

Intelligent and patient investigation will often result in the discovery of a missing link in the chain of evidence, of corroborating evidence, or of evidence tending to exculpate the accused. It may even save an unnecessary or abortive court-martial.

(*b*) Before taking down the evidence:—

(i) Consider what offence or offences appear to have been committed.

(ii) Consider the essential elements of such offence, or of each offence.

(iii) Consider what facts and circumstances must be proved in order to establish not only the commission of an offence but also the commission of it by the accused, *i.e.*, what facts are relevant to the issue.

(iv) Consider what evidence should be adduced in order to prove each material fact; in other words, how it is proposed to prove each of the necessary facts by admissible evidence. He will generally find it convenient to ascertain from each witness roughly what evidence that witness can give before actually taking down the evidence.

(*c*) When reducing the evidence of witnesses to writing:—

(i) Take down the evidence and arrange it, both in the statements of witnesses and in the summary, as far as possible so that events are set out in chronological order and the court may have a connected story to consider.

A statement of evidence as to facts should commence by recording the place, date and time (if material), to which the evidence refers.

(ii) Ensure that only such evidence as is admissible in law is adduced; particularly eliminate all irrelevant and hearsay statements.

(iii) Avoid attempting to tell the story of the crime by recording conversations at which the accused was not present.

(iv) Ascertain that any document intended to be produced is legally admissible in evidence. Every document intended to be produced to the court must be produced by a witness and described and, where necessary, identified by a witness able to do so. For example, where a document has been acknowledged as correct or signed by an accused, evidence must be given to show that he has acknowledged it or his signature must be identified.

Mark and number documents according to order of production.

(v) Arrange for the preparation, production and proof of plans where necessary [see note to Rule 16 (A).]

(vi) Recod the evidence of witnesses as nearly as possible in their own words and expressions. When evidence is not given in English, it will be interpreted and recorded in English.

(vii) If the accused has to any person or at any time said anything by way of explanations or admission of any of the facts in issue, consider the circumstances in which the statement was made and if it is admissible let a witness be called to prove it.

(viii) Remember that, when it is proposed to tender evidence of an admission or confession, it is desirable that evidence should first be adduced by the prosecution of the circumstances in which it was made to show that it was voluntary, though under Indian law the onus lies upon the accused of showing that a confession made by him was not voluntary (see Pt. I. Ch. V, paras. 28, *et seq.*)

(ix) With regard to the attendance of witnesses, take advantage where desirable of the provisions of Rule 15 (H). The written statements of such witnesses must be signed and certified as required by this rule.

(x) Remember that a civilian witness can be compelled to attend the taking of the summary [I. A. A. 84 and Rule 15 (I).]

(xi) At the close of the evidence of each witness who is not cross-examined by the accused, make a note that "accused declines to cross-examine" [see Rule 15 (E).]

(xii) Ensure that the evidence of each witness is signed by the witness [Rule 15 (F).]

(xiii) Ensure that the record of any statement made by the accused is prefaced by a note that he was formally "cautioned" [Rule 15 (F).]

(xiv) Enter at the end of the summary of evidence a statement that the requirements of Rule 15 (D), (E), (F), (G) have been complied with, and sign the summary. The place and date should be stated.

2. Evidence in special cases:—

(*a*) Where the charge is for deficiency of kit, unless I. A. F. D-918 is to be produced in evidence, the fact that the accused has been at some time previously in possession of a complete

kit, or of the articles alleged to be deficient, the date and place of discovering any subsequent deficiencies, and that none of the articles have since been recovered, should be included in the summary of evidence. Any articles recovered will be omitted from the charge.

(*b*) Where a certified true copy of a record in any regimental book is to be produced [I. A. A. 91A (*4*)], the copy should show clearly that the record purports to have been signed by the commanding officer or by the officer whose duty it was to make the record [I. A. A. 91A (*3*).]

(*c*) Where the charge is for neglecting to obey a battalion or similar order, the order should be proved as provided in I. A. A. 91A (*3*) or (*4*) [see (*b*) above] but if the order is not included in the "regimental books" (R. A. I.), as for example a station or company order or an order for sentries, the original order must be produced.

(*d*) Where I. A. F. D-918 is to be produced, it must be signed by the officer having the custody of the books from which it is compiled. The original declaration of the court of inquiry even if in existence, is not admissible in evidence. Nor is I. A. F. D-918, unless the entry in the court-martial book (of which it is a certified copy) purports to have been signed by the officer in actual command of the accused's corps or department, as required by I. A. A. 126.

(*e*) A certificate of surrender or apprehension under I. A. A. 91A (*6*) (*I. A. F. D.*-910) should only state the fact, date and place of the surrender or apprehension and is only admissible as evidence of those facts and only in cases of desertion or absence without leave. The circumstances of the surrender or apprehension must be proved by a witness. The certificate must be signed by a police officer not below the rank of an officer in charge of a police station.

The commanding officer of the deserter or absentee should forward I. A. F. D-910 without unnecessary delay to the officer in charge of the police station for completion and signature.

(*f*) Many cases depend on the identification of persons or things. Evidence should be recorded to show that each witness identifies the accused, and any other person or thing mentioned in his evidence whose identity is relevant to the charge ; *e.g.*, on a charge for theft, the articles, the subject of the charge, must be produced and identified or their absence satisfactorily accounted for.

Articles alleged to have been damaged should be produced and identified.

(*g*) Where the charge is for any offence which has occasioned any expense, loss, damage, or destruction for which it is expedient to award compensation under I. A. A. 50 (*1*) (*b*) or (*2*) (*e*) or (*f*) values should be assessed and evidence taken as follows :—

(i) When an article which has an official value has been lost or rendered unserviceable, a witness is required who can prove the value (inclusive of authorized departmental expenses) of the article at the date of loss upon a basis of its age and/or condition and by reference to the regulations which should be produced for fixing the value of the article at that age or in that condition.

(ii) When the article has not official value, competent evidence is required to prove the approximate value.

(iii) When an article has been damaged but not rendered unserviceable, competent evidence is required to prove the pecuniary amount of the damage, which will be either the cost of repairing it, if it can be repaired, or the loss of value caused by the act of the accused, if it cannot be repaired, or the cost of repair *plus* any ultimate loss of value due to the act of the accused.

(iv) In the case of absence or desertion, the deficiencies to be alleged in a charge under I. A. A. 35 (*e*) are those ascertained when the soldier rejoins, not necessarily those found on the commencement of the absence, or by a court of inquiry.

Evidence should not be taken of the values of personal clothing and necessaries the property of the soldier, the value of which has not to be made good to the public.

(*h*) Where the charge is for misappropriating or losing by neglect money or stores, etc., the evidence should show :—

(i) The period during which the accused held office and was responsible for certain money or stores, etc. ;

(ii) That at the opening of this period the accounts and money, stores, etc., were correct ;

(iii) Receipts and expenditures of money, stores, etc., during this period :

(iv) That at the close of this period there was a specific deficiency of money or stores, etc.

Items (ii), (iii) and (iv) must, as a rule, be proved by the production by a sworn witness of the original account books, and vouchers, and evidence that they were kept or signed by the accused. Witnesses should then give evidence explaining the deficiency, which is checked with the original books, etc., and recorded.

(*i*) In cases of attempts to commit suicide, medical evidence giving an opinion on the state of mind of the accused at the time of the commission of the alleged offence should be taken.

(*j*) In cases of self-maiming the medical witness or witnesses should be asked whether the injury sustained by the accused will render him unfit for further service.

3. Where the accusation arises out of complaint made by an individual who has not yet identified the person whose conduct is complained of, the complainant, and any other alleged eye-witness in the

same circumstances, should have an opportunity of picking out from a group the man against whom they are prepared to give evidence. For this purpose an identification parade should be held in the presence of an officer before the witness or witnesses give evidence at the summary, or otherwise see the accused in circumstances which may suggest that they are expected to recognize one particular man as the offender. At such a parade a witness should not be permitted to see or hear anything which might induce him to take a cue from the behaviour of another witness.

4. If in any case two or more persons are suspected of complicity in an offence, and it is found necessary to call one of these as a witness for the prosecution against the other or others charged in connection with the offence, one of two courses must be taken. Either:—

(i) Proceedings against him must be abandoned and any charge therein already preferred against him dismissed; or

(ii) Steps must be taken to ensure that the case against him is disposed of summarily or tried by court-martial, before the trial of persons concerned against whom he is to give evidence; and that he is only tendered as a witness when he has already been acquitted or convicted.

In all such cases the circumstances and the course proposed should be fully set out in a covering letter to the convening officer.

Commanding Officers.

5. A commanding officer will take care that an accused person is not detained in custody beyond 48 hours without the charge, being investigated, unless investigation is impracticable, in which case a report will be made to the officer to whom application to convene a general or district court-martial would be made (Rule 14).

6. Before applying for the trial of an offender a commanding officer should satisfy himself:—

(*a*) That the accused is subject to the Indian Army Act, and is charged with an offence which is an offence against that Act;

(*b*) That the offender is not exempt from trial under the provisions of I. A. A. 67;

(*c*) That the offence is not one which he should dispose of himself summarily or one which he should and can try by summary court-martial (R. A. I.) without reference (I. A. A. 74) or, if it is one of those offences, that from its gravity, or from the previous character of the accused, he ought not to deal with it on account of the inadequacy of his powers of punishment;

(*d*) That the summary of evidence is properly recorded (see paras. 1 and 2 *ante*);

(*e*) That the evidence justifies the trial of the offender on the charge:

(*f*) That the charge is properly framed under the appropriate section (see Rules 18 to 20 and notes, and Second Appendix);

(*g*) That an officer has given the accused a copy of the summary (or abstract) of evidence as soon as practicable after he had been remanded for trial and that his rights as to preparing his defence and of being assisted or represented at the trial have been explained to him by that office [Rule 22 (B).]

7. When making application for the trial of the offender, the commanding officer should satisfy himself that the following provisions are complied with :—

(*a*) The application for trial (A. F. B.-116) must be accompanied by all necessary documents as therein specified ; and the medical officer's certificate at the foot completed ; the application should ordinarily be submitted within 36 hours after the accused has been remanded for trial [note to Rule 16 (B)] ;

(*b*) The name of the officer to act as prosecutor should be stated on the application ;

(c) The convening officer must be informed whether or not the accused desires to have a defending officer assigned to represent him at the trial ;

(*d*) The information required as to officers who have investigated the case ; or sat on a court of inquiry, must be given with great care ;

(*e*) The charge-sheet must be signed by the officer in actual command of the unit to which the accused belongs, and should state the place and date of signature;

(*f*) Sufficient space should be left at the foot of the charge-sheet for the orders of the convening officer, or officer sanctioning trial under I. A. A. 74, to be entered. The place and date should be entered by the officer signing such orders :

(*g*) The section of the Act under which each charge is framed should be entered in the margin (in red ink), opposite the charge to which it refers ;

(*h*) When it is intended to prove any facts in respect of which any deduction from the pay and allowances (*i.e.*, stoppages) of the accused can be awarded in consequence of the offence charged, those facts must be clearly shown in the particulars of the charge and the sum of the loss or damage it is intended to charge [see para. 2 (*g*) above] ;

(*i*) I. A. F. D.-905, by whomsoever produced, is to be signed by the officer having the custody of the books from which it is compiled ; custody includes temporary custody for the purpose of the trial. In preparing this form, minor offences may be grouped as "miscellaneous" ; offences of the same class as that being charged should be shown in a separate group.

8. After trial has been ordered the commanding officer should satisfy himself that the following provisions are complied with :—

(*a*) The accused must be warned for trial not less than 24 hours before the court assembles, must be informed by an officer of every charge on which he is to be tried, must be given a copy

of the charge-sheet and a vernacular translation of the same and of the summary (or abstract) of evidence, and notice of the intention to call witnesses whose evidence is not contained in the summary (or abstract) and an abstract of their evidence, and (if he desires it) must be informed of the ranks, names and units of the officers who are to form the court as well as of any waiting members (Rule 23);

(*b*) The accused must be informed that on his giving the names of any witnesses for the defence, reasonable steps will be taken to procure their attendance;

(*c*) The accused must be afforded proper opportunity for preparing his defence;

(*d*) The commanding officer must not detail as a member of the court an officer who is ineligible or disqualified to serve under the provisions of Rule 29;

(*e*) The accused must be seen by a medical officer on the morning of each day the court is sitting for his trial and the medical officer's report should be produced to the court immediately after it opens;

(*f*) In a case of a joint trial, the accused persons should be informed of the intention to try them together and of their right to claim separate trials if the nature of the charge admits of it.

9. After confirmation (or refusal thereof), the commanding officer must see that the following provisions are complied with:—

(*a*) The proceedings must be promulgated as laid down in R. A. I.

(*b*) The record of the promulgation must be entered on the proceedings in form shown on p. 393, and, if the proceedings have been confirmed, extracts recorded in the regimental books;

(*c*) After promulgation the proceedings must be forwarded without delay to the proper authority.

Convening officer.

10. The convening officer should satisfy himself as regards the matters mentioned in para. 6 and para. 7 (above); and in addition he will ensure:—

(*a*) In all cases for trial by general court-martial, and in all cases of indecency, fraud, theft (except ordinary theft), and civil offences; and in all other cases which present doubt or difficulty, that the charge sheet and summary or abstract of evidence are submitted to the Deputy or Assistant Judge-Advocate-General concerned before trial is ordered (see R. A. I.);

(*b*) That he holds the necessary court-martial warrant empowering him to convene the description of court-martial that he considers appropriate;

(*c*) That the court which he has decided to convene is properly composed in accordance with the Indian Army Act; see also Rule 30—any opinion of the convening officer with respect to the composition of the court under this rule should be stated in the convening order;

(*d*) That no officer is detailed to serve on the court who is ineligible or disqualified under Rule 29;

Note.—In the case of theft from an officers' mess, all the officers of that mess are regarded as interested, and are therefore disqualified.

(*e*) That application is made to the Deputy or Assistant Judge-Advocate-General concerned for the services of a Judge-Advocate when the appointment of a Judge-Advocate is legally required or is desirable (see I. A. A. 78 and notes);

(*f*) That the officers detailed to serve are stated in the convening order either by name or by the units from which they are to be drawn;

(*g*) That in trials by general court-martial, and in complicated cases a prosecutor is specially selected for his experience and knowledge of military law (see note to Rule 33);

(*h*) That the order for trial at the foot of the charge-sheet is signed by him, or by an officer of his staff signing "for" him;

(*i*) That the convening order is signed by him, or by an officer of his staff authorised by usage of the service to sign his orders.

11. Where the convening officer, or the senior officer, on the spot considers that military exigencies or the necessities of discipline render it impossible or inexpedient to observe any of the Rules referred to in Rule 25, he must make on I. A. F. D-920 a declaration to that effect specifying the nature of those exigencies or necessities.

12. The convening officer must ascertain whether the accused desires to have a defending officer assigned to assist him at his trial; and, if so, must endeavour to meet his wishes. Should no suitable officer be available, the convening officer must notify the president in writing [see Rule 81 (B)].

13. The convening officer must send to the senior member of the court martial the convening order, charge-sheet and summary (or abstract) of evidence. Except in the case of a joint trial of two or more persons a separate copy of the convening order should be supplied in respect of every person to be tried.

General.

14. The original convening order must be before the court, and the president must satisfy himself that the court is duly constituted according to its terms.

The court must not make any alteration or correction in the convening order, nor, save as allowed by Rule 40 (A), in the charge-sheet.

15. In any case of doubt as to the constitution of the court, or any other matter affecting jurisdiction or validity of the charges, the president should consult the convening officer before the court assembles, or if the court has assembled, before proceeding with the trial.

16. When, in accordance with Rule 75, the court is sworn at one time in the presence of several accused persons who are to be tried separately in succession, the time at which the convening order is read should be recorded on page "A" of each I. A. F. D-906, as the time at which the trial of each of the accused commences. In such cases it is desirable that the time of arraignment of each such accused should be inserted on page "B" of each I. A. F. D-906 before the words : "The accused is arraigned", etc.

17. The full name and description of the accused should be entered on the first page of the proceedings.

18. Care should be taken that, whenever a court of inquiry has been held, the relevant certificate (on the first page of the proceedings) is properly completed (see p. 378 for form).

19. Any person addressing the court, or examining or cross-examining a witness, should always do so standing.

20. Every witness, including the officer producing I. A. F. D.-905, must be sworn or affirmed in the presence of the accused to whom his evidence refers ; he must not be examined on a former oath taken in the presence of another accused person.

The prosecutor or other person producing documents must be sworn. By the custom of courts-martial, however, the accused is allowed to hand in letters and certificates of character purporting to be in the handwriting of absent officers or former employers, and unless there is reason to doubt their authenticity, they may be accepted.

21. The evidence will usually be taken down in narrative form. Questions and answers recorded *verbatim* will be numbered consecutively ("Q1", "A.1", etc.) throughout.

22. When original documents are not retained by the court and copies are attached to the proceedings, it must be stated in the proceedings that the copies have been compared with the originals and found to be correct. As a rule, it is preferable to attach copies, and not original documents, to the proceedings (see note to Rule 56).

23. In accepting I. A. Forms D-905, D-918, D-910 and certified copies of records in regimental books, attention should be given to paras. 7(*i*), 2(*d*), 2(*e*), 2(*b*) *ante*. Where these documents are given in evidence it is sufficient to record upon the proceedings the mere fact of their production without setting out the facts which they purport to prove; but the record of the evidence should always show that a witness identified the accused as the person to whom the particular document relates.

24. A certified true copy of a record in a regimental book (*e.g.*, on I. A. F. D-918 of an entry in the court-martial book) is sufficient evidence thereof ; it is not necessary for the court to compare the copy with the regimental book.

25. Where the value of arms, ammunition, equipment, or public clothing lost or damaged is proved, the accused, if convicted, should be sentenced to be put under stoppages, notwithstanding the fact that he may also be sentenced to be dismissed from the service, in case the latter part of the sentence should be remitted.

26. Arrears of pay and allowances forfeited by sentence of court-martial under I. A. A. 43(*h*) (iii) cannot be applied as compensation for loss or damage. If, therefore, loss or damage has been averred and proved, stoppages should be awarded, even if the accused is also sentenced to forfeiture of arrears, so that compensation may first be paid and any balance remaining over forfeited.

27. Included in I. A. F. D-906 are two sets of pages "C" and "D" —one for proceedings on a plea of "Not guilty" and one for proceedings on a plea of "Guilty". Where the pleas recorded are all "Not guilty", or all "Guilty", the set pertaining to the plea or pleas recorded is alone to be used, and the unused set should be removed from the proceedings.

When some of the pleas are "Not guilty" and some "Guilty", both sets will be used, the court proceeding first on the plea or pleas of "Not guilty" upto and including the findings, and then on the plea or pleas of "Guilty". It is not necessary to insert before page "D" a separate sheet containing the findings of the court upon the plea or pleas of "Not guilty".

28. Where two or more persons are charged and tried jointly on a charge-sheet, only one set of proceedings should normally be used, the relevant pages of I. A. F. D-906 being adapted accordingly, and the replies of each of the accused to the questions set out therein being separately recorded. A separate sheet, however, should be used for the finding and proceedings on conviction, and for the sentences, in each case.

29. Where trial proceeds on more than one charge-sheet, all printed matter on page "A" and the two printed lines at the top of page "B" should be struck out in the case of the second or any subsequent charge-sheet, the word "second", "third" (or as the case may be) being inserted before the word "charge-sheet" on page "B".

30. The charge-sheet is to be inserted in the proceedings after page "B"; all other documents are to be attached at the end of the proceedings in the order of their production to the Court.

31. Every document attached to the proceedings should be signed by the president (*or* judge-advocate) and marked with a reference letter, preferably not one used in I. A. F. D-906.

32. In case of a plea of "Guilty", the summary of evidence is to be annexed to the proceedings. In case of a plea of "Not guilty" it will be annexed if it or any part of it has been put in evidence at the trial. In other cases the summary will merely be enclosed with the proceedings when sent to the confirming officer.

33. All erasures of written or printed matter, and all interlineations and corrections should be initialled by the president or judge-advocate, see note (A) 1 to r. 78.

34. Pages should be numbered consecutively up to the end of the proceedings after they have been put together in the order prescribed. In case of revision, the later proceedings are added at the end, and the numbering of pages carried on.

35. Care must be taken that the proceedings are both signed and dated by the president.

Duties of Prosecutor

36. For the general duties of a prosecutor, see Rule 66 (A) and notes.

37. (*a*) Duties before trial :—

The prosecutor should have previous knowledge of the subject-matter of the charge or charges. For that reason the officer detailed as prosecutor must make it his business to acquaint himself with the circumstances, and assure himself that the various rules relating to procedure before trial have been complied with (see note to Rule 33). He will, as a rule, be the officer who recorded the summary of evidence.

The Court will look to him for an explanation of any defect or omission apparent or alleged by the accused.

(*b*) On being detailed for duty he should--

(i) Obtain a copy of the charge-sheet and summary of evidence, and enquire whether there is any correspondence or other material relative to the case, which he should peruse and note.

(ii) If he thinks there is any legal defect, irregularity, or serious omission in either the charge-sheet or the summary of evidence, he should refer to the commanding officer of the accused's unit. The ability to detect irregularities connotes a working knowledge of the Rules under the Act, and of the laws of evidence.

(iii) Satisfy himself that Rules 22, 23, and in the case of joint trial Rule 24, have been complied with.

(iv) Satisfy himself that proper steps are being taken to secure the attendance of all necessary witnesses.

(v) Obtain or prepare a record of the accused's service (I. A. F. D.-1905) for production at the trial if required. This form must be signed by the officer having the custody of the regimental books.

(vi) Consider whether an opening address is desirable, or is likely to be required from him by the court [Rule 46 (A)]. If so, prepare such an opening address, setting out in the form of a narrative the facts which are alleged against the accused, and the nature of the evidence by which those facts are to be proved. The opening address must be as impartial as he can make it free from unnecessary comment, denunciation or prejudice. There must be no reference in it to any allegation which is not to be proved in evidence subsequently at the trial. An opening address is not ordinarily

required in disciplinary cases of a simple character, but is valuable where accounts are involved, or the evidence is largely circumstantial.

(vii) On the morning of the trial take with him to the court a certificate by a medical officer stating that he has examined the accused on that morning, and that he is fit for trial.

(viii) Assure himself that all witnesses and necessary exhibits are present.

38. Duties at the trial :—

(*a*) On the opening of the Court the prosecutor presents the medical certificate to the president.

(*b*) If any material witness is absent, the prosecutor should inform the court at once, and if necessary apply for an adjournment (Rule 124).

(*c*) If a court of inquiry has been held respecting a matter upon which a charge against the accused is founded, the prosecutor should hand to the court a list of the names of the officers who sat on the court of inquiry. The written record of the proceedings of such court of inquiry must not be laid before the court-martial [see Rule 31(A)].

(*d*) As to the prosecutor's right to address the court and call witnesses in reply in the event of a special plea or plea in bar of trial, see Rules 39, 41 and 43.

(*e*) Where the accused pleads "Guilty", the duties of the prosecutor are confined to calling such witnesses as may be necessary if the summary be insufficient [Rule 44 (B)], and producing I. A. F. D.-905.

Note.—If the accused in a statement in mitigation says something which is inconsistent with his plea, the prosecutor should call the attention of the court to Rule 44 (D), and prepare to call his witnesses as on a plea of "Not guilty".

(*f*) Where the accused pleads "Not guilty", the prosecutor makes his opening address, if any, and if it is in writing hands it in, and calls his first witness.

(*g*) Before calling his witnesses, and as the case proceeds, the prosecutor must consider whether he should call all those whose evidence is in the summary or abstract of evidence, and whether it is his duty to call as a witness any person whose evidence is not contained in summary (Rules 120, 121).

(*h*) As to accomplices as witnesses for the prosecution, see para. 4 *ante*.

(*i*) After a witness for the prosecution has been sworn or affirmed, the prosecutor will ascertain the witness's number, rank, name, unit, station, address, occupation, etc., as may be material and will elicit from the witness the relevant facts to which the witness can speak. This may be done by means of questions of a non-leading character (see Pt. I, Ch. V, paras. 102-106),

or by permitting the witness to tell his own story, questions being subsequently asked to make good any omissions. A series of short simple questions will generally assist the witness to recount facts in chronological order, and the president or judge-advocate in making the record.

(*j*) The rules which govern cross-examination are described in Pt. I, Ch. V, paras. 107-113. The limits within which re-examination is permitted are set out in para. 116. It may happen that a question in cross-examination has been so framed as to compel the witness to answer simply "Yes" or "No", whereas there is within the prosecutor's knowledge an explanation which should in fairness be made. In such a case the prosecutor may in re-examination refer the witness to that question and answer, and ask him if he has anything to add or explain.

The prosecutor should not dismiss a witness until he has ascertained whether the court desire to question him and until Rule 127 (B) (C) (D) has been complied with.

(*k*) The prosecutor must take care that each exhibit which he desires to put before the court is produced and identified by one of his witnesses. If an exhibit (*e.g.*, the property alleged to have been stolen) is to be referred to by more than one witness, each witness who refers to it must be invited to look at the exhibit, and say whether he identifies it. If the prosecutor is himself producing documents he should do so, after being sworn as a witness, before he calls his other witnesses [Rule 46(C) and note]. Neither the prosecutor nor a witness may refer to the contents of a document which is not before the court, unless evidence is given accounting for its absence (see Pt. I, Ch. V, paras. 76-77).

(*l*) The prosecutor having called his witnesses, the case for the prosecution is closed. The subsequent procedure depends upon the exercise by the accused of his rights, and is fully set out in Rules 47 and 48.

(*m*) If the accused calls any witnesses to the facts, it is the duty of the prosecutor to assist the court to test the value of their evidence by cross-examination. The result of omission to cross-examine is frequently that the evidence for the defence stands unchallenged, and the prosecutor cannot properly, in a subsequent address, characterise as untrue a defence which he has not attempted, by question to the witnesses at the proper time, to impugn. Cross-examination is not limited to the matters dealt with in the examination-in-chief. It must however, be confined to matters relevant, directly or indirectly, to the issue. Leading question may be asked in cross-examination, but not questions which assume that facts have been given in evidence which have not been given (see Pt. I, Ch. V, para. 109). As to injurious questions see para. 110. As to calling witnesses in reply to the defence, see Rule 129 and notes.

(*n*) The desirability of making a closing address at the appropriate time, as provided in Rules 47 and 48, is a matter for the prosecutor's discretion. If there is any evidence or argument

put forward by the defence which he thinks might seriously mislead the court, he should comment on it. He is entitled to sum up the evidence generally and to point out any weakness in the defence, and to suggest the inferences which the court may draw from the facts proved, but he must state nothing as a fact which has not been proved in evidence (see note to Rule 96).

(*o*) If the accused is convicted on any charge, the prosecutor, or some other person in a position to do so, is sworn (if he has not already been sworn as a witness in the case) and produces evidence (I. A. F. D.-905) of the character, age, service, rank, etc., of the accused (see Rule 53 and notes).

Duties of Defending Officer.

39. Duties before trial:—

(*a*) The defending officer, like the prosecutor, requires a working knowledge of the Rules under the Act, and of the laws of evidence. He must also make himself acquainted with the details of the case.

(*b*) The proper preparation of the defence (note to Rule 81) includes :—

(i) Study of the charge-sheet and summary of evidence and consideration of legal points which he may raise, or which may arise upon them, *e.g.*, objection to a charge, plea to the jurisdiction, plea in bar of trial, admissibility of a confession or of other evidence.

(ii) Ascertaining from the accused what is his answer, if any, to each charge.

(iii) Communication with possible witnesses for the defence, to ascertain if they are able to give evidence in support of the accused's case, and the taking of appropriate steps to secure their attendance at the trial [Rule 23 (A) and note and Rule 122].

Note.—He is not entitled to interview witnesses for the prosecution without special authority.

(*c*) The defending officer must bear in mind that the ultimate responsibility for the decision on the plea which is to be offered on each charge must rest upon the accused himself. He may properly advice on this point, but should put no pressure on the accused, except to dissuade him from pleading guilty, where he appears to have an answer, however slight, to the charge. The defending officer's duty at the trial will be to present the accused's defence in the best possible light. He may properly prepare arguments on fact or law, which his own reason or ingenuity may suggest, but it would be improper for him to advise or suggest to the accused an account of the facts, other than that which the accused himself desires to give.

(*d*) The defending officer is not called upon to judge the truth or otherwise of the accused's defence, nor is he permitted to

express his own opinion or belief (Rule 86). To avoid, however, giving countenance to a line of defence which is incompatible with his duty as an officer, he should apply through his commanding officer to the convening officer for permission to withdraw from the case.

40. Duties at the trial:—

(*a*) Having the rights, duties, and obligations of counsel, the defending officer must himself conduct the case as representing the accused, *i.e.*, he will himself cross-examine witnesses for the defence, take any objections, make any submissions, and address the court on the accused's behalf.

(*b*) The defending officer has the right to make an application for adjournment [see Rule 23 (D)], and to address the court in support of it. It should not be made on the ground of a technical irregularity or omission, merely as a protest, where no benefit can accrue to the presentation of the defence from the postponement of the trial.

(*c*) It is the defending officer's duty to question each witness for the prosecution on any matter which is to be alleged in defence in so far as this matter is or should be within the witness's knowledge (see Pt. I, Ch. V, paras. 107-113). As to injurious questions, see para. 110.

(*d*) The defending officer may take objection to any question put by the prosecutor to a witness for the prosecution on one of the following grounds; the objection should be made if possible before the witness answers [Rule 127 (A)] :—

(i) That it is a leading question.

(ii) That it invites hearsay, or an account of an involuntary confession, or evidence of the accused's bad character when that character has not been put in issue, etc. (Pt. I, Ch. V, para. 60).

(*e*) At the close of the case for the prosecution, the defending officer may submit that the accused has no case to answer, and therefore should not be called upon for his defence, because the prosecution have not produced evidence in support of one or more essentials in the charge (Note 1 to Rule 47. Note to Rule 74).

Note.—This submission must be to the effect that there is no evidence at all on the point or points, and not that the evidence is untrust-worthy.

(*f*) Where a witness not on the summary of evidence is called by the prosecutor, the defending officer may apply for an adjournment, or postponement of cross-examination (Rule 121).

(*g*) The defending officer is entitled to consult the judge-advocate, if one has been appointed, on any question of law or procedure relative to the charge or trial [Rule 91 (A)].

(*h*) The defending officer must throughout the proceedings treat the court with respect and candour.

FOURTH APPENDIX.

WARRANTS UNDER SECTIONS 107 AND 109 OF THE INDIAN ARMY ACT.

FORM A.

Warrant of commitment for use when a prisoner is sentenced to transportation (Indian Army Act, Section 107). I.A.F.D. 911-A.

To the Superintendent of the (a) Prison.

Whereas at a (*b*) Court-martial, held at on the day of , 19 , (*Number, Rank, Name*) of the Regiment was convicted of (*the offence to be briefly stated here, as "desertion", "corresponding with the enemy", "disobedience of lawful command" or as the case may be*).

And whereas the said (*b*) Court-martial on the day of , 19 passed the following sentence upon the said (*Name*) ; that is to say :—

(*Sentence to be entered in full, but without signature.*)

And whereas the said sentence has been duly confirmed by (*c*) as required by law. (*d*).

This is to require and authorise you to receive the said (*Name*) into your custody in the said prison as by law is required, together with this warrant, until he shall be delivered over by you with the said warrant to the proper authority and custody for the purpose of undergoing the aforesaid sentence of transportation. The aforesaid sentence has effect from the (*e*) .

Given under my hand at this the day of , 19 .

Signature (*f*)

(*a*) Enter name of civil prison.

(*b*) General, or Summary General.

(*c*) Name and description of confirming authority.

(*d*) Add if necessary "with a remission of ".

(*e*) Enter date on which the original sentence was signed.

(*f*) Signature of Commanding Officer of prisoner or other prescribed officer.

See Rule 152.

FORM B.

Warrant of commitment for use when a prisoner is sentenced to imprisonment which is to be undergone in a civil prison [Indian Army Act, section 107(2)] I.A.F.D. 911-B.

To the Superintendent

of the (a) *Prison.*

Whereas at a (*b*) Court-martial, held at on the day of , 19 , (*Number, Rank, Name*) of the Regiment was duly convicted of (*the offence to be briefly stated here, as "desertion", "theft", "receiving stolen goods", "fraud", "disobedience of lawful command" or as the case may be*).

And whereas the said (*b*) Court-martial on the day of , 19 , passed the following sentence upon the said (*Name*) ; that is to say : —

(*Sentence to be entered in full, but without signature.*)

And whereas the said sentence has been duly confirmed by (*d*) as required by law (*e*).

(*c*) is by law valid without confirmation.

This is to require and authorise you to receive the said (*Name*) into your custody together with the warrant, and there carry the aforesaid sentence of imprisonment into execution according to law. The sentence has effect from the (*f*)

Given under my hand at this the day of , 19 .

Signature (*g*).

(*a*) Enter name of civil prison.

(*b*) General, District, Summary General or Summary.

(*c*) Strike out inapplicable words.

(*d*) Name and description of confirming authority.

(*e*) Add if necessary "with a remission of ".

(*f*) Enter date on which the *original* sentence was signed.

(*g*) Signature of Commanding Officer of prisoner or other prescribed officer. See Rule 152.

FORM BB.

Warrant of commitment for use when a prisoner is sentenced to imprisonment which is to be undergone in a prison [Indian Army Act, section 107 (2)]

To

The Commandant.
of the Indian Military Prison at

Whereas at (*a*) Court-Martial held at on the day of 19 , (*Number, Rank, Name*) of the Regiment was duly convicted of (*the offence to be briefly stated here, as "desertion", "theft", "receiving stolen goods", "fraud", "dis-obedience of lawful command" or as the case may be*)

And whereas the said (*a*) Court-Martial, on the day of 19 , passed the following sentence upon the said (*Name*) that is to say :—

(*Sentence to be entered in full, but without signature*).

And whereas the said sentence has been duly confirmed by (*b*)
*as required by law (*c*)
*is by law valid without confirmation.

This is to require and authorise you to receive the said (*Name*) into your custody together with this warrant, and there carry the aforesaid sentence of imprisonment into execution according to law. The sentence has effect from (*d*).

Given under my hand at this the day of 19 .

Signature (*e*).

*Strike out inapplicable words.

(*a*) General, District, Summary General or Summary.

(*b*) Name and description of confirming authority.

(*c*) Add if necessary "with remission of ".

(*d*) Enter date on which the original sentence was signed.

(*e*) Signature of Commanding Officer of prisoner or other prescribed Officer. See Rule 152.

FORM C.

Warrant for use when a prisoner is pardoned or his trial set aside, or when the whole sentence, or the unexpired portion thereof, is remitted (Indian Army Act section 109). I.A.F.D. 11-C.

To the Superintendent/Commandant of the (a) Prison.

Whereas (*Number, Rank, Name*) (*late*) of the Regiment is confined in the (*a*) prison under a warrant issued by (*b*) in pursuance of a sentence of (*c*) passed upon him by a (*d*) Court-Martial held at on ; and whereas (*e*) has, in the exercise of the powers conferred upon him by the Indian Army Act, passed the following order regarding the aforesaid sentence; that is to say:—

(*f*)

This is to require and authorise you to forthwith discharge the said (*Name*) from your custody unless he is liable to be detained for some other cause; and for your so discharging him this shall be your sufficient warrant

Given under my hand at this the day of , 19 .

Signature (*g*)

(*a*) Enter name of civil or military prison.

(*b*) Enter name or designation of officer who signed original warrant.

(*c*) Enter original sentence (if this was reduced by the Confirming Officer or other superior authority the sentence should be entered thus:

"2 years' rigorous imprisonment reduced by Confirming Officer to 1 year").

(*d*) General, District, Summary General or Summary.

(*e*) Name and designation of authority pardoning prisoner, mitigating sentence or setting aside trial.

(*f*) Order to be set out in full.

(*g*) Signature of prescribed officer. See Rule 153.

FORM D.

I.A.F.D. 911-D.

Warrant for use when a sentence of transportation is reduced by superior authority to one of a shorter period of the same (Indian Army Act, section 109).

To the Superintendent of the (*a*) *Prison.*

Whereas (*Number, Rank, Name*) (*late*) of the Regiment is confined in the (*a*) prison under a warrant issued by (*b*) in pursuance of a sentence of (*c*) passed upon him by a (*d*) Court-Martial held at on , and whereas (*e*) has, in the exercise of the powers conferred upon him by the Indian Army Act, passed the following order regarding the aforesaid sentence : that is to say :—

(*f*) _____

This is to require and authorise you to keep the said (*Name*) in your custody together with this warrant, in the said prison as by law is required until he shall be delivered over by you with the said warrant to the proper authority and custody for the purpose of his undergoing the punishment of transportation, under the said order. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued. The period of such transportation will reckon from the (*g*).

Given under my hand at this the day of , 19 .

Signature (*h*)

(*a*) Enter name of civil prison.

(*b*) Enter name or designation of officer who signed original warrant.

(*c*) Enter original sentence (if this was reduced by the Confirming Officer or other superior authority the sentence should be entered thus:—

"2 years' rigorous imprisonment reduced by Confirming Officer to 1 year").

(*d*) General or Summary General.

(*e*) Name and designation of authority varying the sentence.

(*f*) Order to be set out in full.

(*g*) Enter date on which *original* sentence was signed.

(*h*) Signature of prescribed officer. See Rule 153.

FORM E

I.A.F.D.—911-E.

Warrant for use when a sentence of imprisonment is reduced by superior authority or when one of transportation is reduced to one of imprisonment

(*Indian Army Act, Section* 109)

To the Superintendent/Commandant.
of the (*a*) *Prison.*

Whereas (*Number, Rank, Name*) (*late*) *of the* Regiment is confined in the (*a*) prison under a warrant issued by (*b*) in pursuance of a sentence of (*c*)
passed upon him by a (*d*) Court-Martial held at on , and whereas (*e*) has in the exercise of the powers conferred upon him by the Indian Army Act, passed the following order regarding the aforesaid sentence; that is to say :
(*f*) ——— ——— ———

This is to require and authorise you to keep the said (*Name*) in your custody together with this warrant, and these to carry into execution the punishment of imprisonment under the said order according to law. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued. The period of such imprisonment will reckon from the (*g*)

Given under my hand at this the day of , 19 .

Signature (*h*)

(*a*) Enter name of civil or military prison.

(*b*) Enter name or designation of officer who signed original warrant.

(*c*) Enter original sentence (if this was reduced by the Confirming Officer or other superior authority the sentence should be entered thus:

"2 years' imprisonment reduced by Confirming Officer to 1 year").

(*d*) General, District, Summary General or Summary.

(*e*) Name and designation of authority varying the sentence.

(*f*) Order to be set out in full.

(*g*) Enter date on which *original* sentence was signed.

(*h*) Signature of prescribed officer. See Rule 153.

FORM F

Warrant for use when prisoner is to be delivered into military custody (*Indian Army Act, section 109*)

I.A.F.D.—911-F

To the Superintendent/Commandant of the (*a*) *Prison.*

Whereas (*Number, Rank, Name*) (*late*) *of the* Regiment is confined in the (*a*) prison under a warrant issued by (*b*) in pursuance of a sentence of (*c*) passed upon him by a (*d*) Court-Martial held at on ; and whereas (*e*) has in the exercise of the powers conferred upon him by the Indian Army Act passed the following order regarding the aforesaid sentence; that is to say : —

(*f*)————————————

This is to require and authorise you to forthwith deliver the said (*Name*) to the officer or non-commissioned officer bringing this warrant.

Given under my hand at this the day of , 19 .

Signature (*g*)

(*a*) Enter name of civil or military prison.

(*b*) Enter name or designation of officer who signed original warrant.

(*c*) Enter original sentence (if this was reduced by the Confirming Officer or other superior authority the sentence should be entered thus:—

"2 years' rigorous imprisonment reduced by Confirming Officer to 1 year").

(*d*) General, District, Summary General or Summary.

(*e*) Name and designation of authority issuing order.

(*f*) Order to be set out in full.

(*g*) Signature of prescribed officer. See Rule 153.

FIFTH APPENDIX

FORM G

I. A.F.D.—11-G

Warrant committing to civil prison custody a person sentenced to death

(*Indian Army Act Rule*, 154A)

To the Superintendent of the (*a*) (.....) Prison.

WHEREAS at a (*b*) .....Court-Martial held at .....on the ..... day of ..... 19 ..... (number, rank and name) of the .....Regiment was convicted of .....(offence to be briefly stated);

And whereas the said (*b*) ..... Court-Martial, on the ..... day of ..... 19 , passed sentence of death on the said ..... (name);

And whereas the said sentence has been confirmed by (*c*)..... as required by law;

This is to require and authorise you to receive and hold the said ..... (name) into your custody in the said prison as by law is required, together with his warrant, until such time as a further warrant in respect of the said ..... (name) shall be issued to you.

Given under my hand at ..... this the ..... day of ..... 19 .....

Signature (*d*)

(*a*) Enter name of civil prison.

(*b*) General or Summary General.

(*c*) Name and description of confirming authority.

(*d*) Signature of Commanding Officer of prisoner.

FORM H

Warrant to obtain person sentenced to death from civil prison custody in order to carry out such sentence I.A.F.D. 911-H

(*Indian Army Act Rule*, 154B)

To the Superintendent of the (*a*) ..... Prison.

WHEREAS .....(number, rank and name) (late) of the ..... Regiment, having been sentenced to suffer death on the ..... day of ..... 19 ..... . by a (*b*) ..... Court-Martial held at ..... is held in the said prison under a warrant issued by (*c*) .....

And whereas, the said sentence having been duly confirmed by (*d*) ..... as by law required, an order to carry out the said sentence has been issued to me (*e*) ..... (name and rank) ;

This is to require and authorise you to deliver forthwith the said ..... (*name*) to the officer/non-commissioned officer bringing this warrant.

Given under my hand at .... this the .....day of .....19.....

Signature (*f*)

(*a*) Enter name of civil prison.

(*b*) General or Summary General.

(*c*) Enter name or designation of officer who signed original warrant.

(*d*) Name and description of confirming authority.

(*e*) Name and designation of the officer to whom the order is issued.

(*f*) Signature of the officer to whom the order is issued.

FORM 1

I.A.F.D.—911-I.

Warrant for use when the sentence of a person under sentence of death and committed to custody in a civil prison is commuted to a sentence of transportation

(*Indian Army Act Rule*, 154C)

To the Superintendent of the (*a*) .....Prison.

WHEREAS ..... (number, rank and name) (late) of the ..... Regiment, is held in the (*a*) .... prison under a warrant issued by (*b*) ..... in pursuance of a sentence of death passed upon him by (*c*) .... Court-Martial held at .....on ....., and whereas (*d*) ..... has, in exercise of the powers conferred upon him by the Indian Army Act, passed the following order regarding the aforesaid sentence, that is to say :—

(*e*)..... ....

This is to require and authorise you to keep the said ..... (name) in your custody together with this warrant in the said prison as by law is required until he shall be delivered over by you with the said warrant to the proper authority and custody for the purpose of his undergoing the punishment of transportation, under the said order ; And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued. The period of such transportation will reckon from the (*f*) .....

Given under my hand at ... . this the ....day of ..... 19.....

Signature (*g*)

(*a*) Enter name of civil prison.

(*b*) Enter name or designation of officer who signed original warrant.

(*c*) General or Summary General.

(*d*) Name and designation of authority commuting the sentence.

(*e*) Order to be set out in full.

(*f*) Enter date on which original sentence was signed.

(*g*) Signature of Commanding Officer.

FORM J

Warrant for use when the sentence of a person under sentence of death and committed to custody in a civil prison, is commuted to a sentence of imprisonment to be served in the same prison. I.A.F.D. 911-J.

(*Indian Army Act Rules*, 154C)

To the Superintendent of the (*a*)..... .....Prison.

WHEREAS ..... (number, rank, name) (late) of the ..... Regiment is held in the (*a*) ..... prison under a warrant issued by (*b*) ..... in pursuance of a sentence of death passed upon him by a (*c*).....Court-Martial held at..... ..... on ..... and whereas (*d*) ..... has in the exercise of the powers conferred upon him by the Indian Army Act, passed the following order regarding the aforesaid sentence; that is to say: — (*e*) .....

This is to require and authorise you to keep the said . ..... (name) in your custody together with this warrant, and there to carry into execution the punishment of imprisonment under the said order according to law. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued. The period of such imprisonment will reckon from the (*f*) .....

Given under my hand at ..... this the ..... day of ..... 19 .....

Signature (*g*)

(*a*) Enter name of civil prison.

(*b*) Enter name or designation of officer who signed original warrant.

(*c*) General or Summary General.

(*d*) Name and designation of authority commuting the sentence.

(*e*) Order to be set out in full.

(*f*) Enter date on which original sentence was signed.

(*g*) Signature of Commanding Officer.

FORM K

I.A.F.D.—911-K.

Warrant for use when a person who, after having been sentenced to death, has been committed to custody in a civil prison is to be delivered into military custody for a purpose other than carrying out the sentence of death.

(*Indian Army Act Rules*, 154C)

To the Superintendent of the (*a*) ..... Prison.

WHEREAS ..... (number, rank, name) (late) of ..... Regiment is held in the (*a*) ..... prison under a warrant issued by (*b*) .....in pursuance of a sentence of death passed upon him by (*c*) ..... Court-Martial held at ..... on ....., and whereas (*d*) ..... has in the exercise of the powers conferred upon him by the Indian Army Act passed the following order regarding the aforesaid sentence ; that is to say :—(*e*)... .....

This is to require and authorise you to forthwith deliver the said ..... (name) to the officer or non-commissioned officer bringing this warrant.

Given under my hand at ..... this the ..... day of ..... 19.....

Signature (*f*)

(*a*) Enter name of civil prison.

(*b*) Enter name or designation of officer who signed original warrant.

(*c*) General or Summary General.

(*d*) Name and designation of authority issuing order.

(*e*) Order to be set out in full.

(*f*) Signature of Commanding Officer.

THE INDIAN ARMY (SUSPENSION OF SENTENCES) ACT

(Act XX of 1920.)

CONTENTS.

SECTIONS.

1. Short title and construction.
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Act No. XX of 1920.

An Act to consolidate and amend the law relating to the suspension of sentences passed by Courts-martial under the Indian Army Act, 1911.

Whereas it is expedient to consolidate and amend the law relating to the suspension of sentences of imprisonment or transportation passed by Courts-martial on persons subject to the Indian Army Act, 1911; It is hereby enacted as follows :—

1. Short title and construction.—This Act may be called the Indian Army (Suspension of Sentences) Act, 1920, and shall be construed as one with the principal Act.

NOTE.

The Act came into force on the 23rd March 1920.

This Act is in effect an integral part of the Indian Army Act. Persons subject to the principal Act are *ipso facto* subject to this Act and words and expressions defined in s. 7 of the principal Act have, when used in this Act, the same meaning as in the principal Act.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(a) "committed" means committed to prison or to confinement in military custody;

(b) "competent military authority" means a superior military authority, or any general or other officer not below the rank of field officer duly authorised by a superior military authority;

(c) "imprisonment" includes confinement in military custody;

(d) "principal Act" means the Indian Army Act, 1911;

(e) "sentence" means a sentence of transportation or imprisonment, whether originally passed on a person subject to the principal Act, or passed by way of reduction or commutation; and "sentenced" has the corresponding meaning; and

(f) "superior military authority" means the Commander-in-Chief or any officer empowered under the principal Act to convene general Courts-martial or summary general Courts-martial.

NOTE.

The above definitions must be read as explained in para. 5 of Chapter II of Part I.

Competent military authority.—The Commander-in-Chief in India has authorised all officers not below the rank of field officer commanding brigades in India to be competent military authorities.

3. Suspension of sentences.—(*1*) Where a person subject to the principal Act is sentenced, the confirming officer when confirming the sentence, or, in the case of a sentence which does not require confirmation, the officer holding the trial or the President of the Court-martial when passing sentence may, notwithstanding anything in the principal Act, direct that such person be not committed until the orders of a superior military authority have been obtained.

(*2*) A superior military authority may, in the case of any such offender so sentenced,—

(a) direct that, until his orders have been obtained, such offender shall not be committed; and

(b) suspend the sentence whether or not the offender has already been committed.

(*3*) Where, in accordance with any order passed under sub-section (*2*), a sentence is suspended, the offender shall, whether he has been committed or not, forthwith be released.

NOTE.

1. *Sub-sec.* (*1*).—If the officer referred to in this sub-section is himself a superior military authority (*i.e.*, an officer empowered to convene general courts-martial or summary general courts-martial) he need not record a formal direction requiring reference to himself but may record his orders under sub-section (*2*) (*b*) forthwith. The cases in which and by whom a direction under this sub-section may be recorded are therefore as under:—

(i) by the officer holding the trial (the Court) in the case of a summary court-martial if a sentence of imprisonment is awarded;

(ii) by the president in the case of a summary general court-martial if a sentence of imprisonment, which is not required under the provisions of section 98 (*1*) of the Indian Army Act to be confirmed, is awarded;

(iii) by the confirming officer in the case of any sentence of imprisonment awarded by a district court-martial unless the confirming officer happens to be also a superior military authority.

It should be noted that the officer holding the trial and the president can only so direct when passing sentence, and the confirming officer when confirming.

Notwithstanding anything in the principal Act.—See I. A. A. s. 107.

2. *Sub-sec. 2* (*a*).—A superior military authority may, in his discretion, issue a general direction that no person sentenced to imprisonment is to be committed to prison or to confinement in military custody until his orders have been obtained. Sentences of transportation or imprisonment exceeding two years will, since only a general or a summary general court-martial can pass such a sentence, always require confirmation by an officer who will himself be a superior military authority.

3. *Sub-sec. 2* (*b*). -A superior military authority under this sub-section read with s. 5 (*a*) can at any time suspend a sentence, order it into execution, and again suspend it, etc., provided that the offender has not ceased to be subject to the Indian Army Act. See I. A. A., s. 2 (2) and Rule 154. See also I. A. (Suspension of Sentences) Act, s. 9.

A minute of suspension may be signed by a staff officer "for" the superior authority, so long as it makes clear that the superior authority considered the case and arrived at the decision.

4. A warrant officer or non-commissioned officer sentenced to transportation or imprisonment is *ipso facto* reduced to the ranks (I. A. A., s. 49), and the suspension of his sentence does not cancel or suspend the reduction. There is, however, no legal bar to a person receiving promotion or an appointment whilst under a suspended sentence.

4. Calculation of periods of sentence under suspension.—Any period during which a sentence is under suspension shall be reckoned as part of the term of such sentence.

NOTE.

Suspension of a sentence does not affect its continuity. Under the provision of I. A. A., s. 106, a sentence of transportation or imprisonment, whether suspended or not, commences on the date on which the original proceedings of the court were signed and runs continuously until it expires.

5. Power to set aside suspension or order remission.—A superior military authority may, at any time whilst a sentence is suspended under this Act, order,—

(a) that the offender be committed to undergo the unexpired portion of the sentence, or

(b) that the sentence be remitted.

NOTE.

1. If the competent military authority at the periodical review required by s. 6 considers that a sentence ought not to remain suspended, he will refer the case to a superior military authority. See note to s. 6. A suspended sentence may, however, be referred to a superior military authority at any time with a view either to its remission or to the committal of the offender to undergo the unexpired portion.

2. This section does not contemplate the partial remission of a sentence; the only power of remission under clause (*b*) is to remit the whole. Partial remission must be effected (if at all) under I. A. A., s. 112. But see s. 8 and note.

3. When an offender is committed to prison to undergo the unexpired portion of his sentence, the unexpired portion should be stated in the warrant. As to signing committal warrants, see Rule 152.

6. Periodical review of suspended sentences.—Where a sentence has been suspended under this Act, the case may at any time, and shall at intervals of not more than four months be reconsidered by a competent military authority, and if, on any such reconsideration, it appears to such authority that the conduct of the offender since his conviction has been such as to justify a remission of the sentence, he shall, if he is not also a superior military authority, refer the case to a superior military authority.

NOTE.

1. See notes to s. 5. Unless he is also a superior military authority, a competent military authority can only:—

(*a*) Keep a suspended sentence further suspended by ordering it to be brought forward for reconsideration on such and such a date not more than four months ahead; or

(*b*) refer it to a superior military authority with a recommendation either that the offender be committed to undergo the unexpired portion of the sentence or that the sentence be remitted.

2. Failure to reconsider a suspended sentence at the proper date has no effect upon the sentence; it can be subsequently reconsidered, and a further suspension or a committal may then be ordered.

7. Procedure on further sentence of offender whose sentence is suspended.—Where an offender, while a sentence on him is suspended under this Act, is sentenced for any other offence, then—

(*a*) if the further sentence is also suspended under this Act, the two sentences shall run concurrently;

(*b*) if the further sentence is for a priod of three months or more and is not suspended under this Act, the offender shall also be committed on the unexpired portion of the previous sentence, but both sentences shall run concurrently; and

(*c*) if the further sentence is for a period of three months or less and is not suspended under this Act, the offender shall be committed on that sentence only, and the previous sentence shall (subject to any order which may be passed under section 5 or section 6) continue to be suspended

NOTE.

1. The case of a further sentence of exactly three months which is not suspended will be dealt with under clause (*b*) and not under clause (*c*).

2. Under clause (*b*) the offender is committed to undergo the unexpired portion of the previous sentence from the date the further sentence is signed. An order by a superior military authority under s. 5 (*a*) is not required.

Committal warrants must, in order to comply with the provisions of the Prisoners Act (III of 1900), be forwarded to the authorities of the prison to which the offender is sent. It will generally be convenient to prepare separate warrants; in preparing the warrant in respect of the former sentence care must be taken to state the unexpired portion which the offender has to undergo.

3. *Clause* (*c*).—If dismissal has been added to the further (unsuspended) sentence and no order has been passed under I. A. A. s. 107, that the imprisonment is to be undergone in military custody, the offender should not be committed to a civil prison until a superior military authority has had an opportunity to order the unexpired portion of the former sentence into execution. It should be remembered that as soon as the offender is

received into a civil prison, the sentence of dismissal will take effect (Rule 154) and he will cease to be subject to the Indian Army Act and to this Act. The former (suspended) sentence will then be inoperative and he will escape the liability to be committed to undergo the unexpired portion.

4. As to preparation of committal warrants, see note 2 above.

8. Saving of section 112 Act VIII of 1911.—The powers conferred by this Act shall be in addition to and not in derogation of, any powers as to the mitigation, remission or commutation of sentences conferred by the principal Act, and a superior military authority shall, as regards persons subject to that Act, be an authority having power to mitigate, remit or commute sentences under section 112 of that Act.

NOTE.

Under this section a superior military authority (see s. 2) may mitigate, remit or commute sentences of transportation or imprisonment whether he is or is not an authority specifically mentioned in I. A. A., s. 112, but a superior military authority cannot *as such* mitigate, remit or commute any other sentence, *e.g.*, dismissal. See the definition of "sentence" in s. 2 (*e*). When, however, a sentence of dismissal has been added to a sentence of transportation or imprisonment and the latter is remitted by a superior military authority acting as such under this Act, the dismissal is automatically remitted. See proviso to s. 9.

9. Provision as to dismissal.—Where in addition to any other sentence the punishment of dismissal has been awarded by a Court-martial, and such other sentence is suspended under this Act, then, notwithstanding anything contained in the principal Act or in any rules made thereunder, such dismissal shall not take effect until so ordered by a superior military authority :

Provided that, if a sentence is remitted under this Act, the punishment of dismissal shall also be remitted.

NOTE.

In the case of a sentence of dismissal combined with transportation or imprisonment which is suspended the dismissal does not take effect until so ordered by a superior military authority. This is so even if the transportation or imprisonment is subsequently ordered into execution by a superior military authority or is automatically put into execution under clause (*b*) of s. 7. A superior military authority who orders into execution a sentence of transportation or of imprisonment other than imprisonment to be undergone in military custody should, if dismissal has been added to such sentence, as a rule order the dismissal to take effect when the offender is received into a civil prison. If the dismissal accompanies a sentence of transportation or imprisonment which is *not* suspended it takes effect as provided in Indian Army Act Rule 154, that is when the sentence is one of transportation or of imprisonment which has to be undergone in a civil prison it takes effect immediately on the offender being received into such a prison and he therefore ceases to be subject to the Indian Army Act and to this Act. In such a case, therefore, the dismissal must be remitted before the sentence of imprisonment or transportation can be suspended. In this connection see the notes to s. 7.

Proviso.—The effect of this proviso is that whenever dismissal has been added to a sentence of transportation or imprisonment and such sentence is remitted *under this* Act the dismissal is also automatically remitted. The remission of a sentence of transportation or imprisonment under s. 112 of the Indian Army Act does not operate so as to remit a sentence of dismissal which accompanied such sentence. If a suspended sentence, to which dismissal has been added runs out whilst still under suspension the dismissal should as a rule be formally remitted under s. 112 of the Indian Army Act by one of the officers empowered *under that section* to do so as this proviso does not automatically remit such dismissals. The powers of remission under s. 112 of the Indian Army Act which s. 8 of this Act confers on all superior military authorities do not extend to sentences of dismissal. See the definition of sentence in s. 2 (*e*) and the note to s. 8.

10. (Section 10 repealed).

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THE ARMY ACT, 1950

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THE SCHEDULE.

THE ARMY ACT, 1950.

(Act XLVI of 1950)

CHAPTER I

Preliminary

1. Short title and commencement.—(*1*) This Act may be called the Army Act, 1950.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

2. Persons subject to this Act.—(*1*) The following persons shall be subject to this Act wherever they may be, namely :—

(a) officers, junior commissioned officers and warrant officers of the regular Army ;

(b) persons enrolled under this Act ;

(c) persons belonging to the Indian Reserve Forces :

(d) persons belonging to the Indian Supplementary Reserve Forces when called out for service or when carrying out the annual test ;

(e) officers of the Territorial Army, when doing duty as such officers, and enrolled persons of the said Army when called out or embodied or attached to any regular forces, subject to such adaptations and modifications as may be made in the application of this Act to such persons under sub-section (*1*) of section 9 of the Territorial Army Act, 1948 (LVI of 1948) ;

(f) persons holding commissions in the Army in India Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces ;

(g) officers appointed to the Indian Regular Reserve of Officers, when ordered on any duty or service for which they are liable as members of such Reserve forces ;

(h) [1][Omitted].

(i) persons not otherwise subject to military law who, on active service, in camp, on the march or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, the regular Army.

(*2*) Every person subject to this Act under clauses (a) to [2][(g)], sub-section (*1*) shall remain so subject until duly retired, discharged, released, removed, dismissed or cashiered from the service.

3. Definitions.—In this Act, unless the context otherwise requires,—

(i) "active service", as applied to a person subject to this Act, means the time during which such person—

(a) is attached to, or forms part of, a force which is engaged in operations against an enemy, or

(b) is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or

[1]Omitted by Adaptation of Laws (No. 3) Order, 1956.
[2]Substituted by Adaptation of Laws (No. 3) Order, 1956.

(c) is attached to or forms part of a force which is in military occupation of a foreign country ;

(ii) "civil offence" means an offence which is triable by a criminal court ;

(iii) "civil prison" means any jail or place used for the detention of any criminal prisoner under the Prisons Act, 1894 (IX of 1894), or under any other law for the time being in force ;

(iv) ["Chief of the Army Staff" means the officer commanding the regular Army ;][1]

(v) "commanding officer", when used in any provision of this Act, with reference to any separate portion of the regular Army or to any department thereof, means the officer whose duty it is under the regulations of the regular Army, or in the absence of any such regulations, by the custom of the service, to discharge with respect to that portion of the regular Army or that department, as the case may be, the functions of a commanding officer in regard to matters of the description referred to in that provision ;

(vi) "corps" means any separate body of persons subject to this Act, which is prescribed as a corps for the purposes of all or any of the provisions of this Act ;

(vii) "court-martial" means a court-martial held under this Act ;

(viii) "criminal court" means a court of ordinary criminal justice in any part of India, other than the State of Jammu and Kashmir ;

(ix) "department" includes any division or branch of a department ;

(x) "enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to military law to act :

(xi) "the Forces" means the regular Army, Navy and Air Force or any part of any one or more of them ;

(xii) "junior commissioned officer" means a person commissioned, gazetted or in pay as a junior commissioned officer in the regular Army or the Indian Reserve Forces, and includes a person holding a junior commission in the Indian Supplementary Reserve Forces, or the Territorial Army [ ][2] who is for the time being subject to this Act ;

(xiii) "military custody" means the arrest or confinement of a person according to the usages of the service and includes naval or air force custody ;

(xiv) "military reward" includes any gratuity or annuity for long service or good conduct, good service pay or pension, and any other military pecuniary reward ;

(xv) "non-commissioned officer" means a person holding a non-commissioned rank or an acting non-commissioned rank in the regular Army or the Indian Reserve Forces, and includes a non-commissioned officer or acting non-commissioned officer of the Indian Supplementary Reserve Forces or the Territorial Army [ ][2] who is for the time being subject to this Act ;

(xvi) "notification" means a notification published in the Official Gazette ;

[1]Substituted by Act No. 19 of 1955.
[2]Omitted by the Adaptation of Laws (No. 3) Order, 1956.

(xvii) "offence" means any act or omission punishable under this Act and includes a civil offence as hereinbefore defined;

(xviii) "officer" means a person commissioned, gazetted or in pay as an officer in the regular Army, and includes—

(a) an officer of the Indian Reserve Forces;

(b) an officer holding a commission in the Territorial Army granted by the President with designation of rank corresponding to that of an officer of the regular Army who is for the time being subject to this Act;

(c) an officer of the Army in India Reserve of Officers who is for the time being subject to this Act;

(d) an officer of the Indian Regular Reserve of Officers who is for the time being subject to this Act;

(e) [Omitted][1].

(f) in relation to a person subject to this Act when serving under such conditions as may be prescribed, an officer of the Navy or Air Force;

but does not include a junior commissioned officer, warrant officer, petty officer or non-commissioned officer;

(xix) "prescribed" means prescribed by rules made under this Act;

(xx) "provost-marshal" means a person appointed as such under section 107 and includes any of his deputies or assistants or any other person legally exercising authority under him or on his behalf;

(xxi) "regular Army" means officers, junior commissioned officers, warrant officers, non-commissioned officers and other enrolled persons who, by their commission, warrant, terms of enrolment or otherwise, are liable to render continuously for a term military service to the Union in any part of the world, including persons belonging to the Reserve Forces and the Territorial Army when called out on permanent service;

(xxii) "regulation" includes a regulation made under this Act;

(xxiii) "superior officer", when used in relation to a person subject to this Act, includes a junior commissioned officer, warrant officer and a non-commissioned officer, and, as regards persons placed under his orders, an officer, warrant officer, petty officer and non-commissioned officer of the Navy or Air Force;

(xxiv) "warrant officer" means a person appointed, gazetted or in pay as a warrant officer of the regular Army or of the Indian Reserve Forces, and includes a warrant officer of the Indian Supplementary Reserve Forces or of the Territorial Army [ ][1] who is for the time being subject to this Act;

(xxv) all words and expressions used but not defined in this Act and defined in the Indian Penal Code (Act XLV of 1860) shall be deemed to have the meanings assigned to them in that Code.

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[1]Omitted by the Adaptation of Laws (No. 3) Order, 1956.

CHAPTER II

SPECIAL PROVISIONS FOR THE APPLICATION OF ACT IN CERTAIN CASES

4. Application of Act to certain forces under Central Government.—(*1*) The Central Government may, by notification, apply, with or without modifications, all or any of the provisions of this Act to any force raised and maintained in India under the authority of that Government, [ ][1] and suspend the operation of any other enactment for the time being applicable to the said force.

(*2*) The provisions of this Act so applied shall have effect in respect of persons belonging to the said force as they have effect in respect of persons subject to this Act holding in the regular Army the same or equivalent rank as the aforesaid persons hold for the time being in the said force.

(*3*) The provisions of this Act so applied shall also have effect in respect of persons who are employed by or are in the service of or are followers of or accompany any portion of the said force as they have effect in respect of persons subject to this Act under clause (i) of section 2.

(4) While any of the provisions of this Act apply to the said force, the Central Government may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of the said force.

5. [Omitted][1].

6. Special provision as to rank in certain cases.—(1) The Central Government may, by notification, direct that any persons or class of persons subject to this Act under clause (i) of section 2 shall be so subject as officers, junior commissioned officers, warrant officers or non-commissioned officers and may authorise any officer to give a like direction and to cancel such direction.

(2) All persons subject to this Act other than officers, junior commissioned officers, warrant officers and non-commissioned officers shall, if they are not persons in respect of whom a notification or direction under sub-section (1) is in force, be deemed to be of a rank inferior to that of a non-commissioned officer.

7. Commanding officer of persons subject to military law under clause (i) of section 2.—(1) Every person subject to this Act under clause (i) of section 2 shall, for the purposes of this Act be deemed to be under the commanding officer of the corps, department or detachment, if any, to which he is attached, and, if he is not so attached, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person for the time being is serving, or any other prescribed officer, or, if no such officer is named or prescribed under the command of the said officer commanding the force.

(2) An officer commanding a force shall not place a person subject to this Act under clause (i) of section 2 under the command of an officer of rank inferior to that of such person, if there is present at the place where such person is any officer of a higher rank under whose command he can be placed.

8. Officers exercising powers in certain cases.—(1) Whenever persons subject to this Act are serving under an officer commanding any military organisation, not in this section specifically named and being in the opinion of the Central

[1]Omitted by the Adaptation of Laws (No. 3) Order, 1956.

Government not less than a brigade, that Government may prescribe the officer by whom the powers, which under this Act may be exercised by officers commanding armies, army corps, divisions and brigades, shall, as regards such persons, be exercised.

(2) The Central Government may confer such powers, either absolutely or subject to such restrictions, reservations, exceptions and conditions, as it may think fit.

9. Power to declare persons to be on active service.—Notwithstanding anything contained in clause (i) of section 3, the Central Government may, by notification, declare that any person or class of persons subject to this Act shall, with reference to any area in which they may be serving or with reference to any provision of this Act or of any other law for the time being in force, be deemed to be on active service within the meaning of this Act.

CHAPTER III

COMMISSION, APPOINTMENT AND ENROLMENT

10. Commission and appointment.—The President may grant, to such person as he thinks fit, a commission as an officer, or as a junior commissioned officer or appoint any person as a warrant officer of the regular Army.

11. Ineligibility of aliens for enrolment.—No person who is not a citizen of India shall, except with the consent of the Central Government signified in writing, be enrolled in the regular Army :

Provided that nothing contained in this section shall bar the enrolment of the subjects of Nepal in the regular Army.

12. Ineligibility of females for enrolment or employment.—No female shall be eligible for enrolment or employment in the regular Army, except in such corps, department, branch or other body forming part of, or attached to any portion of, the regular Army as the Central Government may, by notification in the Official Gazette, specify in this behalf :

Provided that nothing contained in this section shall affect the provisions of any law for the time being in force providing for the raising and maintenance of any service auxiliary to the regular Army or any branch thereof in which females are eligible for enrolment or employment.

13. Procedure before enrolling officer.—Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled ; and shall put to him the questions set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.

14. Mode of enrolment.—If, after complying with the provisions of section 13, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if such officer perceives no impediment, he shall sign and shall also cause such person to sign the enrolment paper, and such person shall thereupon be deemed to be enrolled.

15. Validity of enrolment.—Every person who has for the space of three months been in receipt of pay as a person enrolled under this Act and been borne on the rolls of any corps or department shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of any irregularity or illegality in his enrolment or on any other ground whatsoever ; and if any person, in receipt of such pay and borne on the rolls as aforesaid, claims his discharge before the expiry of three months from his enrolment, no such irregularity or illegality or other ground shall, until he is discharged in pursuance of his claim, affect his position as an enrolled person under this Act or invalidate any proceeding, act or thing taken or done prior to his discharge.

16. Persons to be attested.—The following persons shall be attested, namely:—

(a) all persons enrolled as combatants ;

(b) all persons selected to hold a non-commissioned or acting non-commissioned rank ; and

(c) all other persons subject to this Act as may be prescribed by the Central Government.

17. Mode of attestation.—(1) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer in front of his corps or such portion thereof or such members of his department as may be present, or by any other prescribed person.

(2) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will bear true allegiance to the Constitution of India as by law established, and that he will serve in the regular Army and go wherever he is ordered by land, sea or air, and that he will obey all commands of any officer set over him, even to the peril of his life.

(3) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper, and authenticated by the signature of the officer administering the oath or affirmation.

CHAPTER IV

CONDITIONS OF SERVICE

18. Tenure of service under the Act.—Every person subject to this Act shall hold office during the pleasure of the President.

19. Termination of service by Central Government.—Subject to the provisions of this Act and the rules and regulations made thereunder the Central Government may dismiss, or remove from the service, any person subject to this Act.

20. Dismissal, removal or reduction by [Chief of the Army Staff][1] and by other officers.—(1) The [Chief of the Army Staff][1] may dismiss or remove from the service any person subject to this Act other than an officer.

(2) The [Chief of the Army Staff][1] may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer.

(3) An officer having power not less than a brigade or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a junior commissioned officer.

(4) Any such officer as in mentioned in sub-section (3) may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer under his command.

(5) A warrant officer reduced to the ranks under this section shall not, however, be required to serve in the ranks as a sepoy.

(6) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent grade as a non-commissioned officer, or if he has no permanent grade above the ranks, to the ranks.

(7) The exercise of any power under this section shall be subject to the said provisions contained in this Act and the rules and regulations made thereunder.

21. Power to modify certain fundamental rights in their application to persons subject to this Act.—Subject to the provisions of any law for the time being in force relating to the regular Army or to any branch thereof, the Central Government may, by notification, make rules restricting to such extent and in such manner as may be necessary the right of any person subject to this Act—

(a) to be a member of, or to be associated in any way with, any trade union or labour union, or any class of trade or labour unions or any society, institution or association, or any class of societies, institutions or associations;

(b) to attend or address any meeting or to take part in any demonstration organised by any body of persons for any political or other purposes;

(c) to communicate with the press or to publish or cause to be published any book, letter or other document.

22. Retirement, release or discharge.—Any person subject to this Act may be retired, released or discharged from the service by such authority and in such manner as may be prescribed.

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[1]Substituted by Act No. 19 of 1955.

23. Certificate on termination of service.—Every junior commissioned officer, warrant officer, or enrolled person who is dismissed, removed, discharged, retired or released from the service shall be furnished by his commanding officer with a certificate, in the language which is the mother tongue of such person and also in the English language setting forth—

(a) the authority terminating his service ;

(b) the cause for such termination ; and

(c) the full period of his service in the regular Army.

24. Discharge or dismissal when out of India.—(1) Any person enrolled under this Act who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled to ordered to be discharged, is serving out of India, and requests to be sent to India, shall, before being discharged, be sent to India, with all convenient speed.

(2) Any person enrolled under this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed.

(3) When any such person as is mentioned in sub-section (2) is sentenced to dismissal combined with any other punishment, such other punishment, or, in the case of a sentence of transportation or imprisonment, a portion of such sentence may be inflicted before he is sent to India.

(4) For the purposes of this section, the word "discharge" shall include release, and the word "dismissal" shall include removal.

CHAPTER V

SERVICE PRIVILEGES

25. Authorised deductions only to be made from pay.—The pay of every person subject to this Act due to him as such under any regulation for the time being in force shall be paid without any deduction other than the deductions authorised by or under this or any other Act.

26. Remedy of aggrieved persons other than officers.—(1) Any person subject to this Act other than an officer who deems himself wronged by any superior or other officer may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer commanding the same.

(2) When the officer complained against is the officer to whom any complaint should, under sub-section (1), be preferred, the aggrieved person may complain to such officer's next superior officer.

(3) Every officer receiving any such complaint shall make as complete an investigation into it as may be possible for giving full redress to the complainant; or, when necessary, refer the complaint to superior authority.

(4) Every such complaint shall be preferred in such manner as may from time to time be specified by the proper authority.

(5) The Central Government may revise any decision by the [Chief of the Army Staff][1] under sub-section (2), but, subject thereto, the decision of the [Chief of the Army Staff][1] shall be final.

27. Remedy of aggrieved officers.—Any officer who deems himself wronged by his commanding officer or any superior officer and who on due application made to his commanding officer does not receive the redress to which he considers himself entitled, may complain to the Central Government in such manner as may from time to time be specified by the proper authority.

28. Immunity from attachment.—Neither the arms, clothes, equipment, accoutrements or necessaries of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue officer in satisfaction of any decree or order enforceable against him.

29. Immunity from arrest for debt.—(1) No person subject to this Act shall, so long as he belongs to the Forces, be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue court or revenue officer.

(2) The judge of any such court or the said officer may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section and may, by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no court-fee shall be payable by the complainant.

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[1]Substituted by Act No. 19 of 1955.

30. Immunity of persons attending courts-martial from arrest.—(1) No presiding officer or member of a court-martial, no judge advocate, no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial shall, while proceeding to, attending, or returning from, a court-martial, be liable to arrest under civil or revenue process.

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

31. Privileges of reservists.—Every person belonging to the Indian Reserve Forces shall, when called out for or engaged in or returning from, training or service, be entitled to all the privileges accorded by section 28 and 29 to a person subject to this Act.

32. Priority in respect of army personnel's litigation.—(1) On the presentation to any court by or on behalf of any person subject to this Act of a certificate from the proper military authority of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

(2) The certificate from the proper military authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee shall be payable to the court in respect of the presentation of any such certificate, or of any application by or on behalf of any such person, for priority for the hearing of his case.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for its inability to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid, such question shall at once be referred by the court to an officer having power not less than a brigade or equivalent commander whose decision shall be final.

33. Saving of rights and privileges under other laws.—The rights and previleges specified in the preceding sections of this Chapter shall be in addition to, and not in derogation of, any other rights and privileges conferred on persons subject to this Act or on members of the regular Army, Navy and Air Force generally by any other law for the time being in force.

CHAPTER VI

OFFENCES

34. Offences in relation to the enemy and punishable with death.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) shamefully abandons or delivers up any garrison, fortress, post, place or guard, committed to his charge, or which it is his duty to defend, or uses any means to compel or induce any commanding officer or other person to commit any of the said acts; or

(b) intentionally uses any means to compel or induce any person subject to military, naval or air force law to abstain from acting against the enemy, or to discourage such person from acting against the enemy ; or

(c) in the presence of the enemy, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or

(d) treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union ; or

(e) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies; or

(f) treacherously or through cowardice sends a flag of truce to the enemy ; or

(g) in time of war or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency; or

(h) in time of action leaves his commanding officer or his post, guard, picquet, patrol or party without being regularly relieved or without leave; or

(i) having been made a prisoner of war, voluntarily serves with or aids the enemy; or

(j) knowingly harbours or protects an enemy not being a prisoner ; or

(k) being a sentry in time of war or alarm, sleeps upon his post or is intoxicated; or

(l) knowingly does any act calculated to imperil the success of the military, naval or air forces of India or any forces co-operating therewith or any part of such forces;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

35. Offences in relation to the enemy and not punishable with death.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner, fails to rejoin his service when able to do so ; or

(b) without due authority holds correspondence with or communicates intelligence to the enemy or having come by the knowledge of any such correspondence or communication, wilfully omits to discover it immediately to his commanding or other superior officer; or

(c) without due authority sends a flag of truce to the enemy ; shall, on conviction by court-martial be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as in this Act mentioned.

36. Offences punishable more severely on active service than at other times.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) forces a safeguard, or forces or uses criminal force to a sentry ; or

(b) breaks into any house or other place in search of plunder ; or

(c) being a sentry sleeps upon his post, or is intoxicated; or

(d) without orders from his superior officer leaves his guard, picquet, patrol or post; or

(e) intentionally or through neglect occasions a false alarm in camp, garrison, or quarters; or spreads reports calculated to create unnecessary alarm or despondency; or

(f) makes known the parole, watchword or countersign to any person not entitled to receive it; or knowingly gives a parole, watchword or countersign different from what the received ;

shall, on conviction by court-martial,

If he commits any such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned ; and

if he commits any such offence when not on active service, be liable to suffer imprisonment for a term which may extend to seven years or such or such less punishment as is in this Act mentioned.

37. Mutiny.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) begins, incites, causes, or conspires with any other persons to cause any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer; or

(e) endeavours to seduce any person in the military, naval or air forces of India from his duty or allegiance to the Union;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

38. Desertion and aiding desertion.—(1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by court-martial,

if he commits the offence on active service or when under orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned ; and

if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who, knowingly harbours any such deserter shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as in this Act mentioned.

(3) Any person subject to this Act who, being congnizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such person to be apprehended, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

39. Absence without leave.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) absents himself without leave ; or

(b) without sufficient cause overstays leave granted to him; or

(c) being on leave of absence and having received information from proper authority that any corps, or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay ; or

(d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or

(e) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer, quits the parade or line of march; or

(f) when in camp or garrison or elsewhere, is found beyond any limits fixed, or in any place prohibited, by any general, local or other order, without a pass or written leave from his superior officer; or

(g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

40. Striking or threatening superior officers.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) uses criminal force to or assaults his superior officer; or

(b) uses threatening language to such officer; or

(c) uses insubordinate language to such officer;

shall, on conviction by court-martial.

if such officer is at the time in the execution of his office or, if the offence is committed on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.

41. Disobedience to superior officer.—(1) Any person subject to this Act who disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally, or in writing or by signal or otherwise shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who disobeys any lawful command given by his superior officer shall, on conviction by court-martial,

if he commits such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if he commits such offence when not on active service, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

42. Insubordination and obstruction.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) being concerned in any quarrel, affray, or disorder, refuses to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to or assaults any such officer; or

(b) uses criminal force to or assaults any person, whether subject to this Act or not, in whose custody he is lawfully placed, and whether he is or is not his superior officer; or

(c) resists an escort whose duty it is to apprehend him or to have him in charge; or

(d) breaks out of barracks, camp or quarters; or

(e) neglects to obey any general, local or other order; or

(f) impedes the provost-marshal or any person lawfully acting on his behalf, or when called upon, refuses to assist in the execution of his duty a provost-marshal or any person lawfully acting on his behalf; or

(g) uses criminal force to or assaults any person bringing provisions or supplies to the forces:

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend, in the case of the offences specified in clauses (d) and (e) to two years, and in the case of the offences specified in the other clauses to ten years, or such less punishment as is in this Act mentioned.

43. Fraudulent enrolment.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) without having obtained a regular discharge from the corps or department to which he belongs, or otherwise fulfilled the conditions enabling him to enrol or enter, enrols himself in, or enters the same or any other corps or department or any part of the naval or air forces of India or the Territorial Army; or

(b) is concerned in the enrolment in any part of the Forces of any person when he knows or has reason to believe such person to be so circumstanced that by enrolling he commits an offence against this Act;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

44. False answers on enrolment.—Any person having become subject to this Act who is discovered to have made at the time of enrolment a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

45. Unbecoming conduct.—Any officer, junior commissioned officer or warrant officer who behaves in a manner unbecoming his position and the character expected of him shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is a junior commissioned officer or a warrant officer, be liable to be dismissed or to suffer such less punishment as is in this Act mentioned.

46. Certain forms of disgraceful conduct.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or

(b) malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or

(c) with intent to render himself or any other person unfit for service voluntarily causes hurt to himself or that person;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

47. Ill-treating a subordinate.—Any officer, junior commissioned officer, warrant officer or non-commissioned officer who uses criminal force to or otherwise ill-treats any person subject to this Act, being his subordinate in rank or position, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

48. Intoxication.—(1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is not an officer, be liable, subject to the provisions of sub-section (2), to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

(2) Where an offence of being intoxicated is committed by a person other than an officer when not on active service or not on duty, the period of imprisonment awarded shall not exceed six months.

49. Permitting escape of person in custody.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) when in command of a guard, picquet, patrol or post, releases without proper authority, whether wilfully or without reasonable excuse, any person committed to his charge, or refuses to receive any prisoner or person so committed; or

(b) wilfully or without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to keep or guard;

shall, on conviction by court martial, be liable, if he has acted wilfully to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and if he has not acted wilfully, to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

50. Irregularity in connection with arrest or confinement.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation; or

(b) having committed a person to military custody fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within forty-eight hours thereafter, to the officer or other person into whose custody the person arrested is committed, an account in writing signed by himself of the offence with which the person so committed is charged;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

51. Escape from custody.—Any person subject to this Act who, being in lawful custody, escapes or attempts to escape, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

52. Offences in respect of property.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) commits theft of any property belonging to the Government, or to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law; or

(b) dishonestly misappropriates or converts to his own use any such property; or

(c) commits criminal breach of trust in respect of any such property; or

(d) dishonestly receives or retains any such property in respect of which any of the offences under clauses (a), (b) and (c) has been committed, knowing or having reason to believe the commission of such offence; or

(e) wilfully destroys or injures any property of the Government entrusted to him; or

(f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person ;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

53. Extortion and corruption.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) commits extortion ; or

(b) without proper authority exacts from any person money, provisions or service;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

54. Making away with equipment.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) makes away with, or is concerned in making away with, any arms, ammunition, equipment, instruments, tools, clothing or any other thing being the property of the Government issued to him for his use or entrusted to him; or

(b) loses by neglect anything mentioned in clause (a); or

(c) sells, pawns, destroys or defaces any medal or decoration granted to him;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend in the case of the offences specified in clause (a) to ten years, and in the case of the offences specified in the other clauses to five years, or such less punishment as is in this Act mentioned.

55. Injury to property.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) destroys or injures any property mentioned in clause (a) of section 54 or any property belonging to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law, or serving with, or attached to, the regular Army; or

(b) commits any act which causes damage to, or destruction of, any property of the Government by fire; or

(c) kills, injures, makes away with, ill-treats or loses any animal entrusted to him;

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and if he has acted without reasonable excuse, to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

56. False accusations.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) makes a false accusation against any person subject to this Act knowing or having reason to believe such accusation to be false; or

(b) in making a complaint under section 26 or section 27 makes any statement affecting the character of any person subject to this Act, knowing or having reason to believe such statement to be false or knowingly and wilfully suppresses any material facts;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

57. Falsifying official documents and false declaration.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy; knowingly makes, or is privy to the making of any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud ; or

(c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record or by making any document containing a false statement, or by omitting to make a true entry of document containing a true statement ;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

58. Signing in blank and failure to report.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) when signing any document relating to pay, arms, ammunition, equipment, clothing, supplies or stores, or any property of the Government fraudulently leaves in blank any material part for which his signature is a voucher; or

(b) refuses or by culpable neglect omits to make or send a report or return which it is his duty to make or send;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

59. Offences relating to courts-martial.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) being duly summoned or ordered to attend as a witness before a court-martial, wilfully or without reasonable excuse, makes default in attending; or

(b) refuses to take an oath or make an affirmation legally required by a court-martial to be taken or made; or

(c) refuses to produce or deliver any document in his power or control legally required by a court-martial to be produced or delivered by him; or

(d) refuses when a witness to answer any question which he is by law bound to answer; or

(e) is guilty of contempt of court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

60. False evidence.—Any person subject to this Act who having been duly sworn or affirmed before any court-martial or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

61. Unlawful detention of pay.—Any officer, junior commissioned officer, warrant officer or non-commissioned officer who, having received the pay of a person subject to this Act unlawfully detains or refuses to pay the same when due, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

62. Offences in relation to aircraft and flying.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) wilfully or without reasonable excuse damages, destroys or loses any aircraft or aircraft material belonging to the Government; or

(b) is guilty of any act or neglect likely to cause such damage, destruction or loss; or

(c) without lawful authority disposes of any aircraft or aircraft material belonging to the Government; or

(d) is guilty of any act or neglect in flying, or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person; or

(e) during a state of war, wilfully and without proper occasion, or negligently, causes the sequestration, by or under the authority of a neutral State, or the destruction in a neutral State of any aircraft belonging to the Government;

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned, and, in any other case, to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

63. Violation of good order and discipline.—Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

64. Miscellaneous offences.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority ; or

(b) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person ; or

(c) attempts to commit suicide, and in such attempt does any act towards the commission of such offence ; or

(d) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bazar, carrying a rifle, sword or other offensive weapon ; or

(e) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service ; or

(f) commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving ;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

65. Attempt.—Any person subject to this Act who attempts to commit any of the offences specified in sections 34 to 64 inclusive and in such attempt does any act towards the commission of the offence shall, on conviction by court-martial, where no express provision is made by this Act for the punishment of such attempt be liable,

if the offence attempted to be committed is punishable with death, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned ; and

if the offence attempted to be committed is punishable with imprisonment, to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

66. Abetment of offences that have been committed.—Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive shall, on conviction by court-martial, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

67. Abetment of offences punishable with death and not committed.—Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub-section (1) of section 38 shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

68. Abetment of offences punishable with imprisonment and not committed.—Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive and punishable with imprisonment shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

69. Civil offences.—Subject to the provisions of section 70, any person subject to this Act who at any place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be tried by a court-martial and, on conviction, be punishable as follows, that is to say,—

(a) if the offence is one which would be punishable under any law in force in India with death or with [transportation][1], he shall be liable to suffer any punishment, other than whipping, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned ; and

(b) in any other case, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by the law in force in India, or imprisonment for a term which may extend to seven years, or such less punishment as is in this Act mentioned.

70. Civil offences not triable by court-martial.—A person subject to this Act who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a court-martial, unless he commits any of the said offences—

(a) while on active service, or

(b) at any place outside India, or

(c) at a frontier post specified by the Central Government by notification in this behalf.

Explanation.—In this section and in section 69, "India" does not include the State of Jammu and Kashmir.

[1]To be construed as "imprisonment for life". See I. P. C. Sec. 53A.

CHAPTER VII

PUNISHMENTS

71. Punishment awardable by courts-martial.—Punishments may be inflicted in respect of offences committed by person subject to this Act and convicted by courts-martial, according to the scale following, that is to say,—

(a) death ;

(b) [transportation for life or for any period not less than seven years ;]'

(c) imprisonment, either rigorous or simple, for any period not exceeding fourteen years ;

(d) cashiering, in the case of officers ;

(e) dismissal from the service ;

(f) reduction to the ranks or to a lower rank or grade or place in the list of their rank, in the case of warrant officers ; and reduction to the ranks or to a lower rank or grade, in the case of non-commissioned officers :

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy ;

(g) forfeiture of seniority of rank, in the case of officers, junior commissioned officers, warrant officers and non-commissioned officers ; and forfeiture of all or any part of their service for the purpose of promotion, in the case of any of them whose promotion depends upon length of service ;

(h) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose ;

(i) severe reprimand or reprimand, in the case of officers, junior commissioned officers, warrant officers and non-commissioned officers ;

(j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service ;

(k) forfeiture in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal ;

(l) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

72. Alternative punishments awardable by court-martial.—Subject to the provisions of this Act, a court-martial may, on convicting a person subject to this Act of any of the offences specified in sections 34 to 68 inclusive, award either the particular punishment with which the offence is stated in the said sections to be punishable, or, in lieu thereof, any one of the punishments lower in the scale set out in section 71, regard being had to the nature and degree of the offence.

73. Combination of punishments.—A sentence of a court-martial may award in addition to, or without any one other punishment the punishment specified in clause (d) or clause (e) of section 71 and any one or more of the punishments specified in clauses (f) to (l) of that section.

74. Cashiering of officers.—An officer shall be sentenced to be cashiered before he is awarded any of the punishments specified in clauses (a) to (c) of section 71

75. Field punishment.—Where any person subject to this Act and under the rank of warrant officer commits any offence on active service, it shall be lawful for a court-martial to award for that offence any such punishment as is prescribed as

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[1]To be construed as "imprisonment for life". *See* I.P.C. Sec. 53A.

a field punishment. Field punishment shall be of the character of personal restraint or of hard labour but shall not be of a nature to cause injury to life or limb and shall not include flogging.

76. Position of field punishment in scale of punishments.—Field punishment shall for the purpose of commutation be deemed to stand next below dismissal in the scale of punishments specified in section 71.

77. Result of certain punishments in the case of a warrant officer or non-commissioned officer.—A warrant officer or a non-commissioned officer sentenced by a court-martial to [transportation][1], imprisonment, field punishment or dismissal from the service, shall be deemed to be reduced to the ranks.

78. Retention in the ranks of a person convicted on active service.—When, on active service, any enrolled person has been sentenced by a court-martial to dismissal, or to [transportation][1] or imprisonment whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks, and such service shall be reckoned as part of his term of [transportation][1] or imprisonment, if any.

79. Punishments otherwise than by court-martial.—Punishments may also be inflicted in respect of offences committed by persons subject to this Act without the intervention of a court-martial and in the manner stated in sections 80, 83, 84 and 85.

80. Punishment of persons other than officers, junior commissioned officers and warrant officers.—Subject to the provisions of section 81, a commanding officer or such other officer as is with the consent of the Central Government, specified by the [Chief of the Army Staff][2], may, in the prescribed manner, proceed against a person subject to this Act otherwise than as an officer, junior commissioned officer or warrant officer who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments, that is to say,—

(a) imprisonment in military custody up to twenty-eight days ;

(b) detention up to twenty-eight days ;

(c) confinement to the lines up to twenty-eight days ;

(d) extra guards or duties ;

(e) deprivation of a position of the nature of an appointment or of corps or working pay, and in the case of non-commissioned officers, also deprivation of acting rank or reduction to a lower grade of pay ;

(f) forfeiture of good service and good conduct pay ;

(g) severe reprimand or reprimand ;

(h) fine up to fourteen days' pay in any one month ;

(i) penal deductions under clause (g) of section 91 ;

(j) any prescribed field punishment up to twenty-eight days in the case of a person on active service.

81. Limit of punishments under section 80.—(1) An award of punishment under section 80 shall not include field punishment in addition to one or more of the punishments specified in clauses (a), (b) and (c) of that section.

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[1]To be construed as "imprisonment for life". *See* I. P. C. Sec. 53A.

[2]Substituted by Act No. 19 of 1955.

(2) In the case of an award of two or more of the punishments specified in clauses (a), (b), (c) and (d) of the said section, punishment specified in clause (c) or clause (d) shall taken effect only at the end of the punishment specified in clause (a) or clause (b).

(3) When two or more of the punishments specified in the said clauses (a), (b) and (c) are awarded to a person conjointly, or when already undergoing one or more of the said punishments, the whole extent of the punishments shall not exceed in the aggregate forty-two days.

(4) The punishments specified in clauses (a), (b), (c) and (j), of section 80 shall not be awarded to any person who is of the rank of non-commissioned officer or was, at the time of committing the offence for which he is punished, of such rank.

(5) The punishment specified in clause (g) of the said section shall not be awarded to any person below the rank of a non-commissioned officer.

82. Punishments in addition to those specified in section 80.—The [Chief of the Army Staff][1] may, with the consent of the Central Government, specify such other punishments as may be awarded under section 80 in addition to or without any of the punishments specified in the said section, and the extent to which such other punishments may be awarded.

83. Punishment of officers, junior commissioned officers and warrant officers by brigade commanders and others.—An officer having power not less than a brigade, or an equivalent commander or such other officer as is, with the consent of the Central Government, specified by the [Chief of the Army Staff][1] may, in the prescribed manner, proceed against an officer below the rank of a field officer, a junior commissioned officer or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments, that is to say,—

(a) severe reprimand or reprimand ;

(b) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

84. Punishment of officers, junior commissional officers and warrant officers by area commanders and others.—An officer having power not less than an area commander or an equivalent commander or an officer empowered to convene a general court-martial or such other officer as is, with the consent of the Central Government, specified by the [Chief of the Army Staff][1] may, in the prescribed manner, proceed against an officer below the rank of lieutenant-colonel, a junior commissioned officer or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments, that is to say,—

(a) forfeiture of seniority, or in the case of any of them whose promotion depends upon length of service, forfeiture of service for the purpose of promotion for a period not exceeding twelve months, but subject to the right of the accused previous to the award to elect to be tried by a court-martial ;

(b) severe reprimand or reprimand ;

(c) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

[1]Substituted by Act No. 19 of 1955.

85. Punishment of junior commissioned officers.—A commanding officer or such other officer as is, with the consent of the Central Government, specified by the [Chief of the Army Staff][1] may, in the prescribed manner, proceed against a junior commissioned officer who is charged with an offence under this Act and award the punishment of stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

86. Transmission of proceedings.—In every case in which punishment has been awarded under any of the sections 83, 84 and 85, certified true copies of the proceedings shall be forwarded, in the prescribed manner, by the officer awarding the punishment, to a superior military authority as defined in section 88.

87. Review of proceedings.—If any punishment awarded under any of the sections 83, 84 and 85 appears to a superior military authority as defined in section 88 to be illegal, unjust or excessive, such authority may cancel, vary or remit the punishment and make such other direction as may be appropriate in the circumstances of the case.

88. Superior military authority.—For the purpose of sections 86 and 87, a "superior military authority" means—

(a) in the case of punishments awarded by a commanding officer, any officer superior in command to such commanding officer ;

(b) in the case of punishments awarded by any other authority, the Central Government, the [Chief of the Army Staff][1] or other officer specified by the [Chief of the Army Staff][1]

89. Collective fines.—(1) Whenever any weapon or part of a weapon forming part of the equipment of a half squadron, battery, company or other similar unit is lost or stolen, the officer commanding the army, army corps, division or independent brigade to which such units belongs may, after obtaining the report of a court of inquiry impose a collective fine upon the junior commissioned officers, warrant officers, non-commissioned officers and men of such unit, or upon so many of them as, in his judgment, should be held responsible for such loss or theft.

(2) Such fine shall be assessed as a percentage on the pay of the individuals on whom it falls.

[1]Substituted by Act No. 19 of 1955.

CHAPTER VIII

PENAL DEDUCTIONS

90. Deductions from pay and allowances of officers.—The following penal deductions may be made from the pay and allowances of an officer, that is to say,—

(a) all pay and allowances due to an officer for every day he absents himself without leave, unless a satisfactory explanation has been given to his commanding officer and has been approved by the Central Government;

(b) all pay and allowances for every day while he is in custody or under suspension from duty on a charge for an offence for which he is afterwards convicted by a Criminal Court or a court-martial or by an officer exercising authority under section 83 or section 84;

(c) any sum required to make good the pay of any person, subject to this Act which he has unlawfully retained or unlawfully refused to pay;

(d) any sum required to make good such compensation for any expenses, loss, damage or destruction occasioned by the commission of an offence as may be determined by the court-martial by whom he is convicted of such offence, or by an officer exercising authority under section 83 or section 84;

(e) all pay and allowances ordered by a court-martial or an officer exercising authority under section 85 to be forfeited or stopped;

(f) any sum required to pay a fine awarded by a criminal court or a court-martial exercising jurisdiction under section 69;

(g) any sum required to make good any loss, damage, or destruction of public or regimental property which, after due investigation, appears to the Central Government to have been occasioned by the wrongful act or negligence on the part of the officer;

(h) all pay and allowances forfeited by order of the Central Government if the officer is found by a court of inquiry constituted by the [Chief of the Army Staff][1] in this behalf, to have deserted to the enemy, or while in enemy hands, to have served with, or under the orders of, the enemy, or in any manner to have aided the enemy, or to have allowed himself to be taken prisoner by the enemy through want of due precaution or through disobedience of orders or wilful neglect of duty, or having been taken prisoner by the enemy, to have failed to rejoin his service when it was possible to do so;

(i) any sum required by order of the Central Government to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

91. Deductions from pay and allowances of persons other than officers.—Subject to the provisions of section 94 the following penal deductions may be made from the pay and allowances of a person subject to this Act other than an officer, that is to say,—

(a) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of [transportation][2] or imprisonment awarded by a criminal court a court-martial or an officer exercising authority under section 80, or of field punishment awarded by a court-martial or such officer;

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[1]Substituted by Act No. 19 of 1955.

[2]To be construed as "imprisonment for life". *See* I.P.C. Sec. 53A.

(b) all pay and allowances for every day while he is in custody on a charge for an offence of which he is afterwards convicted by a criminal Court or a court-martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment or field punishment by an officer exercising authority under section 80 ;

(c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by an offence under this Act committed by him ;

(d) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence, such sum as may be specified by order of the Central Government or such officer as may be specified by that Government ;

(e) all pay allowances ordered by a court-martial or by an officer exercising authority under any of the sections 80, 83, 84 and 85, to be forfeited or stopped ;

(f) all pay and allowances for every day between his being recovered from the enemy and his dismissal from the service in consequence of his conduct when being taken prisoner by, or while in the hands of, the enemy ;

(g) any sum required to make good such compensation for any expenses, loss, damage or destruction caused by him to the Central Government or to any building or property as may be awarded by his commanding officer ;

(h) any sum required to pay a fine awarded by a criminal court, a court-martial exercising jurisdiction under section 69, or an officer exercising authority under any of the sections 80 and 89 ;

(i) any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

92. Computation of time of absence or custody.—For the purposes of clauses (a) and (b) of section 91,—

(a) no person shall be treated as absent or in custody for a day unless the absence or custody has lasted, whether wholly in one day, or partly in one day and partly in another, for six consecutive hours or upwards ;

(b) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person ;

(c) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody ;

(d) a period of absence, or imprisonment, which commences before, and ends after, midnight may be reckoned as a day.

93. Pay and allowances during trial.—In the case of any person subject to this Act who is in custody or under suspension from duty on a charge for an offence, the prescribed officer may direct that the whole or any part of the pay and allowances of such person shall be withheld, pending the result of his trial on the charge against him, in order to give effect to the provisions of clause (b) of sections 90 and 91.

94. Limit of certain deductions.—The total deductions from the pay and allowances of a person made under clauses (e), (g) to (i) of section 91 shall not, except where he is sentenced to dismissal, exceed in any one month one-half of his pay and allowances for that month.

95. Deduction from public money due to a person.—Any sum authorised by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a pension.

96. Pay and allowances of prisoner of war during inquiry into his conduct.—Where the conduct of any person subject to this Act when being taken prisoner by, or while in the hands of, the enemy, is to be inquired into under this Act or any other law, the [Chief of the Army Staff][1] or any officer authorised by him may order that the whole or any part of the pay and allowances of such person shall be withheld pending the result of such inquiry.

97. Remission of deductions.—Any deduction from pay and allowances authorised by this Act may be remitted in such manner and to such extent, and by such authority, as may from time to time be prescribed.

98. Provision for dependants of prisoner of war from remitted deductions.—In the case of all persons subject to this Act, being prisoners of war, whose pay and allowances have been forfeited under clause (h) of section 90 or clause (a) of section 91, but in respect of whom a remission has been made under section 97, it shall be lawful for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependants of such persons, and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances.

99. Provision for dependants of prisoner of war from his pay and allowances.—It shall be lawful for proper provision to be made by the prescribed authorities for any dependants of any person subject to this Act who is a prisoner of war or is missing, out of his pay and allowances.

100. Period during which a person is deemed to be a prisoner of war.—For the purposes of sections 98 and 99, a person shall be deemed to continue to be a prisoner of war until the conclusion of any inquiry into his conduct such as is referred to in section 96, and if he is cashiered or dismissed from the service in consequence of such conduct, until the date of such cashiering or dismissal.

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[1]Substituted by Act No. 19 of 1955.

CHAPTER IX

ARREST AND PROCEEDINGS BEFORE TRIAL

101. Custody of offenders.—(1) Any person subject to this Act who is charged with an offence may be taken into military custody.

(2) Any such person may be ordered into military custody by any superior officer.

(3) An officer may order into military custody any officer, though he may be of a higher rank, engaged in a quarrel, affray or disorder.

102. Duty of commanding officer in regard to detention.—(1) It shall be the duty of every commanding officer to take care that a person under his command when charged with an offence is not detained in custody for more than forty-eight hours after the committal of such person into custody is reported to him, without the charge being investigated, unless investigation within that period seems to him to be impracticable having regard to the public service.

(2) The case of every person being detained in custody beyond to period of forty-eight hours, and the reason thereof, shall be reported by the commanding officer to the general or other officer to whom application would be made to convene a general or district court-martial for the trial of the person charged.

(3) In reckoning the period of forty-eight hours specified in sub-section (1), Sundays and other public holidays shall be excluded.

(4) Subject to the provisions of this Act, the Central Government may make rules providing for the manner in which and the period for which any person subject to this Act may be taken into and detained in military custody, pending the trial by any competent authority for any offence committed by him.

103. Interval between committal and court-martial.—In every case where any such person as is mentioned in section 101 and as is not on active service remains in such custody for a longer period than eight days, without a court-martial for his trial being ordered to assemble, a special report giving reasons for the delay shall be made by his commanding officer in the manner prescribed, and a similar report shall be forwarded at intervals of every eight days until a court-martail is assembled or such person is released from custody.

104. Arrest by civil authorities.—Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any magistrate or police officer, such magistrate or police officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer.

105. Capture of deserters.—(1) Whenever any person subject to this Act deserts, the commanding officer of the corps, department or detachment to which he belongs, shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, into military custody.

(2) Any police officer may arrest without warrant any person reasonably believed to be subject to this Act, and to be a deserter or to be travelling without authority and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

106. Inquiry into absence without leave.—(1) When any person subject to this Act has been absent from his duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be assembled, and such court shall, on oath or affirmation administered in the prescribed manner, inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessaries ; and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

107. Provost-marshals.—(1) Provost-marshals may be appointed by the [Chief of the Army Staff][1] or by any prescribed officer.

(2) The duties of a provost-marshal are to take charge of persons confined for any offence, to preserve good order and discipline, and to prevent breaches of the same by persons serving in, or attached to, the regular Army.

(3) A provost-marshal may at any time arrest and detain for trial any person subject to this Act who commits, or is charged with, an offence, and may also carry into effect any punishment to be inflicted in pursuance of the sentence awarded by a court-martial, or by an officer exercising authority under section 80 but shall not inflict any punishment on his own authority :

Provided that no officer shall be so arrested or detained otherwise than on the order of another officer.

(4) For the purposes of sub-sections (2) and (3), a provost-marshal shall be deemed to include a provost-marshal appointed under any law for the time being in force relating to the government of the Navy or Air Force, and any person legally exercising authority under him or on his behalf.

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[1]Substituted by Act No. 19 of 1955.

CHAPTER X

COURTS-MARTIAL

108. Kinds of courts-martial.—For the purposes of this Act there shall be four kinds of courts-martial, that is to say,—

(a) general courts-martial;
(b) district courts-martial;
(c) summary general courts-martial; and
(d) summary courts-martial.

109. Power to convene a general court-martial.—A general court-martial may be convened by the Central Government or the [Chief of the Army Staff][1] by any officer empowered in this behalf by warrant of the [Chief of the Army Staff][1].

110. Power to convene a district court-martial.—A district court-martial may be convened by an officer having power to convene a general court-martial or by any officer empowered in this behalf by warrant of any such officer.

111. Contents of warrants issued under sections 109 and 110.—A warrant issued under section 109 or section 110 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

112. Power to convene a summary general court-martial.—The following authorities shall have power to convene a summary general court-martial, namely,—

(a) an officer empowered in this behalf by an order of the Central Government or of the [Chief of the Army Staff][1];
(b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf;
(c) an officer commanding any detached portion of the regular Army on active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by a general court-martial.

113. Composition of general court-martial.—A general court-martial shall consist of not less than five officers, each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of captain.

114. Composition of district court-martial.—A district court-martial shall consist of not less than three officers, each of whom has held a commission for not less than two whole years.

115. Composition of summary general court-martial.—A summary general court-martial shall consist of not less than three officers.

116. Summary court-martial.—(1) A summary court-martial may be held by the commanding officer of any corps, department or detachment of the regular Army, and he shall alone constitute the court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers or junior commissioned officers or one of either, and who shall not as such, be sworn or affirmed.

117. Dissolution of courts-martial.—(1) If a court-martial after the commencement of a trial is reduced below the minimum number of officers required by this Act, it shall be dissolved.

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[1]Substituted by Act No. 19 of 1955.

(2) If, on account of the illness of the judge advocate or of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(3) The officer who convened a court-martial may dissolve such court-martial if it appears to him that military exigencies or the necessities of discipline render it impossible or inexpedient to continue the said court-martial.

(4) Where a court-martial is dissolved under this section, the accused may be tried again.

118. Powers of general and summary general courts-martial.—A general or summary general court-martial shall have power to try any person subject to this Act for any offence punishable therein and to pass any sentence authorised thereby.

119. Powers of district courts-martial.—A district court-martial shall have power to try any person subject to this Act other than an officer or a junior commissioned officer for any offence made punishable therein, and to pass any sentence authorised by this Act other than a sentence of death, transportation, or imprisonment for a term exceeding two years :

Provided that a district court-martial shall not sentence a warrant officer to imprisonment.

120. Powers of summary courts-martial.—(1) Subject to the provisions of sub-section (2), a summary court-martial may try any offence punishable under this Act.

(2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender, an officer holding a summary court-martial shall not try without such reference any offence punishable under any of the sections 34, 37 and 69, or any offence against the officer holding the court.

(3) A summary court-martial may try any person subject to this Act and under the command of the officer holding the court, except an officer, junior commissioned officer or warrant officer.

(4) A summary court-martial may pass any sentence which may be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding the limit specified in sub-section (5).

(5) The limit referred to in sub-section (4) shall be one year if the officer holding the summary court-martial is of the rank of lieutenant-colonel and upwards, and three months if such officer is below that rank.

121. Prohibition of second trial.—When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been dealt with under any of the sections 80, 83, 84 and 85, he shall not be liable to be tried again for the same offence by a court-martial or dealt with under the said sections.

122. Period of limitation for trial.—(1) Except as provided by sub-section (2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years from the date of such offence.

(2) The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37.

(3) In the computation of the period of time mentioned in sub-section (1), any time spent by such person as a prisoner of war, or in enemy territory, or in evading arrest after the commission of the offence, shall be excluded.

(4) No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular Army.

123. Liability of offender who ceases to be subject to Act.—(1) Where an offence under this Act had been committed by any person while subject to this Act, and he has ceased to be so subject, he may be taken into and kept in military custody, and tried and punished for such offence as if he continued to be so subject.

(2) No such person shall be tried for an offence, unless his trial commences within six months after he had ceased to be subject to this Act :

Provided that nothing contained in this sub-section shall apply to the trial of any such person for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37 or shall affect the jurisdiction of a criminal court to try any offence triable by such court as well as by a court-martial.

(3) When a person subject to this Act is sentenced by a court-martial to [transportation][1] or imprisonment, this Act shall apply to him during the term of his sentence, though he is cashiered or dismissed from the regular Army, or has otherwise ceased to be subject to this Act, and he may be kept, removed, imprisoned and punished as if he continued to be subject to this Act.

(4) When a person subject to this Act is sentenced by a court-martial to death, this Act shall apply to him till the sentence is carried out.

124. Place of trial.—Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

125. Choice between criminal court and court-martial.—When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding the army, army corps, division or independent brigade in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a court-martial, to direct that the accused person shall be detained in military custody.

126. Power of criminal court to require delivery of offender.—(1) When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in section 125 at his option, either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Central Government, whose order upon such reference shall be final.

127. Successive trials by a criminal court and court-martial.—(1) A person convicted or acquitted by a court-martial may, with the previous sanction of the Central Government, be tried again by a criminal court for the same offence, or on the same facts.

(2) If a person sentenced by a court-martial under this Act or punished under any of the sections 80, 83, 84 or 85 is afterwards tried and convicted by a criminal court for the same offence, or on the same facts, that court shall, in awarding punishment, have regard to the punishment he may already have undergone for the said offence.

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[1]To be construed as "imprisonment for life". See I.P.C., Sec. 53A.

CHAPTER XI

PROCEDURE OF COURTS-MARTIAL

128. Presiding officer.—At every general, district or summary general court-martial the senior member shall be the presiding officer.

129. Judge Advocate.—Every general court-martial shall, and every district or summary general court-martial may, be attended by a judge advocate, who shall be either an officer belonging to the department of the Judge Advocate General, or if no such officer is available, an officer approved of by the Judge Advocate General or any of his deputies.

130. Challenges.—(1) At all trials by general, district or summary general court-martial, as soon as the court is assembled, the names of the presiding officer and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

(2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the court shall, in the absence of the challenged officer decide on the objection.

(3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

131. Oaths of member, judge advocate and witness.—(1) An oath or affirmation in the prescribed manner shall be administered to every member of every court-martial and to the judge advocate before the commencement of the trial.

(2) Every person giving evidence before a court-martial shall be examined after being duly sworn or affirmed in the prescribed form.

(3) The provisions of sub-section (2) shall not apply where the witness is a child under twelve years of age and the court-martial is of opinion that though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation.

132. Voting by members.—(1) Subject to the provisions of sub-sections (2) and (3), every decision of a court-martial shall be passed by an absolute majority of votes; and where there is an equality of votes on either the finding or the sentence, the decision shall be in favour of the accused.

(2) No sentence of death shall be passed by a general court-martial without the concurrence of at least two-thirds of the members of the court.

(3) No sentence of death shall be passed by a summary general court-martial without the concurrence of all the members.

(4) In matters, other than a challenge or the finding or sentence, the presiding officer shall have a casting vote.

133. General rule as to evidence.—The Indian Evidence Act, 1872 (I of 1872), shall, subject to the provisions of this Act, apply to all proceedings before a court-martial.

134. Judicial notice.—A court-martial may take judicial notice of any matter within the general military knowledge of the members.

135. Summoning witnesses.—(1) The convening officer, the presiding officer of a court-martial, the judge advocate or the commanding officer of the accused person may, by summons under his hand, require the attendance, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(2) In the case of a witness amenable to military authority, the summons shall be sent to his commanding officer, and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with reasonable precision.

136. Documents exempted from production.—(1) Nothing in section 135 shall be deemed to affect the operation of sections 123 and 124 of the Indian Evidence Act, 1872 (I of 1872), or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities.

(2) If any document in such custody is, in the opinion of any district magistrate, chief presidency magistrate, High Court or Court of Session, wanted for the purpose of any court-martial such magistrate or Court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate or Court may direct.

(3) If any such document is, in the opinion of any other magistrate or of any commissioner of police or district superintendent of police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of any such district magistrate, chief presidency magistrate or High Court or Court of Session.

137. Commissions for examination of witnesses.—(1) Whenever, in the course of a trial by court-martial, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Judge Advocate General in order that a commission to take the evidence of such witness may be issued.

(2) The Judge Advocate General may then, if he thinks necessary, issue a commission to any district magistrate or magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(3) The magistrate or officer to whom the commission is issued, or, if he is the district magistrate, he or such magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner and may

for this purpose exercise the same powers, as in trials of warrant-cases under the Code of Criminal Procedure, 1898 (Act V of 1898), or any corresponding law in force in [the State of Jammu and Kashmir][1].

(4) When the witness resides in a tribal area or in any place outside India, the commission may be issued in the manner specified in Chapter XL of the Code of Criminal Procedure, 1898 (Act V of 1898), or of any corresponding law in force in [the State of Jammu and Kashmir][1].

(5) In this and the next succeeding section, the expression "Judge Advocate General" includes a Deputy Judge Advocate General.

138. Examination of a witness on commission.—(1) The prosecutor and the accused person in any case in which a commission is issued under section 137 may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the magistrate or officer executing the commission shall examine the witness upon such interrogatories.

(2) The prosecutor and the accused person may appear before such magistrate or officer by counsel or, except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine, as the case may be, the said witness.

(3) After a commission issued under section 137 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder to the Judge Advocate General.

(4) On receipt of a commission and deposition returned under sub-section (3), the Judge Advocate General shall forward the same to the court at whose instance the commission was issued or, if such court has been dissolved, to any other court convened for the trial of the accused person; and the commission, the return thereto and the deposition shall be open to inspection by the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.

(5) In every case in which a commission is issued under section 137, the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

139. Conviction of offence not charged.—(1) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged before a court-martial with attempting to desert may be found guilty of being absent without leave.

(3) A person charged before a court-martial with using criminal force may be found guilty of assault.

(4) A person charged before a court-martial with using threatening language may be found guilty of using insubordinate language.

(5) A person charged before a court-martial with any one of the offences specified in clauses (a), (b), (c) and (d) of section 52 may be found guilty of any other of these offences with which he might have been charged.

(6) A person charged before a court-martial with an offence punishable under section 69 may be found guilty of any other offence of which he might have been found guilty if the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), were applicable.

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[1]Substituted by the Adaptation of Laws (No. 3) Order, 1956.

(7) A person charged before a court-martial with any offence under this Act, may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

(8) A person charged before a court-martial with any offence under this Act may be found guilty of having attempted or abetted the commission of that offence, although the attempt or abetment is not separately charged.

140. Presumption as to signatures.—In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the service of the Government shall, on production, be presumed to have been duly signed by the person by whom and in the character in which it purports to have been signed, until the contrary is shown.

141. Enrolment paper.—(1) Any enrolment paper purporting to be signed by an enrolling officer shall in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given.

(2) The enrolment of such person may be proved by the production of the original or a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.

142. Presumption as to certain documents.—(1) A letter, return or other document respecting the service of any person, in or the cashiering, dismissal or discharge of any person, from, any portion of the regular Army, or respecting the circumstances of any person not having served in, or belonged to, any portion of the Forces, if purporting to be signed by or on behalf of the Central Government or the [Chief of the Army Staff][1], or by any prescribed officer, shall be evidence of the facts stated in such letter, return or other document.

(2) An Army, Navy or Air Force List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers, junior commissioned officers or warrant officers therein mentioned, and of any appointment held by them and of the corps, battalion or arm or branch of the services to which they belong.

(3) Where a record is made in any regimental book in pursuance of this Act or of any rules made thereunder or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts therein stated.

(4) A copy of any record in any regimental book purporting to be certified to be a true copy by the officer having custody of such book shall be evidence of such record.

(5) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of any officer or other person subject to this Act, or any portion of the regular Army, or has been apprehended by such officer or person, a certificate purporting to be signed by such officer, or by the commanding officer of that portion of the regular Army, or by the commanding officer of the corps, department or detachment to which such person belongs, as the case may be, and stating the fact, date and place of such surrender or apprehension, and the manner in which he was dressed, shall be evidence of the matters so stated.

[1]Substituted by Act No. 19 of 1955.

(6) Where any person subject to this Act is being tried on a chrage of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by, a police officer not below the rank of an officer in charge of a police station, a certificate purporting to be signed by such police officer and stating the fact, date and place of such surrender or apprehension and the manner in which he was dressed shall be evidence of the matters so stated.

(7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report may be used as evidence in any proceeding under this Act.

143. Reference by accused to Government officer.—(1) If at any trial for desertion or absence without leave, overstaying leave or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorised absence, and refers in support thereof to any officer in the service of the Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn the proceedings until his reply is received.

(2) The written reply of any officer so referred to shall, if signed by him be received in evidence and have the same effect as if made on oath before the court.

(3) If the court is dissolved before the receipt of such reply, or if the court omits to comply with the provisions of this section, the convening officer may, at his discretion, annul the proceedings and order a fresh trial.

144. Evidence of previous convictions and general character.—(1) When any person subject to this Act has been convicted by a court-martial of any offence, such court-martial may inquire into, and receive and record evidence of any previous convictions of such person either by a court-martial or by a criminal court, or any previous award of, punishment under any of the sections, 80, 83, 84 and 85, and may further inquire into and record the general character of such person and such other matters as may be prescribed.

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, court-martial books or other official records : and it shall not be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(3) At a summary court-martial the officer holding the trial may, if he thinks fit, record any previous convictions against the offender, his general character, and such other matters as may be prescribed, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this section.

145. Lunacy of accused.—(1) Whenever, in the course of a trial by a court-martial, it appears to the court that the person charged is by reason of unsoundness of mind incapable of making his defence, or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or knowing that it was wrong or contrary to law, the court shall record a finding accordingly.

(2) The presiding officer of the court, or, in the case of a summary court-martial the officer holding the trial, shall forthwith report the case to the confirming officer, or to the authority empowered to deal with its finding under section 162, as the case may be.

(3) The confirming officer to whom the case is reported under sub-section (2) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another court-martial for the offence with which he was charged.

(4) The authority to whom the finding of a summary court-martial is reported under sub-section (2), and a confirming officer confirming a finding in any case so reported to him shall order the accused person to be kept in custody in the prescribed manner and shall report the case for the orders of the Central Government.

(5) On receipt of a report under sub-section (4) the Central Government may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

146. Subsequent fitness of lunatic accused for trial.—Where any accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention under section 145, the officer commanding the army, army corps, division or brigade within the area of whose command the accused is in custody or is detained, or any other officer prescribed in this behalf, may—

(a) if such person is in custody under sub-section (4) of section 145, on the report of a medical officer that he is capable of making his defence, or

(b) if such person is detained in a jail under sub-section (5) of section 145, on a certificate of the Inspector General of Prisons, and if such person is detained in a lunatic asylum under the said sub-section on a certificate of any two or more of the visitors of such asylum that he is capable of making his defence,

take steps to have such person tried by the same or another court-martial for the offence with which he was originally charged or, if the offence is a civil offence, by a criminal court.

147. Transmission to Central Government of orders under section 146.—A copy of every order made by an officer under section 146 for the trial of the accused shall forthwith be sent to the Central Government.

148. Release of lunatic accused.—Where any person is in custody under sub-section (4) of section 145 or under detention under sub-section (5) of that section—

(a) if such person is in custody under the said sub-section (4), on the report of a medical officer, or

(b) if such person is detained under the said sub-section (5), on a certificate from any of the authorities mentioned in clause (b) of section 146 that, in the judgment of such officer or authority such person may be released without danger of his doing injury to himself or to any other person,

the Central Government may order that such person be released or detained in custody, or transferred to a public lunatic asylum if he has not already been sent to such an asylum.

149. Delivery of lunatic accused to relatives.—Where any relative or friend of any person who is in custody under sub-section (4) of section 145 or under detention under sub-section (5) of that section desires that he should be delivered to his care and custody, the Central Government may upon application by such relative or friend and on his giving security to the satisfaction of that Government that the person delivered shall be properly taken care of and prevented from

doing injury to himself or any other person, and be produced for the inspection of such officer, and at such times and places, as the Central Government may direct, order such person to be delivered to such relative or friend.

150. Order for custody and disposal of property pending trial.—When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a court-martial during a trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

151. Order for disposal of property regarding which offence is committed.—(1) After the conclusion of a trial before any court-martial, the court or the officer confirming the finding or sentence of such court-martial, or any authority superior to such officer, or, in the case of a court-martial whose finding or sentence does not require confirmation, the officer commanding the army, army corps, division or brigade within which the trial was held, may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof, or otherwise, of any property or document produced before the court or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) Where any order has been made under sub-section (1) in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within India or not, be sent to a magistrate within whose jurisdiction such property for the time being is situated, and such magistrate shall thereupon cause the order to be carried into effect as if it were an order passed by him under the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), or any corresponding law in force in [the State of Jammu and Kashmir][1].

(3) In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

152. Powers of court-martial in relation to proceedings under this Act.—Any trial by a court-martial under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860), and the court-martial shall be deemed to be a court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

[1]Substituted by the Adaptation of Laws (No. 3) Order 1956.

CHAPTER XII

CONFIRMATION AND REVISION

153. Finding and sentence not valid, unless confirmed.—No finding or sentence of a general, district or summary general, court-martial shall be valid except so far as it may be confirmed as provided by this Act.

154. Power to confirm finding and sentence of general court-martial.—The findings and sentences of general courts-martial may be confirmed by the Central Government, or by any officer empowered in this behalf by warrant of the Central Government.

155. Power to confirm finding and sentence of district court-martial.—The findings and sentences of district courts-martial may be confirmed by any officer having power to convene a general court-martial or by any officer empowered in this behalf by warrant of such officer.

156. Limitation of powers of confirming authority.—A warrant issued under section 154 or section 155 may contain such restrictions, reservations or conditions as the authority issuing it may think fit.

157. Power to confirm finding and sentence of summary general court-martial.—The findings and sentences of summary general courts-martial may be confirmed by the convening officer or if he so directs, by an authority superior to him.

158. Power of confirming authority to mitigate, remit or commute sentences.—(1) Subject to such restrictions, reservations or conditions, as may be contained in any warrant issued under section 154 or section 155 and to the provision of sub-section (2), a confirming authority may, when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any punishment or punishments lower in the scale laid down in section 71.

(2) [A sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court.][1]

159. Confirming of findings and sentences on board a ship.—When any person subject to this Act is tried and sentenced by a court-martial while on board a ship, the finding and sentence so far as not confirmed and executed on board the ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

160. Revision of finding or sentence.—(1) Any finding or sentence of a court-martial which requires confirmation may be once revised by order of the confirming authority and on such revision, the court, if so directed by the confirming authority, may take additional evidence.

(2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided that, if a general court-martial, it still consists of five officers, or, if a summary general or district court-martial, of three officers.

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[1]Reference to transportation for a term stands omitted. *See* I.P.C. Sec. 53A.

161. Finding and sentence of a summary court-martial.—(1) Save as otherwise provided in sub-section (2), the finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out forthwith.

(2) If the officer holding the trial is of less than five years service, he shall not, except on active service, carry into effect any sentence until it has received the approval of an officer commanding not less than a brigade.

162. Transmission of proceedings of summary courts-martial.—The proceedings of every summary court-martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held, or to the prescribed officer; and such officer, or the [Chief of the Army Staff][1], or any officer empowered in this behalf by the [Chief of the Army Staff][1], may, for reasons based on the merits of the case, but not any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the court might have passed.

163. Alteration of finding or sentence in certain cases.—(1) Where a finding of guilty by a court-martial, which has been confirmed, or which does not require confirmation, is found for any reason to be invalid or cannot be supported by the evidence, the authority which would have had power under section 179 to commute the punishment awarded by the sentence, if the finding had been valid may substitute a new finding and pass a sentence for the offence specified or involved in such finding:

Provided that no such substitution shall be made unless such finding could have been validly made by the court-martial on the charge and unless it appears that the court-martial must have been satisfied of the facts establishing the said offence.

(2) Where a sentence passed by a court-martial which has been confirmed, or which does not require confirmation, not being a sentence passed in pursuance of a new finding substituted under sub-section (1), is found for any reason to be invalid, the authority referred to in sub-section (1) may pass a valid sentence.

(3) The punishment awarded by a sentence passed under sub-section (1) or sub-section (2) shall not be higher in the scale of punishments than, or in excess of, the punishment awarded by, the sentence for which a new sentence is substituted under this section.

(4) Any finding substituted, or any sentence passed, under this section shall, for the purposes of this Act and the rules made thereunder, have effect as if it were a finding or sentence, as the case may be, of a court-martial.

164. Remedy against order, finding or sentence of court-martial.—(1) Any person subject to this Act who considers himself aggrieved by any order passed by any court-martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such court-martial, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any court-martial which has been confirmed, may present a petition to the Central Government, the [Chief of the Army Staff][1] or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the [Chief of the Army Staff][1] or other officer, as the case may be, may pass such order thereon as it or he thinks fit.

165. Annulment of proceedings.—The Central Government, the [Chief of the Army Staff][1] or any prescribed officer may annul the proceedings of any court-martial on the ground that they are illegal or unjust.

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[1]Substituted by Act No. 19 of 1955.

CHAPTER XIII

EXECUTION OF SENTENCES

166. Form of sentence of death.—In awarding a sentence of death a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death.

167. Commencement of sentence of [transportation][1] or imprisonment.—Whenever any person is sentenced by a court-martial under this Act to [transportation][1] or imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the presiding officer or, in the case of a summary court-martial by the court.

168. Execution of sentence of transportation.—Whenever, any sentence of transportation is passed under this Act or whenever any sentence of death is commuted to transportation, the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

169. Execution of sentence of imprisonment.—(1) Whenever any sentence of imprisonment is passed under this Act by a court-martial or whenever any sentence of death or [transportation][1] is commuted to imprisonment, the confirming officer or in case of a summary court-martial the officer holding the court or such other officer as may be prescribed, shall, save as otherwise provided in sub-sections (3) and (4), direct either that the sentence shall be carried out by confinement in a military prison or that it shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub-section (1) the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a court-martial, the appropriate officer under sub-section (1) may direct that the sentence shall be carried out by confinement in military custody instead of in a civil or military prison.

(4) On active service, a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may from time to time appoint.

170. Temporary custody of offender.—Where a sentence of [transportation][1] or imprisonment is directed to be undergone in a civil prison the offender may be kept in a military prison or in military custody or in any other fit place, till such time as it is possible to send him to a civil prison.

171. Execution of sentence of imprisonment in special cases.—Whenever, in the opinion of an officer commanding an army, army corps, division or independent brigade, any sentence or portion of a sentence of imprisonment cannot for

[1]To be construed as "imprisonment for life". *See* I.P.C. Sec. 53A.

special reasons, conveniently be carried out in a military prison or in military custody in accordance with the provisions of section 169 such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

172. Conveyance of prisoner from place to place.—A person under sentence of [transportation][1] or imprisonment may during his conveyance from place to place, or when on board ship, aircraft, or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal.

173. Communication of certain orders to prison officers.—Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil or military prison, a warrant in accordance with such order shall be forwarded by the officer making the order or his staff officer or such other person as may be prescribed to the officer in charge of the prison in which such person is confined.

174. Execution of sentence of fine.—When a sentence of fine is imposed by a court-martial under section 69 whether the trial was held within India or not, a copy of such sentence, signed and certified by the confirming officer, or where no confirmation is required, by the officer holding the trial may be sent to any magistrate in India, and such magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), or any corresponding law in force in [the State of Jammu and Kashmir][2] for the levy of fines as if it were a sentence of fine imposed by such magistrate.

175. Establishment and regulation of military prisons.—The Central Government may set apart any building or part of a building, or any place under its control, as a military prison for the confinement of persons sentenced to imprisonment under this Act.

176. Informality or error in the order or warrant.—Whenever any person is sentenced to transportation or imprisonment under this Act, and is undergoing the sentence in any place or manner in which he might be confined under a lawful order or warrant in pursuance of this Act, the confinement of such person shall not be deemed to be illegal only by reason of any informality or error in or as respects the order, warrant or other document, or the authority by which, or in pursuance whereof such person was brought into or is confined in any such place, and any such order, warrant or document may be amended accordingly.

177. Power to make rules in respect of prisons and prisoners.—The Central Government may make rules providing—

(a) for the government, management and regulation of military prisons;

(b) for the appointment, removal and powers of inspectors, visitors, governors and officers thereof;

(c) for the labour of prisoners undergoing confinement therein, and for enabling persons to earn, by special industry and good conduct, a remission of a portion of their sentence;

(d) for the safe custody of prisoners and the maintenance of discipline among them and the punishment, by personal correction, restraint or otherwise, of offences committed by prisoners;

(e) for the application to military prisons of any of the provisions of the Prisons Act, 1894 (IX of 1894), relating to the duties of officers of prisons and the punishment of persons not being prisoners:

[1]To be construed as "imprisonment for life". See I.P.C., Sec. 53A.
[2]Substituted by the Adaptation of Laws (No. 3) Order 1956.

(f) for the admission into any prison, at proper times and subject to proper restrictions, of persons with whom prisoners may desire to communicate, and for the consultation by prisoners under trial with their legal advisers without the presence as far as possible of any third party within hearing distance.

178. Restriction of rule-making power in regard to corporal punishment.—Rules made under section 177 shall not authorise corporal punishment to be inflicted for any offence, nor render the imprisonment more severe than it is under the law for the time being in force relating to civil prisons.

CHAPTER XIV

PARDONS, REMISSIONS AND SUSPENSIONS

179. Pardon and remission.—When any person subject to this Act has been convicted by a court-martial of any offence, the Central Government or the [Chief of the Army Staff][1] or, in the case of a sentence, which he could have confirmed or which did not require confirmation, the officer commanding the army, army corps, division or independent brigade in which such person at the time of conviction was serving, or the prescribed officer may—

(a) either with or without conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded ; or

(b) mitigate the punishment awarded ; or

(c) commute such punishment for any less punishment or punishments mentioned in this Act :

[Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court][2] or

(d) either with or without conditions which the person sentenced accepts, release the person on parole.

180. Cancellation of conditional pardon, release on parole or remission.—(1) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission, not fulfilled, such authority may cancel the pardon, release or remission, and thereupon the sentence of the court shall be carried into effect as if such pardon, release or remission had not been granted.

(2) A person whose sentence of [transportation][3] or imprisonment is carried into effect under the provisions of sub-section (1) shall undergo only the unexpired portion of his sentence.

181. Reduction of warrant officer or non-commissioned officer.—When under the provisions of section 77 a warrant officer or a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purpose of section 179, be treated as a punishment awarded by a sentence of a court-martial.

182. Suspension of sentence of transportation or imprisonment.—(1) Where a person subject to this Act is sentenced by a court-martial to [transportation][3] or imprisonment, the Central Government, the [Chief of the Army Staff][1] or any officer empowered to convene a general or a summary general court-martial may suspend the sentence whether or not the offender has already been committed to prison or to military custody.

(2) The authority or officer specified in sub-section (1) may in the case of an offender so sentenced direct that until the orders of such authority or officer have been obtained the offender shall not be committed to prison or to military custody.

(3) The powers conferred by sub-sections (1) and (2) may be exercised in the case of any such sentence which has been confirmed, reduced or commuted.

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[1]Substituted by Act No. 19 of 1955.
[2]Reference to transportation for a term stands omitted. See I.P.C. Sec. 53A.
[3]To be construed as "imprisonment for life". See I.P.C. Sec. 53A.

183. Orders pending suspension.—(1) Where the sentence referred to in section 182 is imposed by a court-martial other than a summary court-martial, the confirming officer may, when confirming the sentence, direct that the offender be not committed to prison or to military custody until the orders of the authority or officer specified in section 182 have been obtained.

(2) Where a sentence of imprisonment is imposed by a summary court-martial, the officer holding the trial or the officer authorised to approve of the sentence under sub-section (2) of section 161 may make the direction referred to in sub section (1).

184. Release on suspension.—Where a sentence is suspended under section 182 the offender shall forthwith be released from custody.

185. Computation of period of suspension.—Any period during which the sentence is under suspension shall be reckoned as part of the term of such sentence.

186. Order after suspension.—The authority or officer specified in section 182 may, at any time while a sentence is suspended, order—

(a) that the offender be committed to undergo the unexpired portion of the sentence ; or

(b) that the sentence be remitted.

187. Reconsideration of case after suspension.—(1) Where a sentence has been suspended, the case may at any time, and shall at intervals of not more than four months, be reconsidered by the authority or officer specified in section 182, or by any general or other officer not below the rank of field officer duly authorised by the authority or officer specified in section 182.

(2) Where on such reconsideration by the officer so authorised it appears to him that the conduct of the offender since his conviction has been such as to justify a remission of the sentence, he shall refer the matter to the authority or officer specified in section 182.

188. Fresh sentence after suspension.—Where an offender, while a sentence on him is suspended under this Act, is sentenced for any other offence, then—

(a) if the further sentence is also suspended under this Act, the two sentences shall run concurrently ;

(b) if the further sentence is for a period of three months or more and is not suspended under this Act, the offender shall also be committed to prison or military custody for the unexpired portion of the previous sentence, but both sentences shall run concurrently ; and

(c) if the further sentence is for a period of less than three months and is not suspended under this Act, the offender shall be so committed on that sentence only, and the previous sentence shall, subject to any order which may be passed under section 186 or section 187, continue to be suspended.

189. Scope of power of suspension.—The powers conferred by sections 182 and 186 shall be in addition to and not in derogation of the power of mitigation, remission and commutation.

190. Effect of suspension and remission on dismissal.—(1) Where in addition to any other sentence the punishment of dismissal has been awarded by a court-martial, and such other sentence is suspended under section 182, then, such dismissal shall not take effect until so ordered by the authority or officer specified in section 182.

(2) If such other sentence is remitted under section 186, the punishment of dismissal shall also be remitted.

CHAPTER XV

RULES

191. Power to make rules.—(1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the power conferred by sub-section (1), the rules made thereunder may provide for—

(a) the removal, retirement, release, or discharge from the service of persons subject to this Act ;

(b) the amount and incidence of fines to be imposed under section 89 ;

(c) the specification of the punishments which may be awarded as field punishments under sections 75 and 80 ;

(d) the assembly and procedure of courts of inquiry, the recording of summaries of evidence and the administration of oaths or affirmations by such courts ;

(e) the convening and constituting of courts-martial and the appointment of prosecutors at trials by courts-martial ;

(f) the adjournment, dissolution and sitting of courts-martial ;

(g) the procedure to be observed in trials by courts-martial and the appearance of legal practitioners thereat ;

(h) the confirmation, revision and annulment of, and petitions against, the findings and sentences of courts-martial ;

(i) the carrying into effect of sentences of courts-martial ;

(j) the forms of orders to be made under the provisions of this Act relating to courts-martial, [transportation][1] and imprisonment ;

(k) the constitution of authorities to decide for what persons, to what amounts and in what manner, provision should be made for dependants under section 99, and the due carrying out of such decisions ;

(l) the relative rank of the officers, junior commissioned officers, warrant officers, petty officers and non-commissioned officers of the regular Army, Navy and Air Force when acting together ;

(m) any other matter directed by this Act to be prescribed.

192. Power to make regulations.—The Central Government may make regulations for all or any of the purposes of this Act other than those specified in section 191.

193. Publication of rules and regulations in Gazette.—All rules and regulations made under this Act shall be published in the Official Gazette and, on such publication, shall have effect as if enacted in this Act.

194. [Repealed].[2]

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[1]To be construed as "imprisonment for life". See I.P.C. Sec. 53A.

[2]See Act No. 36 of 1957, Sec. 2.

CHAPTER XVI

TRANSITORY PROVISIONS

195. Definition of "British officer".—(1) In this Chapter "British officer" means a person of non-Indian domicile holding a commission in His Majesty's Land Forces or in the Royal Marines or in the Territorial Army and serving in the regular Army.

(2) The expression "superior officer" in this Act shall be deemed to include a British officer.

196. Powers of British officer.—A British officer shall have all the powers conferred by this Act on an officer of corresponding rank or holding a corresponding appointment.

THE SCHEDULE

[Repealed][1]

Comparative table by numbers of sections of Act VIII of 1911 and Act XLVI of 1950

Subject	Section of Act VIII of 1911	Section of Act XLVI of 1950
Short title and commencement	1	1
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Validity of enrolment (presumption of enrolment in certain cases)	10	15
Persons to be attested	11	16
Mode of attestation	12	17
Dismissal by Central Govt., and Commander-in-Chief	13	19 & 20
Dismissal by officer commanding army, army crops, division, brigade, etc.	14	20
Discharge	16	22
Certificate of termination of service	17	23
Dismissal or discharge when out of India	18	24
Reduction of warrant officers and non-commissioned officers	19	20
Minor punishments	20	79, 80, 81, 82, 83, 84, 85
Collective fines	21	89
Punishment of certain Indian followers	22	..
Appointment (of Provost Marshal)	23	107
Duties and powers (of Provost Marshal)	24	106
Offences in relation to the enemy and punishable with death	25	34 & 35 (not punishable with death)
Offences not punishable with death (offences in relation to sentry)	26	36
Mutiny and disobedience	27	37, 40, 41
Insubordination, obstruction, etc.	28	40, 42
Desertion	29	38

[1]*See* Act No. 36 of 1957, Sec. 2.

Subject	Section of Act VIII of 1911	Section of Act XLVI of 1950
Harbouring deserters and absence without leave, etc.	30	38, 39, 43
Disgraceful conduct	31	46,52
Intoxication	32	48
Offences in relation to persons in custody	33	49
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Offences in relation to property	35	53, 54, 55
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Offences in relation to court-martial	38	59,60
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Reduction of warrant officer or non-commissioned officer to ranks	49	77
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Deductions from pay and allowances	50	90, 91, 92, 93, 94
Deductions from public money other than pay	51	95
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Composition of district court-martial	58	114
Members of a court-martial may be either British officers or Indian Commissioned officers	60	196
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Subject	Section of Act VIII of 1911	Section of Act XLVI of 1950
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Majority requisite to sentence of death	87	132
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ARMY RULES

ARRANGEMENT OF RULES

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MINISTRY OF DEFENCE

NOTIFICATION

New Delhi, the 27th November 1954

S. R. O. 484.—In exercise of the powers conferred by section 191 of the Army Act, 1950 (XLVI of 1950), and all other powers enabling in this behalf, and in supersession of the Indian Army Act Rules, and the Army Act Rules, 1950, published with the notifications of the Government of India in the late Army Department No. 911, dated the 3rd November, 1911, and the Ministry of Defence No. S.R.O. 125, dated the 22nd July, 1950, respectively, the Central Government hereby makes the following rules, namely :—

THE ARMY RULES, 1954

CHAPTER I—PRELIMINARY

1. Short title.—These rules may be called the Army Rules, 1954.

2. Definitions.—In these rules, unless the context otherwise requires,

(a) "the Act" means the Army Act, 1950 (XLVI of 1950) ;

(b) "Appendix" means an Appendix set forth in these rules ;

(c) "Field officer" includes an officer, not being a general officer, of any rank (including brevet rank) above the rank of Captain ;

(d) "proper military authority", when used in relation to any power, duty, act or matter, means such military authority as, in pursuance of these rules or the regulations made under the Act or the usages of the service, exercises or performs that power or duty or is concerned with that act or matter ;

(e) "section" means a section of the Act ;

(f) all words and expressions used in these rules and not defined, but defined in the Act shall have the same meanings as in the Act.

3. Reports and applications.—Any report or application directed by these rules to be made to a superior authority, or a proper military authority, shall be made in writing through the proper channel, unless the said authority, on account of military exigencies or otherwise, dispenses with the writing.

4. Forms in Appendices.—(1) The forms set forth in the appendices to these rules, with such variations as the circumstances of each case may require, may be used for the respective purposes therein mentioned, and if used, shall be sufficient, but a deviation from such forms shall not, by reason only of such deviation, render invalid any charge, warrant, order, proceedings or any other document relevant to these rules.

(2) Any omission of any such form shall not, by reason only of such omission, render any act or thing invalid

(3) The directions in the notes to, and the instructions in, the forms shall be duly complied with in all cases to which they relate, but any omission to comply with any such directions in the notes or instructions shall not, merely by reason of such omission, render any act or thing invalid.

5. Exercise of power vested in holder of military office.—Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office for the purposes of these rules may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service.

6. Cases unprovided for.—In regard to any matter not specifically provided for in these rules, it shall be lawful for the competent authority to do such thing or take such action as appears to it be just and proper.

CHAPTER II—ENROLMENT AND ATTESTATION

7. **Enrolling officers.**—The following persons shall be the "enrolling officers" for the purposes of section 13, namely :—

(a) all recruiting and assistant recruiting officers including officers of the Indian Navy or of the Air Force, who may be appointed as such,

(b) the officer commanding a regiment, battalion or training or regimental centre and

(c) any extra assistant recruiting officer or other person who may be appointed as an "enrolling officer" by the Adjutant General.

8. Persons to be attested.—All combatants, and other enrolled persons who may be selected to hold non-commissioned or acting non-commissioned rank, shall, when reported fit for duty, be attested in the manner provided in section 17.

9. Oath or affirmation to be taken on attestation.—(1) Every person required to be attested under section 16 shall make and subscribe an oath or affirmation in one of the following forms or in such other form to the same purport as the attesting officer ascertains to be in accordance with the religion of the person to be attested, or otherwise binding on his conscience.

Form of Oath

I, do swear in the name of God that I will bear true faith and allegiance to the Constitution of India as by law established and that I will, as in duty bound, honestly and faithfully serve in the regular Army of the Union of India and go wherever ordered by land, sea or air, and that I will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life.

Form of affirmation

I, do solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will, as in duty bound, honestly and faithfully serve in the regular Army of the Union of India and go wherever ordered by land, sea or air, and that I will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life.

(2) The aforesaid oath or affirmation shall, whenever practicable, be administered by the commanding officer of the person to be attested (or in the presence of such commanding officer by a person empowered by him in this behalf) in the manner provided in section 17. If it is not so administered, it may be administered by a magistrate or a recruiting officer or an assistant recruiting officer or the officer commanding the station.

The following is a translation into Roman Hindi of the form of oath/affirmation :—

SHAPATH AUR PRATIGYA KE NAE PATRA

"Shapath Patra"

Main.....Parmatma ki shapth lekar pratigya karta hun kih main Qanun dwara nishchit kie hue Bharat ke Vidhan ka sachche man se wafadar rahunga, aur main apne kartavya ke anusar Bharat ki Regular Army

(Sthayi Sena) men imandari aur sachche man se sewa karunga, aur jahan kahin mujhe prithvi, samundar ya hawa ke raste bheja jaega, main khushi se jaunga, Main, Bharat ke Rashtrapati ki aur us officer ki jo mere upar niyukt kia jae, sab agyaon ko manunga aur unka palan karunga; chahe is men mujhe apna jiwan bhi balidan karna pare."

"Pratigya Patra"

Main.....drirh pratigya karta hun kih main Qanun dwara nishchit kie hue Bharat ke Vidhan ka sachche man se wafadar rahunga, aur main apne kartavya ke anusar Bharat ki Regular Army (Sthayi Sena) men imandari aur sachche man se sewa karunga, aur jahan kahin mujhe prithvi, samundar ya hawa ke raste bheja jaega, main khushi se jaunga. Main, Bharat ke Rashtrapati ki aur us officer ki jo mere upar niyukt kia jae, sab agyaon ko manunga aur unka palan karunga; chahe is men mujhe apna jiwan bhi balidan karna pare."

Note—In the case of Sikhs/Muslims the oath will begin with "Main.....Sri Guru Granth Sahib/Pak Khudai Taalu".

10. Transfer from one corps or department to another.—Where the Central Government by any general or special order published in the official Gazette so directs, any person enrolled under this Act may, notwithstanding anything to the contrary contained in the conditions of service for which he is enrolled, be transferred to any corps or department by order of an authority exercising powers not less than those of an officer commanding a division.

CHAPTER III—DISMISSAL, DISCHARGE, ETC.

11. Discharge not to be delayed.—(1) Every person enrolled under the Act shall, as soon as he becomes entitled under the conditions of his enrolment to be discharged, be so discharged with all convenient speed :

Provided that no person shall be entitled to such discharge, if the Central Government has, by notification, suspended the said entitlement to discharge for the whole or a part of the regular Army.

(2) The discharge of a person, validly sanctioned by a competent authority, may, with the consent of the discharged person, be cancelled by any authority superior to the authority who sanctioned the discharge either without any conditions or subject to such conditions as such discharged person accepts.

12. Discharge Certificate.—(1) A certificate required to be furnished under the provisions of section 23 is hereinafter called a "discharge certificate".

(2) A discharge certificate may be furnished either by personal delivery thereof by or on behalf of the commanding officer to the person dismissed, removed, discharged or released, or by the transmission of the same to such person by registered post.

13. Authorities empowered to authorise discharge.—(1) Each of the authorities specified in column 3 of the Table below shall be the competent authority to discharge from service persons subject to the Act specified in column 1 thereof on the grounds specified in column 2.

(2) Any power conferred by this rule on any of the aforesaid authorities shall also be exercisable by any other authority superior to it.

(3) In this table "commanding officer" means the officer commanding the corps or department to which the person to be discharged belongs except that in the case of junior commissioned officers and warrant officers of the Special Medical Section of the Army Medical Corps, the "commanding officer" means the Director of the Medical Services, Army, and in the case of junior commissioned officers and warrant officers of Remounts, Veterinary and Farms Corps, the "commanding officer" means the Director Remounts, Veterinary and Farms.

TABLE

Category	Grounds of discharge	Competent Authority to authorise discharge	Manner of discharge
1	2	3	4
Junior commissioned officers.	I. (i) (a) On completion of the period of service or tenure specified in the Regulations for his rank or appointment, or on reaching the age limit, whichever is earlier, unless retained on the active list for a further specified period with the sanction of the Chief of the Army Staff or on becoming eligible for release under the Regulations.	Commanding officer	

1	2	3	4
	(b) At his own request on transfer to the pension establishment.	Commanding officer.	
	I. (ii) Having been found medically unfit for further service.	Commanding officer.	To be carried out only on the recommendation of an Invaliding Board.
	I. (iii) All other classes of discharge.	(a) In the case of junior commissioned officers granted direct commissions, during the first 12 months' service Area/Divisional Commander.	If the discharge is not at the request of the Junior Commissioned officer the competent authority before sanctioning the discharge shall, if the circumstances of the case permit give the junior commissioned officer concerned an opportunity to show cause against the order of discharge.
		(b) In the case of JCOs not covered by (a), serving in any Army or Command the General Officer Commanding-in-Chief of that Army or Command, if not below the rank of Lieutenant General.	
		(c) In any other case the Chief of the Army Staff.	
Warrant officers.	II. (i) (a) On completion of the period of service or tenure specified in the Regulations for his rank or appointment, or on reaching the age limit, whichever is earlier, unless retained on the active list for a further specified period with the sanction of the Brigade/Sub Area Commander or on becoming eligible for release under the Regulations.	Commanding officer.	
	(b) At his own request on transfer to the pension establishment.	Commanding officer.	
	II. (ii) Having been found medically unfit for further service.	Commanding officer.	To be carried out only on the recommendation of an Invaliding Board.

1	2	3	4
	II. (iii) All other classes of discharge.	Warrant officers class I—the General Officer Commanding-in-Chief of the Command in which the warrant officer is serving. Other warrant officers, Divisional / Area or Independent Brigade/Sub - Area Commanders.	If the discharge is not at the request of the warrant officer the competent authority before sanctioning the discharge shall, if the circumstances of the case permit, give the warrant officer an opportunity to show cause against the order of the discharge.
Persons enrolled under the Act who have been attested.	III. (i) On fulfilling the conditions of his enrolment or having reached the stage at which discharge may be enforced.	Commanding officer, except in the case of persons of the rank of havildar (or equivalent rank) otherwise that at their own request and Brigade or Sub-Area Commander in the case of persons of the rank of havildar (or equivalent rank) otherwise than at their own request.	
	III. (ii) On completion of a period of army service only, there being no vacancy in the Reserve.	Commanding officer (in the case of persons unwilling to extend their Army service).	Applicable to persons enrolled for both Army service and Reserve service. (A person who has the right to extend his Army service, and wishes to exercise that right cannot be discharged under this head).
	III. (iii) Having been found medically unfit for further service.	Commanding officer.	To be carried out only on the recommendation of an Invaliding Board.
	III. (iv) At his own request before fulfilling the conditions of his enrolment.	Commanding officer.	The Commanding officer will exercise this power only when he is satisfied as to the desirability of sanctioning the application and that the strength of the unit will not thereby be unduly reduced.
	III. (v) All other classes of discharge.	Brigade/Sub Area Commander.	The Brigade or Sub Area Commander before ordering the discharge shall, if the circumstances of the case permit, give to the person whose discharge is contemplated, an opportunity to show cause against the contemplated discharge.

1	2	3	4
Persons enrolled under the Act but not attested.	IV. All classes of discharge.	Commanding officer or an officer commanding a Recruit Reception Camp, or a Recruiting, Technical Recruiting, Deputy Recruiting or Deputy Technical Recruiting officer.	In the case of persons requesting to be discharged before fulfilling the conditions of their enrolment, the commanding officer, will exercise this power only where he is satisfied as to the desirability of sanctioning the application and that the strength of the unit will not thereby be undully reduced. Recruits who are considered unlikely to become efficient soldiers will be dealt with under this item.

14. Termination of service by the Central Government on account of misconduct.—(1) When it is proposed to terminate the service of an officer under section 19 on account of misconduct, he shall be given an opportunity to show cause in the manner specified in sub-rule (2) against such action :—

Provided that this sub-rule shall not apply :—

(a) where the service is terminated on the ground of conduct which has led to his conviction by a criminal court ; or

(b) where the Central Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.

(2) When after considering the reports on an officer's misconduct, the Central Government or the Chief of the Army Staff is satisfied that the trial of the officer by a court-martial is inexpedient or impracticable, but is of the opinion, that the further retention, of the said officer in the service is undesirable, the Chief of the Army Staff shall so inform the officer together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence :

Provided that the Chief of the Army Staff may withhold from disclosure any such report or portion thereof if, in his opinion, its disclosure is not in the interest of the Security of the State.

In the event of the explanation of the officer being considered unsatisfactory by the Chief of the Army Staff, or when so directed by the Central Government, the case shall be submitted to the Central Government with the officer's defence and the recommendation of the Chief of the Army Staff as to the termination of the officer's service in the manner specified in sub-rule (4).

(3) Where, upon the conviction of an officer by a criminal court, the Central Government or the Chief of the Army Staff considers that the conduct of the officer which has led to his conviction renders his further retention in service undesirable, a certified copy of the judgment of the criminal court convicting him shall be submitted to the Central Government with the recommendation of the Chief of the Army Staff as to the termination of the officer's service in the manner specified in sub-rule (4).

(4) When submitting a case to the Central Government under the provisions of sub-rule (2) or sub-rule (3), the Chief of the Army Staff shall make his recommendation whether the officer's service should be terminated, and if so, whether the officer should be—

(a) dismissed from the service ; or

(b) removed from the service ; or

(c) called upon to retire ; or

(d) called upon to resign.

(5) The Central Government after considering the reports and the officer's defence, if any, or the judgement of the criminal court, as the case may be, and the recommendation of the Chief of the Army Staff, may dismiss or remove the officer with or without pension or call upon him to retire or resign, and on his refusing to do so, the officer may be compulsorily retired or removed from the service on pension or gratuity, if any, admissible to him.

15. Termination of Service by the Central Government on grounds other than misconduct.—(1) When the Chief of the Army Staff is satisfied that an officer is unfit to be retained in the service due to inefficiency, or physical disability, the officer—

(a) shall be so informed,

(b) shall be furnished with the particulars of all matters adverse to him, and

(c) shall be called upon to urge any reasons he may wish to put forward in favour of his retention in the service :

Provided that clauses (a), (b) and (c) shall not apply if the Central Government is satisfied that for reasons, to be recorded by it in writing, it is not expedient or reasonably practicable to comply with the provisions thereof:

Provided further that the Chief of the Army Staff may not furnish to the officer any matter adverse to him, if, in his opinion, it is not in the interest of the security of the State to do so.

(2) In the event of the explanation being considered by the Chief of the Army Staff unsatisfactory, the matter shall be submitted to the Central Government for orders, together with the officer's explanation and the recommendation of the Chief of the Army Staff as to whether the officer should be—

(a) called upon to retire: or

(b) called upon to resign.

(3) The Central Government after considering the reports, the explanation, if any, of the officer and the recommendation of the Chief of the Army Staff, may call upon the officer to retire or resign, and on his refusing to do so, the officer may be compulsorily retired or removed from the service on pension or gratuity, if any admissible to him.

15-A. Release on medical grounds.—(1) An officer who is found by a Medical Board to be permanently unfit for any form of military service may be released from the service in accordance with the procedure laid down in this rule.

(2) The President of the Medical Board shall, immediately after the Medical Board has come to the conclusion that the officer is permanently unfit for any form of military service, issue a notice specifying the nature of the disease or disability he is suffering from and the finding of the Medical Board and also intimating him that in view of the finding he may be released from the service ; every such

notice shall also specify that the officer may, within fifteen days of the date of receipt of the notice, prefer a petition against the finding of the Medical Board to the Chief of the Army Staff through the President of the Medical Board:

Provided that where in the opinion of the medical board the officer is suffering from a mental disease and it is either unsafe to communicate the nature of the disease or disability to the officer or the officer is unfit to look after his interests, the nature of the disease or disability shall be communicated to the officer's next-of-kin who shall have the like right to petition.

(3) If no petition is preferred within the time specified in sub-rule (2), the officer may be released from the service by an order to that effect by the Chief of the Army Staff.

(4) If a petition is preferred within the time specified in sub-rule (2), it shall be forwarded to the Central Government together with the records thereof and the recommendation of the Chief of the Army Staff. The Central Government may, after considering the petition and the recommendation of the Chief of the Army Staff, pass such order as it deems fit.

16. Release.—A person subject to the Act may be released from the service in accordance with the Release Regulations for the Army or in accordance with any other regulations, instructions or orders made in that behalf.

17. Dismissal or removal by Chief of the Army Staff and by other officers.—Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court or a court-martial, no person shall be dismissed or removed under sub-section (1) or sub-section (3) of section 20, unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service:

Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule, he may, after certifying to that effect, order the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government.

18. Date from which retirement, resignation, removal, release, discharge or dismissal otherwise than by sentence of court-martial takes effect.—(1) The dismissal of an officer under section 19 or the retirement, resignation, release or removal of such officer shall take effect from the date specified in that behalf in the notification of such dismissal, retirement or removal in the official Gazette.

(2) The dismissal of a person subject to the Act, other than an officer whose dismissal otherwise than by sentence of a court-martial is duly authorised or the discharge of a person so subject whose discharge, if duly authorised, shall be carried out by the commanding officer of such person with all convenient speed. The authority competent to authorise such dismissal or discharge may, when authorising the dismissal or discharge, specify any future date from which it shall take effect:

Provided that if no such date is specified the dismissal or discharge shall take effect from the date on which it was duly authorised, or from the date on which the person dismissed or discharged, ceased to perform military duty, whichever is the later date.

(3) The retirement, removal, resignation, release, discharge or dismissal of a person subject to the Act shall not be retrospective.

CHAPTER IV

Restrictions on Fundamental Rights

19. Unauthorised organisations.—No person subject to the Act shall, without the express sanction of the Central Government—

(i) take official cognisance of, or assist or take any active part in, any society, institution or organisation, not recognised as part of the Armed Forces of the Union; unless it be of a recreational or religious nature in which case prior sanction of the superior officer shall be obtained;

(ii) be a member of, or be associated in any way with, any trade union or labour union, or any class of trade or labour unions.

20. Political and non-military activities.—(1) No person subject to the Act shall attend, address, or take part in, any meeting or demonstration held for a party or any political purposes, or belong to or join or subscribe in the aid of, any political association or movement.

(2) No person subject to the Act shall issue an address to electors or in any other manner publicly announce himself or allow himself to be publicly announced as a candidate or as a prospective candidate for election to Parliament, the legislature of a State, or a local authority, or any other public body or act as a member of a candidate's election committee, or in any way actively promote or prosecute a candidate's interests.

21. Communications to the Press, Lectures, etc.—No person subject to the Act shall.

(i) publish in any form whatever or communicate directly or indirectly to the Press any matter in relation to a political question or on a service subject or containing any service information, or publish or cause to be published any book or letter or article or other document on such question or matter or containing such information without the prior sanction of the Central Government, or any officer specified by the Central Government in this behalf; or

(ii) deliver a lecture or wireless address, on a matter relating to a political question or on a service subject or containing any information or views on any service subject without the prior sanction of the Central Government or any officer specified by the Central Government in this behalf.

Explanation.—For the purposes of this rule, the expressions "service information" and "service subject" include information or subject, as the case may be, concerning the forces, the defence or the external relation of the Union.

CHAPTER V

Investigation of Charges and Trial by Court-Martial

Section 1—Investigation of Charges and Remand for Trial

Power of Commanding Officers

22. Hearing of Charge.—(1) Every charge against a person subject to the Act other than an officer, shall be heard in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him, and to call any witnesses and make any statement in his defence.

(2) The commanding officer shall dismiss a charge brought before him if, in his opinion, the evidence does not show that an offence under the Act has been committed, and may do so if, in his discretion, he is satisfied that the charge ought not to be proceeded with.

(3) At the conclusion of the hearing of a charge, if the commanding officer is of opinion that the charge ought to be proceeded with, he shall without unnecessary delay,

(a) dispose of the case summarily under section 80 in accordance with the manner and form in Appendix III; or

(b) refer the case to the proper superior military authority; or

(c) adjourn the case for the purpose of having the evidence reduced to writing; or

(d) if the accused is below the rank of warrant officer, order his trial by a summary court-martial;

Provided that the commanding officer shall not order trial by a summary court-martial without a reference to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender unless either :—

(a) the offence is one which he can try by a summary court-martial without any reference to that officer; or

(b) he considers that there is grave reason for immediate action and such reference cannot be made without detriment to discipline.

23. Procedure for taking down the summary of evidence.—(1) Where the case is adjourned for the purpose of having the evidence reduced to writing, at the adjourned hearing the evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, and of any other person whose evidence appears to be relevant, shall be taken down in writing in the presence and hearing of the accused before the commanding officer or such officer as he directs.

(2) The accused may put in cross-examination such questions as he thinks fit to any witness, and the questions together with the answers thereto shall be added to the evidence recorded.

(3) The evidence of each witness after it has been recorded as provided in the rule when taken down, shall be read over to him, and shall be signed by him, or if he cannot write his name, shall be attested by his mark and witnessed as a token of the correctness of the evidence recorded. After all the evidence against the accused has been recorded, the accused will be asked; "Do you wish to make any statement? You are not obliged to say anything unless you wish to do so,

but whatever you say will be taken down in writing and may be given in evidence." Any statement thereupon made by the accused shall be taken down and read over to him, but he will not be cross-examined upon it. The accused may then call his witnesses, including, if he so desires, any witnesses as to character.

(4) The evidence of the witnesses and the statement (if any) of the accused shall be recorded in the English language. If the witness or accused, as the case may be, does not understand the English language, the evidence or statement, as recorded, shall be interpreted to him in a language which he understands.

(5) If a person cannot be compelled to attend as a witness, or if owing to the exigencies of service or any other grounds (including the expense and loss of time involved), the attendance of any witness cannot in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence purporting to be signed by him may be read to the accused and included in the summary of evidence.

(6) Any witness who is not subject to military law may be summoned to attend by order under the hand of the commanding officer of the accused. The summons shall be in the form provided in Appendix III.

24. Remand of accused.—(1) The evidence and statement (if any) taken down in writing in pursuance of rule 23 (hereinafter referred to as the "summary of evidence"), shall be considered by the commanding officer, who thereupon shall either—

(a) remand the accused for trial by a court-martial; or

(b) refer the case to the proper superior military authority; or

(c) if he thinks it desirable, re-hear the case and either dismiss the charge or dispose of it summarily.

(2) If the accused is remanded for trial by a court-martial, the commanding officer shall without unnecessary delay either assemble a summary court-martial (after referring to the officer empowered to convene a district court-martial or on active service as summary general court-martial when such reference is necessary) or apply to the proper military authority to convene a court-martial, as the case may require.

25. Procedure on charge against officer.—(1) Where an officer is charged with an offence under the Act, the investigation shall, if he requires it, be held, and the evidence, if he so requires, be taken in his presence in writing, in the same manner as nearly as circumstances admit, as is required by rule 22 and rule 23 in the case of other persons subject to the Act.

(2) When an officer is remanded for the summary disposal of a charge against him or is ordered to be tried by a court-martial, without any such recording of evidence in his presence, an abstract of evidence to be adduced shall be delivered to him free of charge as provided in sub-rule (7) of rule 33.

26. Summary disposal of charges against Officer, Junior Commissioned Officer or Warrant Officer.—(1) Where an officer, a junior commissioned officer or a warrant officer is remanded for the disposal of a charge against him by an authority empowered under section 83, 84 or 85 to deal summarily with that charge, the summary of evidence or (in the case of an officer where there is no summary of evidence) an abstract of the evidence to be adduced shall be delivered to him, free of charge, with a copy of the charge as soon as practicable after its preparation and in any case not less than twenty-four hours before the disposal.

(2) Where the authority empowered under section 83, 84 or 85 decides to deal summarily with a charge against an officer, junior commissioned officer or warrant officer, he shall unless he dismisses the charge, or unless the accused has consented in writing to dispense with the attendance of the witnesses, hear the evidence in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him, and to call any witnesses and make a statement in his defence.

(3) The proceedings shall be recorded as far as practicable in accordance with the form in Appendix IV and in every case in which punishment is awarded, the proceedings together with the conduct sheet, summary or abstract of evidence and written consent to dispense with the attendance of witnesses (if any) of the accused shall be forwarded through the proper channel to the superior military authority as defined in section 88.

27. Delay reports.—(1) In every case where a person subject to the Act, who is not on active service, is in military custody for a period longer than eight days without a court-martial for his trial having been ordered to assemble, or without a punishment having been awarded to him under section 80, the commanding officer shall make a report in the form specified in Appendix III to the officer empowered to convene a general or a district court-martial for the trial of such person. Such report shall be made to the authority mentioned in this rule at intervals of every eight days until a court-martial is ordered to assemble, or a punishment is awarded under section 80, or such person is released from custody as the case may be.

(2) A copy of every such report made on or after the forty-eighth day of such custody shall be sent by the commanding officer direct to the Deputy Judge Advocate General of the command in which such person is held in custody.

(3) (i) Detention in military custody beyond two months of a person subject to the Act, who is not on active service and in whose case a court-martial for trial has not been ordered to assemble, shall require the sanction of the Chief of the Army Staff, or any officer authorized by him in this behalf with the approval of the Central Government, who may sanction further detention for a specific period, which he may extend from time to time, subject to a total period of detention of three months.

(ii) Any such detention beyond a period of three months shall require the approval of the Central Government.

Framing Charges

28. Charge-sheet and charge.—(1) A charge-sheet shall contain the whole issue or issues to be tried by a court-martial at one time.

(2) A charge means an accusation contained in a charge-sheet that a person subject to the Act has been guilty of an offence.

(3) A charge-sheet may contain one charge or several charges.

29. Commencement of charge-sheet.—Every charge-sheet shall begin with the name and description of the person charged, and state his number, rank, name and the corps or department (if any) to which he belongs. When the accused person does not belong to the regular Army, the charge-sheet shall show by the description of him, or directly by an express averment, that he is subject to the Act in respect of the offence charged .

30. Contents of charge.—(1) Each charge shall state one offence only, and in no case shall an offence be described in the alternative in the same charge.

(2) Each charge shall be divided into two parts—

(a) statement of the offence; and

(b) statement of the particulars of the act, neglect or omission constituting the offence.

(3) The offence shall be stated, if not a civil offence, as nearly as practicable, in the words of the Act, and if a civil offence, in such words as sufficiently describe that offence, but not necessarily in technical words.

(4) The particulars shall state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect or omission is intended to be proved against him as constituting the offence.

(5) The particulars in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as are so referred to shall be deemed to form part of the first mentioned charge as well as of the other charge.

(6) Where it is intended to prove any facts in respect of which any deduction from pay and allowances can be awarded as a consequence of the offence charged, the particulars shall state those facts and the sum of the loss or damage it is intended to charge.

31. Signature on charge-sheet.—The charge-sheet shall be signed by the commanding officer of the accused and shall contain the place and date of such signature.

32. Validity of charge-sheet.—(1) A charge-sheet shall not be invalid merely by reason of the fact that it contains any mistake in the name or description of the person charged, provided that he does not object to the charge-sheet during the trial, and that no substantial injustice has been done to the person charged.

(2) In the construction of a charge-sheet or charge, there shall be presumed in favour of supporting the same every proposition which may reasonably be presumed to be impliedly included though not expressed therein.

Preparation for defence by accused person

33. Rights of accused to prepare defence.—(1) Correspondence between the accused and his legal advisers shall not be liable to be censored. The accused shall inform his commanding officer of the names of such advisers and shall also inform him of any distinctive marks that such correspondence will bear.

(2) An accused person shall have the right to interview any witnesses whom he may wish to call in his defence. The provisions of rule 137 shall apply to procuring the attendance of such witnesses.

(3) If the accused so desires, the commanding officer of the accused shall take such steps as the circumstances of the case permit to obtain a written statement from a witness whom the accused may wish to call in his defence. The statement shall be obtained in a closed envelope which shall be given to the accused person unopened.

(4) If the accused person gives to his commanding officer the name of any person whom he wishes to call in his defence, no person shall interview such witness with reference to the charges against the accused except in the presence of the accused, unless the accused agrees to dispence with his presence in writing. Similarly if the accused wishes to interview a witness whom the prosecutor intends to call, the interview shall be in the presence of an officer detailed by the commanding officer of the accused person.

(5) The commanding officer of the accused person or the officer responsible for his custody shall take adequate precautions so that no conversation which the accused person may have with his legal advisers or witnesses is liable to be overheard.

(6) The accused person shall have the right to address an application to the Deputy or Assistant Judge Advocate General of the command within which he for the time being is, if he is kept under arrest longer than forty-eight days without being brought to trial or is not given full liberty for preparing his defence.

(7) As soon as practicable after an accused has been remanded for trial by a general or district court-martial, and in any case not less than ninety-six hours or on active service twenty-four hours before his trial, an officer shall give to him free of charge a copy of the summary of evidence, or in the case of an officer where there is no summary of evidence an abstract of the evidence, and explain to him his rights under these rules as to preparing his defence and being assisted or represented at the trial, and shall ask him to state in writing whether or not he wishes to have an officer assigned by the convening officer to represent him at the trial, if a suitable officer should be available. The convening officer shall be informed whether or not the accused so elects.

34. Warning of accused for trial.—(1) The accused before he is arraigned shall be informed by an officer of every charge for which he is to be tried and also that, on his giving the names of witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly.

The interval between his being so informed and his arraignment shall not be less than ninety-six hours or where the accused person is on active service less than twenty-four hours.

(2) The officer at the time of so informing the accused shall give him a copy of the charge-sheet and shall, if necessary, read and explain to him the charges brought against him. If the accused desires to have it in a language which he understands, a translation thereof shall also be given to him.

(3) The officer shall also deliver to the accused a list of the names, rank and corps (if any) of the officers who are to form the court, and where officers in waiting are named, also of those officers in courts-martial other than summary courts-martial.

(4) If it appears to the court that the accused is liable to be prejudiced at his trial by any non-compliance with this rule, the court shall take steps and, if necessary, adjourn to avoid the accused being so prejudiced.

35. Joint trial of several accused persons.—(1) Any number of accused persons may be charged jointly and tried together for an offence averred to have been committed by them collectively.

(2) Any number of accused persons, although not charged jointly, may be tried together for an offence averred to have been committed by one or more of them and to have been abetted by the other or others.

(3) Where the accused are so charged under sub-rule (1) and (2), any one or more of them may at the same time be charged with and tried for any other offence averred to have been committed individually or collectively, provided that all the said offences are based on the same facts, or form or are part of a series of offences of the same or similar character.

(4) In the cases mentioned above, notice of the intention to try the accused persons together shall be given to each of the accused at the time of his being informed of the charged, and any accused person may claim, either by notice to the

authority convening the court or, when arraigned before the court, by notice to the court, that he or some other accused be tried separately on one or more of the charges included in the charge-sheet, on the ground that the evidence of one of more of the other accused persons proposed to be tried together with him will be material to his defence, or that otherwise he would be prejudiced or embarrassed in his defence. The convening authority or court, if satisfied that the evidence will be material or that the accused may be prejudiced or embarrassed in his defence as aforesaid, and if the nature of the charge admits of this, shall allow the claim, and such accused person, or, as the case may be, the other accused person or persons whose separate trial has been claimed, shall be tried separately. Where any such claim has been made and disallowed by the authority convening the court, or by the court, the disallowance of such claim will not be a ground for refusing confirmation of the finding or sentence unless, in the opinion of the confirming authority, substantial miscarriage of justice has occurred by reason of the disallowance of such claim.

36. Suspension of rules on the ground of military exigencies or the necessities of discipline.—Where it appears to the officer convening a court-martial, or to the senior officer on the spot, that military exigencies, or the necessities of discipline render it impossible or inexpedient to observe any of the rules 23, 24, 25, 33 and 34 and sub-rule (2) of rule 95, he may, by order under his hand, make a declaration to that effect specifying the nature of such exigencies or necessities, and thereupon the trial or other proceedings shall be as valid as if the rule mentioned in such declaration had not been contained herein; and such declaration may be made with respect to any or all of the rules aforesaid in the case of the same court-martial:

Provided that the accused shall have full opportunity of making his defence, and shall be afforded every facility for preparing it which is practicable, having due regard to the said exigencies or necessities.

Section 2—General and District Courts-Martial

Convening the Court

37. Convening of General and District Courts-Martial.—(1) An officer before convening a general or district court-martial shall first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Act, and that the evidence justifies a trial on those charges, and if not so satisfied, shall order the release of the accused, or refer the case to superior authority.

(2) He shall also satisfy himself that the case is a proper one to be tried by the kind of court-martial which he proposes to convene.

(3) The officer convening a court-martial shall appoint or detail the officers to form the court and, may also appoint or detail such waiting officers as he thinks expedient. He may also, where he considers the services of an interpreter to be necessary, appoint or detail an interpreter to the court.

(4) The officer convening a court-martial shall furnish to the senior member of the court with the original charge-sheet on which the accused is to be tried and, where no judge-advocate has been appointed, also with a copy of the summary or abstract of evidence and the order for the assembly of the court-martial. He shall also send, to all the other members, copies of the charge-sheet and to the judge-advocate, when one has been appointed, a copy of the charge-sheet and a copy of the summary or abstract of evidence.

38. Adjournment for insufficient number of officers.—(1) If, before the accused is arraigned, the full number of officers detailed are not available to serve, by reason of non-eligibility, disqualification, challenge or otherwise, and if

there are not a sufficient number of officers in waiting to take the place of those unable to serve, the court shall ordinarily adjourn for purpose of fresh members being appointed, but if the court is of opinion that in the interests of justice, and for the good of the service, it is inexpedient so to adjourn, it may, if not reduced in number below the legal minimum, proceed, after recording their reasons for so doing.

(2) If the court adjourns for the purpose of the appointment of fresh members, whether under these rules or otherwise the convening officer may, if he thinks fit, convene another court.

39. Ineligibility and disqualification of officers for court-martial.—(1) An officer is not eligible for serving on a court-martial if he is not subject to the Act.

(2) An officer is disqualified for serving on a general or district court-martial if he—

(a) is an officer who convened the court; or

(b) is the prosecutor or a witness for the prosecution; or

(c) investigated the charges before trial, or took down the summary of evidence, or was a member of a court of inquiry respecting the matters on which the charges against the accused are founded, or was the squadron, battery, company, or other commander, who made preliminary inquiry into the case, or was a member of a previous court-martial which tried the accused in respect of the same offence; or

(d) is the commanding officer of the accused, or of the corps to which the accused belongs; or

(e) has a personal interest in the case.

(3) The provost-marshal or assistant provost-marshal is disqualified from serving on a general court-martial or district court-martial.

40. Composition of court-martial.—(1) A general court-martial shall be composed, as far as seems to the convening officer practicable, of officers of different corps or departments, and in no case exclusively of officers of the corps or department to which the accused belongs.

(2) The members of a court-martial for the trial of an officer shall be of a rank not lower than that of the officer unless, in the opinion of the convening officer, officers of such rank are not (having due regard to the exigencies of the public service) available. Such opinion shall be recorded in the convening order.

(3) In no case shall an officer below the rank of captain be a member of a court-martial for the trial of a field officer.

Procedure at Trial—Constitution of Court

41. Inquiry by court as to legal constitution.—(1) On the court-assembling, the order convening the court shall be laid before it together with the charge-sheet and the summary of evidence or a true copy thereof, and also the ranks, names, and corps of the officers appointed to serve on the court; and the court shall satisfy itself that it is legally constituted; that is to say—

(a) that, so far as the court can ascertain, the court has been convened in accordance with the provisions of the Act and these rules;

(b) that the court consists of a number of officers, not less than the minimum required by law and, save as mentioned in rule 38, not less than the number detailed;

(c) that each of the officers so assembled is eligible and not disqualified for serving on that court-martial; and

(d) that in the case of a general court-martial, the officers are of the required rank.

(2) The court shall, further, if it is a general or district court-martial to which a judge-advocate has been appointed, ascertain that the judge-advocate is duly appointed and is not disqualified for sitting on that court-martial.

(3) The court, if not satisfied with regard to the compliance with the aforesaid provisions, shall report its opinion to the convening authority, and may adjourn for that purpose.

42. Inquiry by court as to amenability of accused and validity of charge.—(1) If the court is satisfied that the requirements of rule 41 have been complied with, it shall further satisfy itself in respect of each charge about to be brought before it—

(a) that it appears to be laid against a person subject to the Act, and subject to the jurisdiction of the court, and

(b) that each charge discloses an offence under the Act and is framed in accordance with these rules, and is so explicit as to enable the accused readily to understand what he has to answer.

(2) The court, if not satisfied on the above matters, shall report its opinion to the convening authority and may adjourn for that purpose.

Procedure at Trial—Challenge and Swearing

43. Appearance of prosecutor and accused.—When the court has satisfied itself that the provisions of rules 41 and 42 have been complied with, it shall cause the accused to be brought before the court, and the prosecutor, who must be a person subject to the Act, shall take his due place in the court.

44. Proceedings for challenges of members of court.—The order convening the court and the names of the presiding officer and the members of the court shall then be read over to the accused and he shall be asked, as required by section 130, whether he has any objection to being tried by any officer sitting on the court. Any such objection shall be disposed of in accordance with the provisions of the aforesaid section:

Provided that—

(a) the accused shall state the names of all the officers constituting the court in respect of whom he has objection, before any objection is disposed of,

(b) the accused may call any person to give evidence in support of his objection and such person may be questioned by the accused and by the court,

(c) if more than one officer is objected to, the objection to each officer shall be disposed of separately, and the objection in respect of the officers of the lowest in rank shall be disposed of first; and on an objection to an officer, the remaining officers of the court shall, in the absence of the challenged officer, vote on the disposal of such objection, notwithstanding that objections have also been made to any of those officers,

(d) when an objection in respect of an officer is allowed, that officer shall forthwith retire, and take no further part in the proceedings,

(e) When an officer so retires or is not available to serve owing to any cause, which the court may deem to be sufficient, and there are any officers in waiting detailed as such, the presiding officer shall appoint one of such officers to fill the vacancy. If there is no officer in waiting available, the court shall proceed as required by rule 38.

(f) the eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy shall be ascertained by the court, as in the case of other officers appointed to serve on the court.

45. Swearing or affirming of members.—As soon as the court is constituted with the proper number of officers who are not objected to, or objections in respect of whom have been overruled, an oath or affirmation shall be administered to every member in one of the following forms or in such other form to the same purport as the court ascertains to be according to his religion or otherwise binding on his conscience.

Form of Oath

"I.....swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the Army Act without partiality, favour or affection; and if any doubt shall arise, then, according to my conscience, the best of my understanding and the custom of war in the like cases; and I do further swear that I will not, on any account at any time, whatsoever, disclose, or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial in due course of law."

Form of Affirmation

"I.....do solemnly, sincerely and truly declare and affirm that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the Army Act without partiality, favour or affection; and if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases; and I do further solemnly, sincerely and truly declare and affirm that I will not, on any account at any time, whatsoever, disclose, or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial in due course of law."

46. Swearing or affirming of judge-advocate and other officers.—After the members of the court are all sworn or have made affirmation, an oath or affirmation shall be administered to the following persons or such of them as are present at the court-martial, in such of the following forms as shall be appropriate, or in such other form to the same purport as the court ascertains to be according to the religion or otherwise binding on the conscience of the person to be sworn or affirmed:—

(A) JUDGE-ADVOCATE

Form of Oath

"I.....swear by Almighty God that I will to the best of my ability carry out the duties of Judge Advocate in accordance with the Army Act, and the rules made thereunder and without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever, disclose

or discover the vote or opinion on any matter of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or, a court-martial in due course of law."

Form of Affirmation

"I.....do solemnly, sincerely and truly declare and affirm that I will to the best of my ability carry out the duties of Judge Advocate in accordance with the Army Act and the rules made thereunder and without partiality, favour or affection, and I do further solemnly, sincerely and truly declare and affirm that I will not; on any account at any time, whatsover, disclose or discover the vote or opinion on any matter of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial, in due course of law."

(B) OFFICER ATTENDING FOR THE PURPOSES OF INSTRUCTION

Form of Oath

"I.....swear by Almighty God that I will not on any account; at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law."

Form of Affirmation

"I.....do solemnly, sincerely and truly declare and affirm that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial; unless required to give evidence thereof by a court of justice or a court-martial, in due course of law."

(C) SHORTHAND WRITER

Form of Oath

"I.....swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as I may be required and will, when required, deliver to the court a true transcript of the same."

Form of Affirmation

"I.....do solemnly, sincerely and truly declare and affirm that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as I may be required, and will, when required deliver to the court a true transcript of the same."

(D) INTERPRETER

Form of Oath

"I.....swear by Almighty God that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial."

Form of Affirmation

"I.....do solemnly, sincerely and truly declare and affirm that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial."

47. Persons to administer oaths and affirmations.—All oaths and affirmations shall be administered by the Judge-advocate (if any), a member of the court, or some other person empowered by the court to administer such oath or affirmation.

Prosecution, Defence and Summing-up

48. Arraignment of accused.—(1) After the members of the court and other persons are sworn or affirmed as abovementioned, the accused shall be arraigned on the charges against him.

(2) The charges upon which the accused is arraigned shall be read and, if necessary, translated to him, and he shall be required to plead separately to each charge.

49. Objection by accused to charge.—The accused, when required to plead to any cargc, may object to the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules. The court, after hearing any submission which may be made by the prosecutor or by or on behalf of the accused, shall consider the objection in closed court and shall either disallow it and proceed with the trial, or allow it and adjourn to report to the convening authority or, if it is in doubt, it may adjourn to consult the convening authority.

50. Amendment of charge.—(1) At any time during the trial, if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, the court may amend the charge-sheet so as to correct that mistake.

(2) If, on the trial of any charge, it appears to the court at any time before it has begun to examine the witnesses, that in the interest of justice any addition to, omission from, or alteration in, the charge is required, it may report its opinion to the convening authority, and may adjourn, and the convening authority may either direct the new trial to be commenced, or amend the charge, and order the trial to proceed with such amended charge after due notice to the accused.

51. Special plea to the jurisdiction.—(1) The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the court, and if he does so, and the court considers that anything stated in such plea shows that the court has not jurisdiction it shall receive any evidence offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and any address by or on behalf of the accused and reply by the prosecutor in reference thereto.

(2) If the court overrules the special plea, it shall proceed with the trial.

(3) If the court allows the special plea, it shall record its decision and the reasons for it, and report it to the convening authority and adjourn; such decision, shall not require any confirmation, and the convening authority shall either forthwith convene another court for the trial of the accused, or order the accused to be released.

(4) If the court is in doubt as to the validity of the plea, it may refer the matter to the convening authority, and may adjourn for that purpose or may record a special decision with respect to such plea, and proceed with the trial.

52. General plea of "guilty" or "not guilty".—(1) If no special plea to the general jurisdiction of the court is offered, or if such plea being offered, is overruled, or is dealt with by a special decision under sub-rule (4) of rule 51, the accused person's plea—"Guilty" or "Not guilty" (or if he refuses to plea, or does not plead intelligibly either one or the other, a plea of "Not guilty")—shall be recorded on each charge.

(2) If an accused person pleads "Guilty", that plea shall be recorded as the finding of the court; but, before it is recorded, the presiding officer or judge-advocate, on behalf of the court, shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty, and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence that the accused ought to plead "Not guilty".

(3) Where an accused person pleads "Guilty" to the first of two or more charges laid in the alternative, the prosecutor may, after sub-rule (2) has been complied with by the court and before the accused is arraigned on the alternative charge or charges, withdraw such alternative charge or charges without requiring the accused to plead thereto and a record to that effect shall be made upon the proceeding of the court.

(4) A plea of "Guilty" shall not be accepted in cases where the accused is liable, if convicted, to be sentenced to death, and where such plea is offered, a plea of "Not Guilty" shall be recorded and the trial shall proceed accordingly.

53. Plea in bar.—(1) The accused, at the time of his general plea of "Guilty" or "Not Guilty" to a charge for an offence, may offer a plea in bar of trial on the ground that—

(a) he has been previously convicted or acquitted of the offence by a competent criminal court or by a court-martial, or has been dealt with summarily under sections 80, 83, 84 and 85, as the case may be, for the offence, or that a charge in respect of the offence has been dismissed as provided in sub-rule (2) of rule 22 ; or

(b) the offence has been pardoned or condoned by competent military authority ; or

(c) the time which has elapsed between the commission of the offence and the commencement of the trial is more than three years, and the limit of time for trial is not extended under section 122.

(2) If he offers such plea in bar, the court shall record it as well as his general plea, and if it considers that any fact or facts stated by him are sufficient to support the plea in bar, it shall receive any evidence offered, and hear any address made by or on behalf of the accused and the prosecutor in reference to the plea.

(3) If the court finds that the plea in bar is proved, it shall record its finding, and notify it to the confirming authority, and shall either adjourn, or if there is any other charge against the accused, whether in the same or in a different charge-sheet, which is not affected by the plea in bar, may proceed to the trial of the accused on that charge.

(4) If the finding that the plea in bar is proved is not confirmed, the court may be re-assembled by the confirming authority, and proceed as if the plea had been found not proved.

(5) If the court finds that the plea in bar is not proved, it shall proceed with the trial, and the said finding shall be subject to confirmation like any other finding of the court.

54. Procedure after plea of "Guilty".—(1) Upon the record of the plea of "Guilty", if there are other charges in the same charge-sheet to which the plea is "Not Guilty", the trial shall first proceed with respect to the latter charges, and, after the finding on those charges, shall proceed with the charges on which a plea of "Guilty" has been entered, but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded

"Guilty" to any charge or may subject to sub-rule (2), instead of trying him, record a finding of "Guilty" upon any one of the alternative charges to which he has pleaded "Guilty" and a finding of "Not Guilty" upon all the other alternative charges.

(2) Where alternative charges are preferred and the accused pleads "Not guilty" to the charge which alleges the more serious offence and "Guilty" to the other, the court shall try him as if he had pleaded "Not guilty" to all the charges.

(3) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the court shall receive any statement which the accused desires to make in reference to the charge, and shall read the summary or abstract of evidence, and annex it to the proceedings, or if there is no such summary or abstract shall take and record sufficient evidence to enable it to determine the sentence and the confirming officer to know all the circumstances connected with the offence. This evidence shall be taken in the manner provided in these rules in the case of plea of "Not Guilty".

(4) After evidence has been so taken, or the summary or abstract of evidence has been read, as the case may be, the accused may make a statement in mitigation of punishment, and may call witnesses as to his character.

(5) If from the statement of the accused or from the summary or abstract of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "Guilty", the court shall alter the record and enter a plea of "Not Guilty" and proceed with the trial accordingly.

(6) If a plea of "Guilty" is recorded, and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under sub-rules (3) and (4) shall take place when the finding on the other charges in the same charge-sheet are recorded.

(7) When the accused states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same.

55. Withdrawal of plea of "Not guilty" subject to compliance with sub-rules (2) and (4) of Rule 52.—The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not Guilty", and plead "Guilty", and in such case the court will at once, subject to a compliance with sub-rules (2) and (4) of rule 52, record a plea and finding of "Guilty" and shall, so far as is necessary, proceed in manner directed by rule 54.

56. Plea of "Not guilty", application for adjournment, and case for the prosecution.—After the plea of "Not Guilty" to any charge is recorded, the trial shall proceed as follows, that is to say—

(1) the court shall ask the accused whether he wishes to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that he has been prejudiced thereby or on the ground that he has not had sufficient opportunity for preparing his defence, and shall record his answer ;

(2) if the accused shall make any such application, the court shall hear any statement or evidence which he may desire to adduce in support thereof, and any statement of the prosecutor or evidence in answer thereto ; and if it shall appear to the court that the accused has been prejudiced by any non-compliance with any of such rules relating to procedure or that

he has not had sufficient opportunity of preparing his defence, it may grant such adjournment as may appear to it in the circumstances to be proper ;

(3) the prosecutor may, if he desires, and shall, if so required by the court make an opening address, and shall state therein the substance of the charge against the accused and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into any unnecessary detail ;

(4) the evidence for the prosecution shall then be taken ;

(5) if it should be necessary for the prosecutor to give evidence for the prosemake an opening address, and shall state therein the substance of the address (if any), and he must be sworn or affirmed, as the case may be, and give his evidence in detail ; and

(6) he may be cross-examined by or on behalf of the accused and afterwards may make any statement which might be made by a witness on re-examination.

57. Plea of no case.—(1) At the close of the case for prosecution, the accused may offer a plea that the evidence given on behalf of the prosecution, in respect of any one or more charges, has not established a *prima facie* case against him and that he should not, therefore, be called upon for his defence.

(2) Such plea may be offered in respect of any one or more charges in the charge-sheet.

(3) The court shall consider the submission in closed court and if it is satisfied that the plea is well founded, it shall record a finding of "Not Guilty" in respect of any one or more charges, to which the plea relates.

58. Close of case for the prosecution and procedure for defence where accused does not call witness.—(1) At the close of the case for the prosecution, the accused shall be asked if he intends to call any witnesses to the facts of the case.

(2) If the accused states that he does not intend to call any witnesses to the facts of the case, the procedure shall be as follows, that is to say—

(a) the accused may make a statement giving his account of the subject of the charge against him. Such statement may be made orally or in writing but no oath shall be administered to the accused. The court or the judge-advocate, if any, may question the accused on the case for the purpose of enabling him to explain any circumstances appearing in his statement or in the evidence against him.

The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving answers to them which he knows not to be true; but the court may draw such inference from such refusal or answers as it thinks just,

(b) the accused may, if he wishes, call witnesses as to his character,

(c) the prosecutor may then make a final address, and

(d) the accused or his counsel or the defending officer (as the case may be) may then make a closing address.

59. Defence where accused calls witnesses.—If the accused states that he intends to call witnesses to the facts of the case, the procedure shall be as follows, that is to say—

(a) the accused or his counsel or the defending officer (as the case may be) may make an opening address,

(b) the accused may then make a statement giving his account of the subject of the charge against him. The statement may be made orally or in writing but no oath shall be administered to the accused. The court or the judge-advocate, if any, may question the accused on the case for the purpose of enabling him to explain any circumstances appearing in his statement or in the evidence against him. The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving answers to them which he knows not to be true; but the court may draw such inference from such refusal or answers as it thinks just,

(c) the accused shall then call his witnesses, including, if he so desires, any witnesses as to character,

(d) after the evidence of all witnesses has been taken, the accused or his counsel or the defending officer (as the case may be) may make a closing address, and

(e) the prosecutor may reply.

60. Summing up by the judge-advocate.—(1) The judge-advocate (if any) shall sum up in open court the evidence and advise the court upon the law relating to the case.

(2) After the summing up of the judge-advocate, no other address shall be allowed.

Finding and sentence

61. Consideration of finding.—(1) The court shall deliberate on its finding in closed court in the presence of the judge-advocate.

(2) The opinion of each member of the court as to the finding shall be given by word of mouth on each charge separately.

62. Form, record and announcement of finding.—(1) The finding on every charge upon which the accused is arraigned shall be recorded and, except as provided in these rules, shall be recorded simply as a finding of "Guilty" or of "Not guilty".

(2) Where the court is of opinion as regards any charge that the facts proved do not disclose the offence charged or any offence of which he might under the Act legally be found guilty on the charge as laid, the court shall acquit the accused of that charge.

(3) If the court doubts as regards any charge whether the facts proved show the accused to be guilty or not of the offence charged or of any offence of which he might under the Act legally be found guilty on the charge as laid, it may, before recording a finding on that charge, refer to the confirming authority for an opinion, setting out the facts which it finds to be proved, and may if necesasry, adjourn for that purpose.

(4) Where the court is of opinion as regards any charge that the facts which it finds to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of "Not guilty", record a special finding.

(5) The special finding may find the accused guilty on a charge subject to the statement of exceptions or variations specified therein.

(6) Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court shall record a finding of "Not Guilty" on that charge.

(7) The court shall not find the accused guilty on more than one of two or more charges laid down in the alternative, even if conviction upon one charge necessarily connotes guilty upon the alternative charge or charges.

(8) If the court thinks that the facts proved constitute one of the offences stated in two or more of the alternative charges, but doubts which of those offences the facts do at law constitute, it may, before recording a finding on those charges, refer to the confirming authority for an opinion, setting out the facts which it finds to be proved and stating that it doubts whether those facts constitute in law the offence stated in such one or other of the charges and may, if necessary, adjourn for that purpose.

(9) In any case where the court is empowered by section 139 to find the accused guilty of an offence other than that charged, or guilty of committing an offence in circumstances involving a less degree of punishment, or where it could, after hearing the evidence, have made a special finding of guilty subject to exceptions or variations in accordance with sub-rules (4) and (5) it may, if it is satisfied of the justice of such course, and if the concurrence of the convening officer is signified by the prosecutor, accept and record a plea of guilty of such other offences or of the offence as having been committed in circumstances involving such less degree of punishment or of the offence charged subject to such exceptions or variations :

Provided that failure to obtain the concurrence of the convening officer as aforesaid shall not invalidate the proceedings when confirmed notwithstanding such failure.

(10) The finding on each charge shall be announced forthwith in open court as subject to confirmation.

63. Procedure on acquittal.—If the finding on all the charges is "Not Guilty", the presiding officer shall date and sign the finding and such signature shall authenticate the whole of the proceedings, and the proceedings upon being signed by the judge-advocate (if any) shall be at once transmitted for confirmation.

64. Procedure on conviction.—(1) If the finding on any charge is "Guilty", then, for the guidance of the court in determining its sentence, and of the confirming authority in considering the sentence, the court, before deliberating on its sentence, shall, whenever possible, take evidence of and record the general character, age, service, rank, and any recognised acts of gallantry or distinguished conduct of the accused, any previous convictions of the accused either by a court-martial or a criminal court, any previous punishments awarded to him by an officer exercising authority under section 80, 83, 84 or 85, as the case may be, the length of time he has been in arrest or in confinement on any previous sentence, and any military decoration, or military reward, of which he may be in possession or to which he is entitled.

(2) Evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the regimental books respecting the accused and identifying the accused as the person referred to in that summary.

(3) The accused may cross-examine any such witness, and may call witnesses to rebut such evidence; and if the accused so requests, the regimental books, or a duly certified copy of the material entries therein, shall be produced; and if the

accused alleges that the summary is in any respect not in accordance with the regimental books, or such certified copy, as the case may be, the court shall compare the summary with those books or copy, and if it finds it is not in accordance therewith, shall cause the summary to be corrected.

(4) When all the evidence on the above matters has been given, the accused may address the court thereon and in mitigation of punishment.

65. Sentence.—The court shall award a single sentence in respect of all the offences of which the accused is found guilty, and such sentence shall be deemed to be awarded in respect of the offence in each charge in respect of which it can be legally given, and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given.

66. Recommendation to mercy.—(1) If the court makes a recommendation to mercy, it shall give its reasons for its recommendation.

(2) The number of opinions by which the recommendation to mercy mentioned in this rule, or any question relative thereto, is adopted or rejected, may be entered in the proceedings.

67. Announcement of sentence and signing and transmission of proceedings.—(1) The sentence together with any recommendation to mercy and the reasons for any such recommendation will be announced forthwith in open court. The sentence will be announced as subject to confirmation.

(2) Upon the court awarding the sentence, the presiding officer shall date and sign the sentence and such signature shall authenticate the whole of the proceedings and the proceedings upon being signed by the Judge-Advocate (if any), shall at once be transmitted for confirmation.

Confirmation and Revision

68. Revision.—(1) Where the finding is sent back for revision under section 160, the court shall reassemble in open court, the revision order shall be read, and if the court is directed to take fresh evidence, such evidence shall also be taken in open court. The court shall then deliberate on its finding in closed court.

(2) Where the finding is sent back for revision and the court does not adhere to its former finding, it shall revoke the finding and sentence, and record the new finding, and if such new finding involves a sentence, pass sentence afresh.

(3) Where the sentence alone is sent back for revision, the court shall not revise the finding.

(4) After the revision, the presiding officer shall date and sign the decision of the court, and the proceedings, upon being signed by the judge-advocate, if any, shall at once be transmitted for confirmation.

69. Review of court-martial proceedings.—The proceedings of a general court-martial shall be submitted by the judge-advocate at the trial for review to the deputy or assistant judge-advocate general of the command who shall then forward it to the confirming officer. The proceedings of a district court-martial shall be sent by the presiding officer or the judge-advocate direct to the confirming officer who must, in all cases, where the sentence is dismissal or above, seek advice of the deputy or assistant judge-advocate general of the command before confirmation.

70. Confirmation.—Upon receiving the proceedings of a general or district court-martial, the confirming authority may confirm or refuse confirmation, or reserve confirmation for superior authority, and the confirmation, non-confirmation, or reservation shall be entered in and form part of the proceedings.

71. Promulgation.—The charge, finding, and sentence, and any recommendation to mercy shall, together with the confirmation or non-confirmation of the proceedings, be promulgated in such manner as the confirming authority may direct; and if no direction is given, according to the custom of the service. Until promulgation has been effected, confirmation is not complete and the finding and sentence shall not be held to have been confirmed until they have been promulgated.

72. Mitigation of sentence on partial confirmation.—(1) Where a sentence has been awarded by a court-martial in respect of offences in several charges, and the confirming authority confirms the finding on some but not on all of such charges, that authority shall take into consideration the fact of such non-confirmation, and shall, if it seems just, mitigate, remit, or commute the punishment awarded according as it seems just, having regard to the offences in the charges in respect of the findings which are confirmed.

(2) Where a sentence has been awarded by a court-martial in respect of offences in several charges and has been confirmed, and any one of such charges or the finding thereon is found to be invalid, the authority having power to mitigate, remit, or commute the punishment awarded by the sentence shall take into consideration the fact of such invalidity, and if it seems just, mitigate, remit or commute the punishment awarded according as it seems just, having regard to the offences in the charges which with the findings thereon are not invalid, and the punishment as so modified shall be as valid as if it had been originally awarded only in respect of those offences.

73. Confirmation notwithstanding informality in or excess of punishment.—If the sentence of a court-martial is informally expressed, the confirming authority may, in confirming the sentence, vary the form so that it shall be properly expressed; and if the punishment awarded by the sentence is in excess of the punishment authorized by law, the confirming authority may vary the sentence so that the sentence shall not be in excess of the punishment authorized by law; and the confirming authority may confirm the finding and the sentence, as so varied, of the court-martial.

74. Member or prosecutor not to confirm proceedings.—A member of a court-martial, or an officer who has acted as a prosecutor at a court-martial, shall not confirm the finding or sentence of that court-martial, and where such member or prosecutor becomes confirming officer, be shall refer the finding the sentence of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of court-martial.

Proceedings of General and District Court-Martial

75. Seating of members.—The members of a court-martial shall take their seats according to their army rank.

76. Responsibility of presiding officer.—(1) The presiding officer is responsible for the trial being conducted in proper order, and in accordance with the Act, rules made thereunder and in a manner befitting a court of justice.

(2) It is the duty of the presiding officer to see that justice is administered, that the accused has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a person under trial, or of his ignorance, or of his incapacity to examine or cross-examine witnesses, or otherwise.

77. Power of court over address of prosecutor and accused.—(1) It is the duty of the prosecutor to assist the court in the administration of justice, to behave impartially, to bring the whole of the transaction before the court, and not to take any unfair advantage of, or suppress any evidence in favour of, the accused.

(2) The prosecutor may not refer to any matter, not relevant to the charge or charges then before the court, and it is the duty of the court to stop him from so doing and also to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor.

(3) The court shall allow great latitude to the accused in making his defence; he must abstain from any remarks contemptuous or disrespectful towards the court, and from coarse and insulting language towards others, but he may for the purposes of his defence impeach the evidence and the motives of the witnesses and the prosecutor, and charge other persons with blame and even criminality, subject, if he does so, to any liability which he may thereby incur. The court may caution the accused as to the irrelevance of his defence, but shall not, unless in special cases, stop his defence solely on ground of such irrelevance.

78. Procedure on trial of accused persons together.—Where two or more accused persons are tried together and any evidence as to the facts of the case is tendered by any one or more of them, the evidence and addresses on the part of or on behalf of all the accused persons shall be taken before the prosecutor replies, and the prosecutor shall make one address only in reply as regards all the accused persons.

79. Separate charge-sheets.—(1) The convening officer may direct any charges against an accused person to be inserted in different charge-sheets, and when he so directs, the accused shall be arraigned and until after the finding tried, upon each charge-sheet separately, and the procedure in rules 48 to 62, both inclusive, shall, until after finding, be followed in respect of each charge-sheet, as if it contained the whole of the charges against the accused.

(2) The trials upon the several charge-sheets shall be in such order as the convening officer directs.

(3) When the court have tried the accused upon all the charge-sheets they shall, in the case of the finding being "Not guilty" on all the charges, proceed as directed by rule 63, and in case of the finding on any one or more of the charges being "Guilty" proceed as directed by rules 54 and 64 to 67, both inclusive, in like manner in each case as if all the charges in the different charge-sheets had been contained in one charge-sheet, and the sentence passed shall be of the same effect as if all the charges had been contained in one charge-sheet.

(4) If the convening officer directs that, in the event of the conviction of an accused person upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets, the court in such event may, without trying the accused upon any of the subsequent charge-sheets, proceed as provided in sub-rule (3).

(5) Where a charge-sheet contains more than one charge, the accused may, before pleading, claim to be tried separately in respect of any charge or charges in that charge-sheet, on the ground that he will be embarrassed in his defence if

he is not so tried separately; and in such case the court, unless they think his claim unreasonable, shall arraign and try the accused in like manner as if the convening officer had inserted the said charge or charges in different charge-sheets.

(6) If a plea of "Guilty", to any charge in a charge-sheet has been recorded as the finding of the court, the provisions of sub-rules (3) and (4) of rule 54 shall not be complied with until after the court had arrived at its findings on all the charge-sheets.

80. Sitting in closed court.—(1) A court-martial shall, where it is so directed by these rules, and may in any other case on any deliberation amongst the members, sit in closed court.

(2) No person shall be present in closed court except the members of the court, the judge-advocate (if any) and any officers under instruction.

(3) For the purpose of giving effect to the foregoing provisions of this rule, the court-martial may either retire or cause the place where they sit to be cleared of all other persons not entitled to be present.

(4) Except as hereinbefore mentioned all proceedings, including the view of any place, shall be in open court and in the presence of the accused subject to sub-rule (5).

(5) The court shall have the power to exclude from the court any witness who has yet to give evidence or any other person, other than the accused, who interferes with its proceedings.

81. Hours of sitting.—(1) A court-martial may sit at such times and for such period between the hours of six in the morning and six in the afternoon as may be directed by the proper superior military authority, and so far as no such direction extends, as the court from time to time determines but no court shall sit for more than six hours in any one day.

(2) If the court consider it necessary to continue the trial after six in the afternoon or to sit for more than six hours in any one day, it may do so but if it does so should record in the proceedings the reason for so doing.

(3) In cases requiring an immediate example or when the convening officer certifies under his hand that it is expedient for the public service, trials may be held at any hour.

(4) If the court or the convening officer or other superior military authority thinks that military exigencies or the interests of discipline require the court to sit on Sunday or on any other day declared as a holiday in Army or Command Orders, the court may sit accordingly, but otherwise the court shall not sit on any of those days.

82. Continuity of trial and adjournment of court.—(1) When a court is once assembled and the accused has been arraigned, the court shall continue the trial from day to day, in accordance with rule 81, unless it appears to the court that an adjournment is necessary for the ends of justice or that such continuance is impracticable.

(2) A court may adjourn from time to time and from place to place and may, when necessary, view any place.

(3) The senior officer on the spot may also, for military exigencies, adjourn or prolong the adjournment of the court.

(4) A court-martial, in the absence of a judge-advocate (if such has been appointed for that court-martial) shall not proceed, and shall adjourn.

(5) If the time to which an adjournment is made is not specified, the adjournment shall be until further orders from the proper military authority; and, if the place to which an adjournment is made is not specified, the adjournment shall be to the same place or to such other place as may be specified in further orders from the proper military authority.

83. Suspension of trial.—(1) Where, in consequence of anything arising while the court is sitting, the court is unable by reason of dissolution as specified in section 117, or otherwise, to continue the trial, the presiding officer or, in his absence, the senior member present, will immediately report the facts to the convening authority.

(2) Where a court-martial is dissolved before the finding, or, in case of a finding of guilty, before award of the sentence, the entire proceedings before the court-martial shall be null and the accused may be tried before another court-martial.

84. Proceedings on death or illness of accused.—In case of the death of the accused, or of such illness of the accused as renders it impossible to continue the trial, the court shall ascertain the fact of the death or illness by evidence, and record the same, and adjourn, and transmit the proceedings to the convening authority.

85. Death, retirement or absence of presiding officer.—In the case of the death, retirement on challange or unavoidable absence of the presiding officer, the next senior officer shall take the place of the presiding officer and the trial shall proceed if the court is still composed of not less than the minimum number of officers of which it is required by law to consist.

86. Presence throughout of all members of court.—(1) A member of a court who has been absent while any part of the evidence on the trial of an accused person is taken, shall take no further part in the trial by that court of that person, but the court will not be affected unless it is reduced below the legal minimum.

(2) An officer shall not be added to a court-martial after the accused has been arraigned.

87. Taking of opinions of members of court.—(1) Every member of a court must give his opinion by word of mouth on every question which the court has to decide, and must give his opinion as to the sentence, notwithstanding that he has given his opinion in favour of acquittal.

(2) The opinions of the members of the court shall be taken in succession, beginning with the member lowest in rank.

88. Procedure on incidental questions.—If any objection is raised on any matter of law, evidence, or procedure by the prosecutor or by or on behalf of the accused during the trial, the prosecutor or the accused or counsel or the defending officer (as the case may be) shall have a right to answer the same and the person raising the objection shall have a right of reply.

89. Swearing of court to try several accused persons.—(1) A court may be sworn or affirmed at one time to try any number of accused persons then present before it, whether those persons are to be tried collectively or separately, and each accused person shall have power to object to the members of the court, and shall be asked separately whether he objects to any member.

(2) In the case of several accused persons to be tried separately, the court, upon one of those persons objecting to a member, may, according as it thinks fit, proceed to determine that objection or postpone the case of that person and swear or affirm the members of the court for the trial of the others alone.

(3) In the case of several accused persons to be tried separately, the court, when sworn or affirmed, shall proceed with one case postponing the other cases, and taking them afterwards in succession.

(4) Where several accused persons are tried separately by the same court upon charges arising out of the same transaction, the court may, if it considers it to be desirable in the interests of justice, postpone consideration of any sentence to be awarded to any one or more of such accused persons until the trials of all such accused persons have been completed.

90. Swearing of interpreter and shorthand writer.—(1) At any time during the trial an impartial person may, if the court thinks it necessary, and shall, if either the prosecutor or the accused requests it on any reasonable ground, be sworn or affirmed to act as interpreter.

(2) An impartial person may at any time of the trial, if the court thinks it desirable, be sworn or affirmed to act as a shorthand writer.

(3) Before a person is sworn or affirmed as an interpreter or shorthand writer the accused shall be informed of the person who is proposed to be sworn or affirm- secutor or the accused, or his defending officer or counsel does not understand. course; and the court, if it thinks that the objection is reasonable, shall not swear or affirm that person as interpreter or shorthand writer.

91. Evidence when to be translated.—When any evidence is given in a language which any of the officers composing the court, the judge-advocate, the prosecutor or the accused, or his defending officer or counsel does not understand, that evidence shall be interpreted to such officer or person in a language which he does understand. If an interpreter in such language has been appointed by the convening officer, and duly sworn or affirmed, the evidence shall be interpreted by him. If no such interpreter has been appointed and sworn or affirmed, an impartial person shall be sworn or affirmed by the court as required by rule 90. When documents are put in for purpose of formal proof, it shall be in the discretion of the court to cause as much to be interpreted as appears necessary.

92. Record in proceedings of transactions of court-martial.—(1) At a court-martial the judge-advocate, or, if there is none, the presiding officer shall record, or cause to be recorded in the English language, all transactions of that court, and shall be responsible for the accuracy of the record (in these rules referred to as the proceedings); and if the judge-advocate is called as a witness by the accused, the presiding officer shall be responsible for the accuracy of the record in the proceedings of the evidence of the judge-advocate.

(2) The evidence shall be taken down in a narrative form in as nearly as possible the words used, but in any case where the prosecutor, the accused person, the judge-advocate, or the court considers it material, the question and answer shall be taken down *verbatim*.

(3) Where an objection has been taken to any question or to the admission of any evidence or to the procedure of the court, such objection shall, if the prosecutor or accused so requests or the court thinks fit, be entered upon the proceedings together with the grounds of the objection and the decision of the court thereon.

(4) Where any address by, or on behalf of, the prosecutor or the accused, is not in writing, it shall not be necessary to record the same in the proceedings further or otherwise than the court thinks proper, except that –

(a) the court shall in every case make such record of the defence made by the accused as will enable the confirming officer to judge of the reply made by, or on behalf of, the accused to each charge against him; and

(b) the court shall also record any particular matters in the address by or on behalf of, the prosecutor or the accused which the prosecutor or the accused, as the case may be, may require.

(5) The court shall not enter in the proceedings any comment or anything not before the court, or any report of any fact not forming part of the trial, but if any such comment or report seems to the court necessary, the court may forward it to the proper military authority in a separate document, signed by the presiding officer.

93. Custody and inspection of proceedings.—The proceedings shall be deemed to be in the custody of the judge-advocate (if any), or, if there is none, of the presiding officer but may, with proper precaution for their safety, be inspected by the members of the court, the prosecutor and accused, respectively, at all reasonable time before the court is closed to consider the finding.

94. Transmission of proceedings after finding.—The proceedings shall be at once sent by the person having the custody thereof to such person as may be directed by the order convening the court, or, in default of any such direction, to the confirming officer.

Defending Officer, Friend of Accused and Counsel

95. Defending Officer and friend of accused.—(1) At any general or district court-martial, an accused person may be represented by any officer subject to the Act who shall be called "the defending officer" or assisted by any person whose services he may be able to procure and who shall be called "the friend of the accused."

(2) It shall be the duty of the convening officer to ascertain whether an accused person desires to have a defending officer assigned to represent him at his trial and, if he does so desire, the convening officer shall use his best endeavours to ensure that the accused shall be so represented by a suitable officer. If owing to military exigencies, or for any other reason, there shall in the opinion of the convening officer, be no such officer available for the purpose, the convening officer shall give a written notice to the presiding officer of the court-martial, and such notice shall be attached to the proceedings.

(3) The defending officer shall have the same rights and duties as appertain to counsel under these rules and shall be under the like obligations.

(4) The friend of the accused may advise the accused on all points and suggest the questions to be put to the witnesses, but he shall not examine or cross-examine the witnesses or address the court.

96. Counsel allowed in certain general and district courts-martial.—(1) Subject to these rules, counsel shall be allowed to appear on behalf of the prosecutor and accused at general and district courts-martial if the Chief of the Army Staff or the convening officer declares that it is expedient to allow the appearance of counsel thereat and such declaration may be made as regards all general and district courts-martial held in any particular place, or as regards any particular general or district court-martial, and may be made subject to such reservation as to cases on active service, or otherwise, as seems expedient.

(2) Save as provided in rule 95, the rules with respect to counsel shall apply only to the court-martial at which counsel are under this rule, allowed to appear.

97. Requirements for appearance of counsel.—(1) An accused person intending to be represented by a counsel shall give to his commanding officer or to the convening officer the earliest practicable notice of such intention and, if no sufficient notice has been given, the court may, if it thinks fit, on the application of the prosecutor, adjourn to enable him to obtain a counsel on behalf of the prosecutor at the trial.

(2) If the convening officer so directs, counsel may appear on behalf of the prosecutor, but in that case, unless the notice referred to in sub-rule (1) has been given by the accused, notice of the direction for counsel to appear shall be given to the accused at such time (not in any case less than seven days) before the trial, as would, in the opinion of the court, have enabled the accused to obtain counsel to assist him at the trial.

(3) The counsel, who appears before a court-martial on behalf of the prosecutor or accused, shall have the same right as the prosecutor or accused for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court, to put in any plea, and to inspect the proceedings, and shall have the right otherwise to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person and in such case that person shall not have the right himself to do any of the aforesaid matters except as regards the statement allowed by caluse (a) of sub-rule (2) of rule 58 and clause (b) of rule 59 or except so far as the court permits him so to do.

(4) When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined and re-examined as any other witness and sub-rules (5) and (6) of rule 56 shall not apply.

98. Counsel for prosecution.—The counsel appearing on behalf of the prosecutor shall have the same duty as the prosecutor, and is subject to be stopped or restrained by the court in the manner provided in sub-rule (2) of rule 77.

99. Counsel for accused.—The counsel appearing on behalf of the accused has the like rights, and is under the like obligations as are specified in sub-rule (3) of rule 77 in the case of the accused.

100. General rules as to counsel.—Counsel, whether appearing on behalf of the prosecutor or of the accused, shall conform strictly to these rules and to the rules of criminal courts in India relating to the examination, cross-examination, and re-examination of witnesses, and relating to the duties of a counsel.

101. Qualifications of counsel.—(1) Neither the prosecutor nor the accused has any right to object to any counsel if properly qualified.

(2) Counsel shall be deemed properly qualified if he is a legal practitioner authorised to practice with right of audience in a Court of Sessions in India, or if, he is recognised by the convening officer in any other country where the trial is held as having in that part, rights and duties similar to those of such legal practitioner in India and as being subject to punishment or disability for a breach of professional rules.

Judge-Advocate

102. Disqualification of judge-advocate.—An officer who is disqualified for sitting on a court-martial, shall be disqualified for acting as a judge advocate at that court-martial.

103. Invalidity in the appointment of judge-advocate.—A court-martial shall not be invalid merely by reasons of any invalidity in the appointment of the judge-advocate officiating thereat, in whatever manner appointed, if a fit person has been appointed and the subsequent approval of the Judge-Advocate General or Deputy Judge-Advocate General obtained, but this rule shall not relieve from responsibility the person who made the invalid appointment.

104. Substitute on death, illness or absence of judge-advocate.—If the judge-advocate dies, or from illness or from any cause whatever is unable to attend, the court shall adjourn, and the presiding officer shall report the circumstances to the convening authority; and a fit person not disqualified to be judge-advocate may be appointed by that authority, who shall be sworn, or affirmed, and act as judge-advocate for the residue of the trial, or until the judge-advocate returns.

105. Powers and duties of judge-advocate.—The powers and duties of a judge-advocate are as follows :—

(1) The prosecutor and the accused, respectively, are, at all times after the judge-advocate is named to act on the court, entitled to his opinion on any question of law relative to the charge or trial, whether he is in or out of court, subject, when he is in court, to the permission of the court.

(2) At a court-martial, he represents the Judge-Advocate-General.

(3) He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he shall inform the convening officer and the court of any informality or defect in the charge, or in the constitution of the court, and shall give his advice on any matter before the court.

(4) Any information or advice given to the court, on any matter before the court shall, if he or the court desires it, be entered in the proceedings.

(5) At the conclusion of the case, he shall sum up the evidence and give his opinion upon the legal bearing of the case, before the court proceeds to deliberate upon its finding.

(6) The court, in following the opinion of the judge-advocate on a legal point, may record that it has decided in consequence of that opinion.

(7) The judge-advocate has, equally with the presiding officer, the duty of taking care that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance or incapacity to examine or cross-examine witnesses or otherwise, and may, for that purpose, with the permission of the court, call witnesses and put questions to witnesses, which appear to him necessary or desirable to elicit the truth.

(8) In fulfilling his duties, the judge-advocate must be careful to maintain an entirely impartial position.

SECTION 3—*Summary courts-martial.*

106. Proceedings.—(1) The officer holding the trial hereinafter called the court, shall record, or cause to be recorded, in the English language, the transactions of every summary court-martial.

(2) The evidence shall be taken down in a narrative form in as nearly as possible the words used; but in any case where the court considers it material, the question and answer shall be taken down *verbatim*.

107. Evidence when to be translated.—When any evidence is given in a language which the court or the accused does not understand, that evidence shall be interpreted to the court or officers or junior commissioned officers attending the proceedings in accordance with sub-section (2) of section 116 or the accused as the case may be in a language which it or he does understand. The court shall, for this purpose, either appoint an interpreter, or shall itself take the oath or affirmation prescribed for an interpreter at a summary court-martial. When documents are put in for the purpose of formal proof, it shall be in the discretion of the court to cause as much to be interpreted as appears necessary.

108. Assembly.—When the court, the interpreter (if any), and the officers or junior commissioned officers attending the trial are assembled, the accused shall be brought before the court, and the oaths or affirmation prescribed in rule 109 taken by the persons therein mentioned.

109. Swearing or affirming of court and interpreter.—(1) The court shall make oath or affirmation in one of the following forms or in such other form to the same purport as may be according to its religion or otherwise binding on its conscience.

Form of Oath

"I.....swear by Almighty God that I will well and truly try the accused (or accused persons) before the court according to the evidence, and that I will duly administer justice according to the Army Act without partiality, favour or affection; and if any doubt shal arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases."

Form of Affirmation

"I.....do solemnly, sincerely and truly declare and affirm that I will well and truly try the accused (or accused persons) before the court according to the evidence, and that I will duly administer justice according to the Army Act without partiality, favour or affection ; and if any doubt shall arise, then, according to my conscience the best of my understanding, and the custom of war in the like cases."

(2) After which the court, or some person empowered by it, shall administer to the interpreter (if any), an oath or affirmation in one of the following forms, or in such other form to the same purport as the court ascertains to be according to his religion or otherwise binding on his conscience.

Form of Oath

"I.....swear by Almighty God that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial."

Form of Affirmation

"I.....solemnly, sincerely and truly declare and affirm that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial."

(3) After the oaths and affirmations have been administered, all witnesses shall withdraw from the court.

110. Swearing of court to try several accused persons.—(1) A summary court-martial may be sworn or affirmed at one time to try any number of accused persons then present before it whether those persons are to be tried collectively or separately.

(2) In the case of several accused persons to be tried separately, the court, when sworn or affirmed, shall proceed with one case postponing the other cases and taking them afterwards in succession.

(3) Where several accused persons are tried separately upon charges arising out of the same transaction, the court may, if it considers it to be desirable in the interests of justice, postpone consideration of any sentence to be awarded to any one or more such accused persons until the trials of all such accused persons have been completed.

111. Arraignment of accused.—(1) After the court and interpreter (if any) are sworn or affirmed as above mentioned, the accused shall be arraigned on the charges against him.

(2) The charges on which the accused is arraigned shall be read and, if necessary, translated to him, and he shall be required to plead separately to each charge.

112. Objection by accused to charge.—The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules.

113. Amendment of charge.—(1) At any time during the trial if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, it may amend the charge-sheet so as to correct that mistake.

(2) If on the trial of any charge it appears to the court at any time before it has begun to examine the witnesses, that in the interests of justice any addition to, omission from, or alteration in, the charge is required, it may amend such charge and may, after due notice to the accused, and with the sanction of the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the accused if the amended charge requires such sanction, proceed with the trial on such amended charge.

114. Special pleas.—If a special plea to the general jurisdiction of the court, or a plea in bar of trial, is offered by the accused, the procedure laid down for general and district courts-martial when disposing of such pleas shall, so far as may be applicable, be followed, but no finding by a summary court-martial on either of such pleas shall require confirmation.

115. General plea of "Guilty" or "Not guilty".—(1) The accused persons' plea—"Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly either one or the other, a plea of "Not guilty")—shall be recorded on each charge.

(2) If an accused person pleads "Guilty", that plea shall be recorded as the finding of the court; but before it is recorded, the court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence (if any) or otherwise that the accused ought to plead not guilty.

(3) Where an accused person pleads guilty to the first of two or more charges laid in the alternative, the court may, after sub-rule (2) of this rule has been complied with and before the accused is arraigned on the alternative charge or charges, withdraw such alternative charge or charges without requiring the accused to plead thereto, and a record to that effect shall be made upon the proceedings of the court.

116. Procedure after plea of "Guilty".—(1) Upon the record of the plea of "Guilty", if there are other charges in the same charge-sheet to which the plea is "Not guilty", the trial shall first proceed with respect to the latter charges, and, after the finding of those charges, shall proceed with the charges on which a plea of "Guilty" has been entered; but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or may, instead of trying him, record a finding upon any one of the alternative charges to which he has pleaded "Guilty" and a finding of "Not guilty" upon all the other alternative charges.

(2) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges), the court shall read the summary of evidence, and annex it to the proceedings or if there is no such summary, shall take and record sufficient evidence to enable it to determine the sentence, and the reviewing officer to know all the circumstances connected with the offence. This evidence shall be taken in like manner as is directed by these rules in case of a plea of "Not guilty".

(3) After such evidence has been taken, or the summary of evidence has been read, as the case may be, the accused may address the court in reference to the charge and in mitigation of punishment and may call witnesses as to his character.

(4) If from the statement of the accused, or from the summary of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "Guilty", the court shall alter the record and enter a plea of "Not guilty", and proceed with the trial accordingly.

(5) If a plea of "Guilty" is recorded and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under sub-rules (2) and (3) shall take place when the findings on the other charges in the same charge-sheet are recorded.

(6) When the accused states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same.

(7) In any case where the court is empowered by section 139 to find the accused guilty of an offence other than that charged, or guilty of committing an offence in circumstances involving a less degree of punishment, or where it could, after hearing the evidence, have made a special finding of guilty subject to exceptions or variations in accordance with sub-rule (3) of rule 121, it may if it is satisfied of the justice of such course, accept and record a plea of guilty of such other offence, or of the offence as having been committed in circumstances involving such less degree of punishment, or of the offence charged subject to such exceptions or variations.

117. Withdrawal of plea of "Not guilty".—The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not guilty" and plead "Guilty", and in such case the court shall at once, subject to a compliance with sub-rule (2) of rule 115, record a plea and finding of "Guilty", and shall, so far as may be, proceed in the manner provided in rule 116.

118. Procedure after plea of "Not guilty".—After the plea of "Not guilty" to any charge is recorded, the evidence for the prosecution shall be taken. At the close of the evidence for the prosecution, the accused shall be asked if he has anything to say in his defence, and may address the court in his defence, or may defer such address until he has called his witnesses. The court, may question the accused on the case for the purpose of enabling him to explain any circumstances appearing in his statement or in the evidence against him. The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving answers to them which he knows not to be true; but the court may draw such inference from such refusal or answers as it thinks just. No oath shall be administered to the accused.

The accused may then call his witnesses, including also witnesses to character.

119. Witnesses in reply to defence.—The court may, if it thinks it necessary in the interest of justice, call witnesses in reply to the defence.

120. Verdict.—After all the evidence, both for prosecution and defence, has been heard, the court shall give its opinion as to whehter the accused is guilty or not guilty of the charges.

121. Form and record of finding.—(1) The finding on every charge upon which the accused is arraigned shall be recorded, and except as mentioned in these rules, such finding shall be recorded simply as a finding of "Guilty", or of "Not guilty".

(2) When the court is of opinion as regards any charge that the facts proved do not disclose the offence charged or any offence of which he might under the Act legally be found guilty on the charge as laid, the court shall acquit the accused of that charge.

(3) When the court is of opinion as regards any charge that the facts found to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of "Not guilty" record a special finding.

(4) The special finding may find the accused guilty on a charge subject to the statement of exceptions or variations specified therein.

(5) The court shall not find the accused guilty on more than one of two or more charges laid down in the alternative, even if conviction upon one charge necessarily connotes guilt upon the alternative charge or charges.

122. Procedure on acquittal.—If the finding on each of the charges in a charge-sheet is "Not guilty", the court shall date and sign the proceedings, the findings shall be announced in open court, and the accused will be released in respect of those charges.

123. Procedure on conviction.—(1) If the finding on any charge is "Guilty", the court may record of its own knowledge, or take evidence of and record, the general character, age, service, rank, and any recognised acts of gallantry or distinguished conduct of the accused, and previous convictions of the accused either by a court-martial, or a criminal court, any previous punishments awarded to him by an officer exercising authority under section 80, the length of time he has been in arrest or in confinement on any previous sentence, and any military decoration, or military reward, of which he may be in possession or to which he is entitled.

(2) If the court does not record the matters mentioned in this rule of its own knowledge, evidence on these matters may be taken in the manner provided in rule 64 for similar evidence at general and district courts-martial.

124. Sentence.—The court shall award one sentence in respect of all the offences of which the accused is found guilty.

125. Signing of proceedings.—The court shall date and sign the sentence and such signature shall authenticate the whole of the proceedings.

126. Charges in different charge-sheets.—When the charges at a trial by summary court-martial are contained in different charge-sheets, the procedure laid down for general and district courts-martial when trying charges contained in different charge-sheets shall, so far as may be applicable, be followed.

127. Clearing the court.—(1) The officer holding the trial may clear the court to consider the evidence or to consult with the officers or junior commissioned officers, attending the trial.

(2) Except as above-mentioned, all the proceedings, including the view of any place, shall be in open court, and in the presence of the accused.

128. Adjournment.—A summary court-martial may adjourn from time to time and from place to place, and may, when necessary, view any place.

129. Friend of accused.—In any summary court-martial, an accused person may have a person to assist him during the trial, whether a legal adviser or any other person. A person so assisting him may advise him on all points and suggest the questions to be put to witnesses, but shall not examine or cross-examine witnesses or address the court.

130. Memorandum to be attached to proceedings.—An explanatory memorandum is to be attached to the proceedings when a summary court-martial tries, without reference, an offence which should not ordinarily be so tried.

131. Promulgation.—The sentence of a summary court-martial shall (except as provided in rule 132) be promulgated, in the manner usual in the service, at the earliest opportunity after it has been pronounced and shall be carried out without delay after promulgation.

132. Promulgation to be defered in certain circumstances.—When the officer holding the trial has less than five years' service, the sentence of a summary court-martial shall not (except on active service) be carried out until approved by superior authority as provided in sub-section (2) of section 161.

133. Review of proceedings.—The proceedings of a summary court-martial shall, immediately on promulgation, be forwarded (through the Deputy Judge-Advocate-General of the command in which the trial is held) to the officer authorised to deal with them in pursuance of section 162. After review by him, they will be returned to the accused person's corps for preservation in accordance with sub-rule (2) of rule 146.

SECTION 4—*General Provisions*

Witnesses and evidence

134. Calling of all prosecutor's witnesses.—The prosecutor or, in the case of a trial by summary court-martial, the court is not bound to call all the witnesses for the prosecution whose evidence is in the summary or abstract of evidence or

whom the accused has been informed he or it intends to call, but he or it should ordinarily call such of them as the accused desires, in order that he may cross-examine them, and shall, for this reason, so far as practicable, secure the attendance of all such witnesses.

135. Calling of witness whose evidence is not contained in summary.—If the prosecutor, or, in the case of a summary court-martial, the court intends to call a witness whose evidence is not contained in any summary or abstract of evidence given to the accused, notice of the intention shall be given to the accused a reasonable time before the witness is called together with an abstract of his proposed evidence; and if such witness is called without such notice or abstract having been given the court shall, if the accused so desires it, either adjourn after taking the evidence of the witness, or allow the cross-examination of such witness to be postponed, and the court shall inform the accused of his right to demand such adjournment or postponement.

136. List of witnesses for accused.—The accused shall not be required to give to the prosecutor or court a list of the witnesses whom he intends to call, but it shall rest with the accused alone to secure the attendance of any witness whose evidence is not contained in the summary or abstract, and for whose attendance the accused has not requested steps to be taken as provided by sub-rule (1) of rule 34.

137. Procuring attendance of witnesses.—(1) In the case of trials by general or district court-martial, the commanding officer of the accused, the convening officer or, after the assembly of the court, the presiding officer, shall take proper steps to procure the attendance of the witnesses whom the prosecutor or accused desires to call, and whose attendance can reasonably be procured, but the person requiring the attendance of a witness may be required to undertake to defray the cost (if any) of their attendance.

(2) The court shall, in the case of trials by summary court-martial, take proper steps to procure the attendance of the witnesses whom the accused desires to call and whose attendance can reasonably be procured, but the accused may be required to undertake to defray the cost (if any) of their attendance.

138. Procedure when essential witness is absent.—If such proper steps as mentioned in the preceding rule have not been taken as to any witness, or if any witness whose attendance could not be reasonably procured before the assembly of the court is essential to the prosecution on defence, the court shall—

(a) take steps to procure the issue of a commission for the examination of such witness; or

(b) if it is a general or district court-martial, adjourn and report the circumstances to the convening officer ; or

(c) if it is a summary court-martial, adjourn to enable the witness to attend, or adopt such other course as appears to the officer holding the trial best calculated to do justice.

139. Withdrawal of witnesses from court.—During the trial a witness, other than the prosecutor, shall not, except by special leave of the court, be permitted to be present in court while not under examination and if, while he is under examination, a discussion arises as to the allowance of a question, or the sufficiency of his answers, or otherwise as to his evidence, he may be directed to withdraw.

140. Oath or affirmation to be administered to witnesses.—An oath or affirmation shall, if so required by the Act, be administered to every witness before he gives his evidence by the judge-advocate (if any), a member of the court, or some other person empowered by the court in one of the following forms or in such other form to the same purport as the court ascertains to be according to the religion or otherwise binding on the conscience of the witness.

Form of Oath

"I.....swear by Almighty God that what I shall state shall be the truth, the whole truth, and nothing but the truth".

Form of Affirmation

"I.....do solemnly, sincerely and truly declare and affirm that what I shall state shall be the truth, the whole truth, and nothing but the truth".

141. Mode of questioning witness.—(1) Every question shall be put to a witness orally by the officer holding the trial, by the prosecutor, by or on behalf of the accused, or by the judge-advocate and the witness will forthwith reply, unless an objection is made by the court, judge-advocate, prosecutor, or accused, in which case he shall not reply until the objection is disposed of. The witness shall address his reply to the court.

(2) The evidence of a witness as taken down shall be read to him if he so requests before he leaves the court, and shall, if necessary, be corrected. If he makes any explanation or correction, the prosecutor and accused or counsel or the defending officer may respectively examine him respecting the same.

(3) If the witness denies the correctness of any part of the evidence when the same is read over to him, the court may instead of correcting the evidence, record the objection made to it by the witness.

(4) If the evidence is not given in English and the witness does not understand that language, the evidence as recorded shall be interpreted to him in the language in which it was given, or in a language which he understands if he so requests before he leaves the court.

(5) Where evidence is recorded by shorthand writer, it shall not be necessary to read the evidence of the witness to him under sub-rule (2) or (4), if, in the opinion of the court and the judge-advocate, if any (such opinion to be recorded in the proceedings), it is unnecessary so to do.

142. Questions to witnesses by court or judge-advocate.—(1) The presiding officer, the judge-advocate (if any), or the officer holding the trial and, with the permission of the court, any member of the court may address a question to a witness while such witness is giving his original evidence and before he withdraws.

(2) Upon any such question being answered, the presiding officer, the judge-advocate (if any), or the officer holding the trial, shall also put to the witness any question relative to that answer which the prosecutor or the accused or counsel or the defending officer may request him to put and which the court deem reasonable.

143. Re-calling of witnesses and calling of witnesses in reply.—(1) At the request of the prosecutor or of the accused, a witness may, by leave of the court, be recalled at any time before the closing address of or on behalf of the accused

(or at a summary court-martial at any time before the finding of the court) for the purpose of having any question put to him through the presiding officer, the judge-advocate (if any), or the officer holding the trial.

(2) The court may, if it considers it expedient, in the interests of justice, so to do, allow a witness to be called or recalled by the prosecutor, before the closing address of or on behalf of the accused, for the purpose of rebutting any material statement made by a witness for the defence or for the purpose of giving evidence on any new matter which the prosecutor could not reasonably have foreseen.

(3) Where the accused has called witnesses to character, the prosecutor before the closing address of or on behalf of the accused, may call or re-call witnesses for the purpose of proving a previous conviction or entries in the defaulters' book against the accused.

(4) The court may call or re-call any witness at any time before the finding, if it considers that it is necessary for the ends of justice.

Addresses

144. Addresses.—All addresses by the prosecutor and the accused and the summing up of the judge-advocate may either be given orally or in writing, and, if in writing, shall be read in open court.

Insanity

145. Finding of insanity.—Where the court finds either that the accused, by reason of unsoundness of mind, is incapable of making his defence, or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the presiding officer or in the case of summary court-martial, the officer holding the trial, shall date and sign the finding; and the proceedings, upon being signed by the judge-advocate (if any) shall be at once transmitted to the confirming officer or to the authority empowered to deal with its finding under section 162 as the case may be.

Preservation of Proceedings

146. Preservation of proceedings.—(1) The proceedings of a court-martial (other than a summary court-martial) shall, after promulgation, be forwarded, as circumstances require, to the office of the Judge-Advocate General, and there preserved for not less, in the case of a general court-martial, than seven years, and, in the case of any other court-martial, than three years.

(2) The proceeding of a summary court-martial shall be preserved for not less than three years, with the records of the corps or department to which the accused belonged.

147. Right of person tried to copies of proceedings.—Every person tried by a court-martial shall be entitled on demand, at any time after the confirmation of the finding and sentence, when such confirmation is required, and before the proceedings are destroyed, to obtain from the officer or person having the custody of the proceedings a copy thereof, including the proceedings upon revision, if any.

147A.—Copy of proceedings not to be given in certain cases.—Notwithstanding anything contained in rule 147, if the Central Government certifies that it is against the interests of the security of the State or friendly relations with foreign States to supply a copy of the proceedings or any part thereof under the said rule, he shall not be furnished with such copy:

Provided that if the Central Government is satisfied that the person demanding the copy is desirous of submitting a petition in accordance with the Act or instituting any action in a court of law in relation to the finding or sentence, it shall permit inspection of the proceedings to such person or his legal adviser, if any, on the following conditions, namely :—

(a) the inspection shall be made at such times and such places as the Central Government or any authority authorised by it may direct; and

(b) the person allowed to inspect the proceedings shall, before such inspection, furnish—

(i) an undertaking, in writing, that he shall not make copies of the proceedings or any part thereof and that the information or documents contained in such proceedings shall not be used by him, for any purpose whatsoever other than for the purpose of submitting a petition in accordance with the Act or instituting an action in a court of law in relation to the said finding or sentence; and

(ii) a certificate that he is aware that he may render himself liable to prosecution under sections 3 and 5 of the Indian Official Secrets Act, 1923 (19 of 1923) if he commits any act specified in the said sections in relation to the documents or information contained in the said proceedings.

NOTE.—This rule shall be deemed always to have been inserted in the Army Rules. Ministry of Defence Gazette notification No. E-7 dated 17th June 1960 published in Extraordinary Gazette Pt. I, Sec. 3 dated 20th June 1960, refers.

148. Loss of proceedings.—(1) If, before confirmation, the original proceedings of a court-martial which require confirmation or any part thereof, are lost, a copy thereof, if any, certified by the presiding officer of or the judge-advocate at the court-martial may be accepted in lieu of the original.

(2) If there is no such copy, and sufficient evidence of the charge, finding, sentence, and transactions of the court can be procured, that evidence may, with the assent of the accused, be accepted in lieu of the original proceedings, or part thereof, which have been lost.

(3) In any case above in this rule mentioned, the finding and sentence may be confirmed, and shall be as valid as if the original proceedings, or part thereof, had not been lost.

(4) If the accused refuses the assent referred to in sub-rule (2), he may be tried again, and the finding and sentence of the previous court of which the proceedings have been lost shall be void.

(5) If, after confirmation or in any case where confirmation is not required, the original proceedings of a court-martial or any part thereof are lost, and there is sufficient evidence of the charge, finding, sentence, and transactions of the court and of the confirmation (if required) of the finding and sentence, that evidence shall be a valid and sufficient record of the trial for all purposes.

Irregular Procedure when no injustice is done

149. Validity of irregular procedure in certain cases.—Whenever it appears that a court-martial had jurisdiction to try any person and make a finding and that there is legal evidence or a plea of guilty to justify such finding, such finding and any sentence which the court-martial had jurisdiction to pass thereon may be confirmed, and shall, if so confirmed and in the case of a summary court-martial where confirmation is not necessary, be valid, notwithstanding any deviation from these rules or notwithstanding that the charge-sheet has not been signed by the

commanding officer or the convening officer, provided that the charges have, in fact, before trial been approved by the commanding officer and the convening officer or notwithstanding any defect or objection, technical or other, unless it appears that any injustice has been done to the offender, and where any finding and sentence are otherwise valid they shall not be invalid by reason only of a failure to administer an oath or affirmation to the interpreter or shorthand writer; but nothing in this rule shall relieve an officer from any responsibility for any wilful or negligent disregard of any of these rules.

Offences of witnesses and others

150. Offences of witnesses and others.—When any court-martial is of opinion that there is ground for inquiring into any offence specified in sections 59 and 60 and committed before it or brought under its notice in the course of its proceedings, or into any act done before it or brought under its notice in the course of its proceedings, which would, if done by a person subject to the Act, have constituted such an offence, such court-martial may proceed as follows, that is to say—

(1) If the person who appears to have committed the offence is subject to to the Act, the court may bring his conduct to the notice of the proper military authority, and may also order him to be placed in military custody with a view to his punishment by an officer exercising authority under section 80, 83, 84 or 85 or to his trial by a court-martial.

(2) If the person who appears to have done the act is amenable to naval or air force law, the court may bring his conduct to the notice of the proper naval or air force authority, as the case may be.

(3) If the person who appears to have done the act is not subject to military, naval or air force law, then in the case of acts which would, if done by a person subject to the Act, have constituted an offence under clause (a), (b), (c) or (d) of section 59, the officer who summoned the witness to appear or the presiding officer or officer holding the court, as the case may be, may forward a written complaint to the nearest Magistrate of the first class having jurisdiction, and in the case of acts which would, if done as aforesaid, have constituted an offence under clause (e) of section 59 or section 60, the court, after making any preliminary inquiry that may be necessary, may send the case to the nearest Magistrate of the first class having jurisdiction for inquiry or trial in accordance with section 476 of the Code of Criminal Procedure, 1898 (Act V of 1898).

SECTION 5—*Summary General Courts-Martial*

The foregoing rules in this Chapter shall not, save as hereinafter mentioned, apply to a summary general court-martial which shall be subject to the following rules, namely—

151. Convening the court and record of proceedings.—(1) The court may be convened and the proceedings of the court recorded in accordance with the form in Appendix III, with such variations as the circumstances of each case may require.

(2) The officer convening the court shall appoint or detail the officers to form the court, and may also appoint or detail such officers as waiting members as he thinks expedient. Such officers should have held commissions for not less than one year, but, if any officers are available who have held commissions for not less than three years, they should be selected in preference to officers of less service.

(3) The provost-marshal, an assistant provost-marshal, or an officer who is a prosecutor or witness for the prosecution shall not be appointed a member of the court, but subject to sub-rule (2), any other available officer may be appointed to sit.

152. Charge.—The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Act.

153. Trial of several accused persons.—The court may be sworn at the same time to try any number of accused persons then present before it, but, except as provided in rule 35, the trial of each accused person shall be separate.

154. Challenges.—(1) The names of the presiding officer and members of the court shall be read over to the accused who shall thereupon be asked if he objects to be tried by any of these officers.

(2) Any objection shall be decided as provided for in section 130 and rule 44—the vacancies being filled from among the waiting members (if any), or by fresh members being appointed by the convening officer.

155. Swearing or affirming the court, judge-advocate, etc.—The provisions of rules 45, 46 and 47 relating to administering and taking of oaths and making of affirmations shall apply to every summary general court-martial.

156. Arraignment.—When the court is sworn or affirmed, the judge-advocate (if any), or the presiding officer shall state to the accused then to be tried, the offence with which he is charged with, if necessary, an explanation giving him full information of the act or omission with which he is charged and shall ask the accused whether he is guilty or not guilty of the offence.

157. Plea to jurisdiction.—If a special plea to the general jurisdiction is offered by the accused, and is considered by the court to be proved, the court shall report the same to the convening officer.

158. Evidence.—(1) The witnesses for the prosecution will be called and the accused shall be allowed to cross-examine them and to call any available witnesses for his defence.

(2) An oath or affirmation as laid down in rule 140 shall be administered to every witness, if so required by the Act, before he gives his evidence, by one of the persons specified in that rule.

159. Defence.—(1) The accused shall be asked what he has to say in his defence, and shall be allowed to make his defence. He may be allowed to have any person to assist him during the trial, whether a legal adviser or any other person.

(2) The court or the judge-advocate, if any, may question the accused on the case for the purpose of enabling him to explain any circumstances appearing in his statement or in the evidence against him. The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving answers to them which he knows not to be true; but the court may draw such inference from such refusal or answers as it thinks just.

160. Record of the Evidence and Defence.—(1) The judge-advocate (if any), or the presiding officer shall take down or cause to be taken down a brief record of the evidence of the witnesses at the trial and of the defence of the accused; the record so taken down shall be attached to the proceedings.

(2) If it appears to the convening officer that military exigencies or other circumstances prevent compliance with sub-rule (1), he may direct that the trial will be carried on without any such brief record being taken down.

(3) If the accused pleads "Guilty" the summary or abstract of evidence, if any, may be read and attached to the proceedings, and it shall not be necessary for the court to hear witnesses for the prosecution, respecting matters contained in the summary of abstract of evidence so read.

161. Finding and sentence.—The court shall then be closed to consider its finding. If the finding on any charge is "Guilty", the court may receive any evidence as to previous convictions and character which is available. The court shall then deliberate in closed court as to its sentence.

162. Signing and transmission of proceedings.—Upon the court arriving at a finding of "Not guilty", or awarding the sentence in case of having arrived at a finding of "Guilty", the presiding officer shall date and sign the finding or sentence, as the case may be. The signature shall authenticate the whole of the proceedings and the proceedings upon being signed by the judge-advocate, if any, shall at once be transmitted to the confirming officer, for confirmation.

163. Adjournment.—(1) A summary general-court-martial may adjourn from time to time and from place to place and may when necessary view any place.

(2) The proceedings shall be held in open court, in the presence of the accused except on any deliberation among the members when the court may be closed.

164. Application of rules.—The foregoing rules, namely rules 22 (hearing of charge), 23 (procedure for taking down the summary of evidence), 24 (remand of accused), 25 (procedure on charge against officer), 27 (delay report), 33 (rights of accused to prepare defence), 34 (warning of accused for trial), 36 (suspension of rules on grounds of military exigencies or the necessities of discipline), 38 (adjournment for insufficient number of officers), 49 (objection by accused to charge), 51 (special plea to the jurisdiction), 52 (general plea of 'Guilty' or 'Not guilty'), 53 (plea in bar), 54 (procedure after plea of "Guilty'), 55 (withdrawal of plea of 'Not guilty'), 61 (consideration of finding), 62 (form, record and announcement of finding), 64 (procedure on conviction), 65 (sentence), 66 (recommendation of mercy), 67 (announcement of sentence), 71 (promulgation), 72 (mitigation of sentence on partial confirmation), 73 (confirmation notwithstanding informality in, or excess of, punishment), 74 (member or prosecutor not to confirm proceedings), 76 (responsibility of presiding officer), 77 (power of court over address of prosecutor and accused), 78 (procedure on trial of accused persons together), 80 (sitting in closed court), 84 (proceedings on death or illness of accused), 85 (death, retirement or absence of presiding officer), 86 (presence throughout of all members of the court), 94 (transmission of proceedings after-finding), 95 (defending officer and friend of accused), 102 (disqualification of judge-advocate), 103 (invalidity in the appointment of judge-advocate), 104 (substitute on death, illness, or absence of judge-advocate), 105 (powers and duties of judge-advocate), 145 (finding of insanity), 146 (preservation of proceedings), 147 (right of person tried to copies of proceedings), 148 (loss of proceedings), 149 (validity of irregular procedure in certain cases), shall, so far as practicable, apply as if a summary general court-martial were a district court-martial.

165. Evidence of opinion of convening officer.—Any statement in an order convening a summary general court-martial as to the opinion of the convening officer shall be conclusive evidence of that opinion, but this rule shall not prejudice the proof at any time of any such opinion when not so stated.

SECTION 6—*Execution of Sentences*

166. Committal Warrants.—A warrant for the committal of a person sentenced by a court-martial to a prison under the provision of section 168 and sub-section (2) of section 169 shall be in one of the forms given in Appendix IV. Such warrant shall be signed and despatched by the commanding officer of the prisoner or by any higher authority or his staff officer and forwarded to the proper prison authority.

167. Warrants under Section 173.—Any warrant issued under the provisions of section 173 shall be in one of the forms given in Appendix IV, and shall be signed by the officer making the order in pursuance of which such warrant is issued, or by his staff officer, or by the commanding officer of the unit to which the person undergoing sentence belonged.

168. Sentence of Cashiering or Dismissal.—(1) A sentence of cashiering or dismissal awarded by a court-martial shall take effect from the date on which the sentence is promulgated to the person under sentence, or except in the case of any officer, from such subsequent date as may be specified by the commanding officer at the time of such promulgation.

(2) When dismissal is combined with imprisonment which is to be carried out in a military prison or in military custody or with field punishment, the dismissal shall not take effect until the date on which the prisoner is released from a military prison or from military custody, or until the completion of the field punishment, unless such field punishment is remitted by a competent authority.

(3) When cashiering or dismissal is combined with imprisonment for life or with imprisonment which is to be carried out in a civil prison, the cashiering or dismissal shall not take effect until the date on which the prisoner is received into a civil prison.

169. Custody of Person under Sentence of Death.—When a person is sentenced by a court-martial to suffer death, the commanding officer for the time being of such person may, if he thinks fit, by a warrant in one of the forms in Appendix V, commit the said person for safe custody in a civil prison pending confirmation or the carrying out of the sentence.

170. Carrying out of Sentences of Death.—Upon the receipt of an order to carry out a sentence of death, the officer to whom the order is issued shall :—

(a) if the person sentenced has been committed to a civil prison under rule 169, obtain the custody of his person by issuing a warrant in one of the forms in Appendix V;

(b) inform the person sentenced as soon as possible that the sentence has been confirmed and of the date on which the sentence will be carried out;

(c) proceed to carry out the sentence as required by the order and in accordance with any general or special instructions which may from time to time be given by or under the authority of the Chief of the Army Staff.

171. Procedure or Commutation of Sentence of Death.—If a sentence of death is commuted under the Act or if the person sentenced to death is pardoned, and

(a) if he has been committed to a civil prison under a warrant issued under rule 169, a further warrant in one of the forms given in Appendix V shall be issued by the commanding officer of such person;

(b) if he has been detained in military custody, any warrant which may be necessary to give effect to the sentence as so commuted, shall be issued in one of the forms given in Appendix IV.

SECTION 7—*Field Punishment*

172. Field Punishment.—A court-martial or an officer exercising authority under section 80, may, for the purpose of awarding field punishment, sentence an offender for a period not exceeding, in the case of a court-martial, three months, and in the case of an officer exercising authority under section 80, twenty-eight days, to one of the following punishments, namely :—

(a) Field Punishment No. 1, and

(b) Field Punishment No. 2.

173. Field Punishment No. 1.—Where an offender is sentenced to Field Punishment No. 1, he may, during the continuance of his sentence, unless the court-martial or the officer exercising authority under section 80 as the case may be, otherwise directs, be punished as follows, that is to say,—

(a) he may be kept in irons, that is to say in fetters or handcuffs, or both letters and handcuffs, and may be secured so as to prevent his escape,

(b) when in irons, he may be attached for a period or periods not exceeding two hours in any one day to a fixed object, but he must not be so attached during more than three out of any four consecutive days, nor during more than twenty-one days in all.

Explanation (1).—The offender must be attached so as to be standing firmly on his feet which, if tied, must not be more than twelve inches apart, and it must be possible for him to move each foot at least three inches. If he is tied round the body there must be no restriction of his breathing. If his arms or wrists are tied, there must be six inches of play between them and the fixed object. His arms must hang either by the side of his body or behind his back.

Explanation (2).—For the purpose of this punishment, irons should be used when available, but straps or ropes may be used in lieu of irons when necessary. Any straps or ropes used for this purpose must be of sufficient width to inflict no bodily harm, and leave no permanent mark on the offender.

(c) He may be subject to the like labour, employment and restraint, and dealt with in like manner as if he were undergoing a sentence of rigorous imprisonment.

174. Field Punishment No. 2.—Where an offender is sentenced to Field Punishment No. 2, the provisions of rule 173 shall apply in his case except that he shall not be liable to be attached to a fixed object as provided in clause (b) of that rule.

175. Mode of carrying out Field Punishment.—Field punishment shall be carried out regimentally when the unit to which the offender belongs or is attached is actually on the move, but when the unit is halted at any place where there is a provost-marshal or any other officer appointed by the commander of the forces in the field to execute such punishment, the punishment shall be carried out under the orders of such officer.

Explanation.—When the unit to which the offender belongs or is attached is actually on the move, an offender awarded field punishment No. 1 shall be exempt from the operation of clause (b) of rule 173 but all offenders awarded field punishment shall march with their unit, carry their arms and accountrements, perform all their military duties as well as extra fatigue duties, and be treated as defaulters.

176. Field Punishment not to cause any Bodily Injury.—Every portion of a field punishment shall be inflicted in such a manner as is calculated not to cause injury or leave any permanent mark on the offender and a portion of a field punishment must be discontinued upon a report by a responsible medical officer that the continuance of that portion would be prejudicial to the offender's health.

CHAPTER VI

COURTS OF INQUIRY

177. Courts of Inquiry.—(1) A court of inquiry is an assembly of officers or of officers and junior commissioned officers or warrant officers or non-commissioned officers directed to collect evidence, and, if so required, to report with regard to any matter which may be referred to them.

(2) The court may consist of any number of officers of any rank, or of one or more officers together with one or more junior commissioned officers or warrant officers or non-commissioned officers. The members of court may belong to any branch or department of the service, according to the nature of the investigation.

(3) A court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps.

178. Members of Court not to be Sworn or Affirmed.—The members of the court shall not be sworn or affirmed, but when the court is a court of inquiry on recovered prisoners of war, the members shall make the following declaration—

"I do declare upon my honour that I will duly and impartially inquire into and give my opinion as to the circumstances in which.....became a prisoner of war, according to the true spirit and meaning of the regulations of the regular Army ; and I do further declare, upon my honour that I will not, on any account, or at any time disclose or discover my own vote or opinion or that of any particular member of the court, unless required to do so by competent authority".

179. Procedure.—(1) The court shall be guided by the written instructions of the authority who assembled the court. The instructions shall be full and specific and shall state the general character of the information required. They shall also state whether a report is required or not.

(2) The officer who assembled the court shall, when the court is held on a returned prisoner of war or on a prisoner of war who is still absent, direct the court to record its opinion whether the person concerned was taken prisoner through his own wilful neglect of duty, or whether he served with or under, or aided the enemy; he shall also direct the court to record its opinion in the case of a returned prisoner of war, whether he returned as soon as possible to the service, and in the case of a prisoner of war still absent whether he failed to return to the service when it was possible for him to do so. The officer who assembled the court shall also record his own opinion on these points.

(3) Previous notice should be given of the time and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry except a prisoner of war who is still absent.

(4) The court may put such questions to a witness as it thinks desirable for testing the truth or accuracy of any evidence he has given and otherwise for eliciting the truth.

(5) The court may be re-assembled as often as the officer who assembled the court-may direct, for the purpose of examining additional witnesses, or further examining any witness, or recording further information.

(6) The whole of the proceedings of a court of inquiry shall be forwarded by the presiding officer to the officer who assembled the court.

180. Procedure when character of a person subject to the Act is involved.—Save in the case of a prisoner of war who is still absent whenever any inquiry affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military reputation. The presiding officer of the court shall take such steps as may be necessary to ensure that any such person so affected and not previously notified, receives notice of and fully understands his rights, under this rule.

181. Evidence when to be taken on oath or affirmation.—Evidence shall be recorded on oath or affirmation when a court of inquiry is assembled—

(a) on a prisoner of war, or

(b) to inquire into illegal absence under section 106, or

(c) in any other case when so directed by officer assembling the court.

Explanation.—The court shall administer the oath or affirmation to witnesses as if the court were a court-martial.

182. Proceeding of court of inquiry not admissible in evidence.—The proceedings of a court of inquiry, or any confession, statement, or answer to a question made or given at a court of inquiry, shall not be admissible in evidence against a person subject to the Act, nor shall any evidence respecting the proceedings of the court be given against any such person except upon the trial of such person for wilfully giving false evidence before that court.

183. Court of inquiry as to illegal absence under Section 106.—(1) A court of inquiry under section 106 shall, when assembled, require the attendance of such witnesses as it thinks sufficient to prove the absence and other facts specified as matters of inquiry in that section.

(2) It shall take down the evidence given it in writing and at the end of the proceedings shall make a declaration of the conclusions at which it has arrived in respect of the facts it is assembled to inquire into.

(3) The commanding officer of the absent person shall enter in the court-martial book of the corps or department a record of the declaration of the court, and the original proceedings will be destroyed.

(4) The court of inquiry shall examine all witnesses who may be desirous of coming forward on behalf of the absentee, and shall put such questions to them as may be desirable for testing the truth or accuracy of any evidence they have given and otherwise for eliciting the truth, and the court in making its declaration shall give due weight to the evidence of all such witnesses.

(5) An oath or affirmation shall be administered to the witnesses in the manner specified in rule 181.

184. Right of certain persons to copies of proceedings.—The following persons shall be entitled to a copy of the proceedings of a court of inquiry including any report made by the court on payment for the same of a sum not exceeding eight annas for every two hundred words :—

(a) any person subject to the Act who is tried by a court-martial in respect of any matter or thing which has been reported on by a court of inquiry, or

(b) any person subject to the Act whose character or military reputation is, in the opinion of the Chief of the Army Staff affected by anything in the evidence, before, or in the report of a court of inquiry, unless the Chief of the Army Staff sees reason to order otherwise.

Losses or Thefts of Arm

185. Court of inquiry when rifles, etc., are lost or stolen.—(1) Whenever any weapon or part of a weapon, which forms part of the equipment of a squadron, battery, company or other similar unit, and in respect of the loss or theft of which a fine may be imposed under rule 186 is lost or stolen, a court of inquiry shall be assembled, under the orders of the officer commanding the army, army corps, division or independent brigade, to investigate the circumstances under which the loss or theft occurred.

(2) The officer who assembled the court shall direct it to record an opinion as to the circumstances of the loss or theft.

186. Collective fine may be imposed.—(1) The officer commanding the army, army corps, division or independent brigade shall then record his opinion on the circumstances of the loss or theft, and may impose for each weapon or part of a weapon lost or stolen collective fines to the extent herein-under specified on the junior commissioned officers, warrant officers, non-commissioned officers, and men of such unit or upon so many of them as he considers should be held responsible for the occurrence—

	Rs.	A.	P.
Gun Machine Bren 303 in.	1,200	0	0
Block Breech	82	0	0
Barrel	100	0	0
Magazine	15	8	0
Gun Machine Vickers 303 in.	2,880	0	0
Block Breech	490	0	0
Barrel	93	0	0
Gun Machine Cal. 30 Browing	3,600	0	0
Block Breech	660	0	0
Barrel	120	0	0
Gun Machine Cal. 50 Browning	4,800	0	0
Block Breech	600	0	0
Barrel	180	0	0
Gun Machine Besa 7·2 mm.	1,150	0	0
Block Breech	110	0	0
Barrel	440	0	0
Carbine Machine Sten 9 mm.	95	0	0
Block Breech	16	12	0
Barrel	15	8	0
Discharge Grenade	42	0	0
Projector Grenade	15	0	0
Pistol	130	0	0
Rifle	170	0	0

	Rs.	A.	P.
Bolt	25	0	0
Bayonet	12	0	0
Ordnance ML 2-in Mortar	580	0	0
Barrel	300	0	0
Ordnance ML 3-in Mortar	860	0	0
Barrel	480	0	0
Base Plate	110	0	0
Launcher Rocket Anti-tank	600	0	0
Barrel	480	0	0
Base Plate	110	0	0
Launcher Rocket Anti-tank	600	0	0
Barrel	480	0	0
Grenades	18	0	0

(2) Such fine will be assessed as a percentage on the pay of the individuals on whom it falls.

CHAPTER VII

PRESCRIBED OFFICERS, AUTHORITIES AND OTHER MATTERS

187. 'Corps' prescribed under Section 3(vi).—(1) Each of the following separate bodies of persons subject to the Act shall be a "corps" for the purposes of Chapter III and section 43 (a) of the said Act and of Chapters II and III of these rules, namely :—

(a) President's Body Guard.

(b) The Armoured Corps, Horsed Cavalry Regiments, including Training Centres and non-combatants.

(c) The Regiment of Artillery.

(d) The Corps of Engineers including non-combatants.

(e) The Corps of Signals including non-combatants.

(f) Each regiment or each ungrouped battalion (as the case may be) of Infantry, or, in the case of grouped Gorkha Regiments, each group of Infantry including non-combatants.

(g) Each parachute battalion.

(h) The Army Service Corps (including postal).

(i) The Remount, Veterinary & Farms Corps.

(j) The Army Medical Corps.

(k) The Army Dental Corps.

(l) The Army Ordnance Corps.

(m) The Corps of Electrical & Mechanical Engineers.

(n) The Technical Development Establishments.

(o) The Intelligence Corps.

(p) The Corps of Military Police.

(q) The Pioneer Corps.

(r) The Defence Security Corps.

(s) The Army Education Corps.

(t) The Army Physical Training Corps.

(u) The General Service Corps.

(v) The Frontier Defence Corps.

(w) Each Boys Battalion.

(x) Gorkha Boys Company.

(y) Any other separate body of persons subject to the Act, employed on any service and NOT attached to any of the above corps or to any department.

(2) Every unit in which a court-martial book is maintained shall be a "corps", for the purposes of section 106 and rule 183.

(3) For the purposes of every other provision of the said Act and of these rules each of the following separate bodies shall be "corps" :—

(a) Every battalion.

(b) Every company which does NOT form part of battalion.

(c) Every regiment of cavalry, armoured corps or artillery.

(d) Every squadron or battery which does NOT form part of a regiment of cavalry, armoured corps or artillery.

(e) Every school of instruction, training centre, or regimental centre.

(f) Every other separate unit composed wholly or partly of persons subject to the Act.

188. Conditions prescribed under Section 3 (xviii) (f).—In the Act and in these rules, the expression 'officer', in relation to a person subject to the Act, includes a person holding a commission in the Indian Navy or the Air Force, when he is serving under any of the following conditions, namely :—

(a) when he is a member of a body of the regular Army, acting with a body of the Indian Navy or the Air Force which is on active service ;

(b) when he is being conveyed on any vessel or aircraft employed as a transport or troop ship ;

(c) when he is serving in or is a patient in any hospital or medical unit in which any officer of the Indian Navy or the Air Force is on duty or is a patient ;

(d) when he is a member of a body of the regular Army acting in an emergency with a body of the Indian Navy or the Air Force and an order in writing is made by the officers commanding the bodies concerned stating that an emergency exists and that it is necessary for officers of the Indian Navy or the Air Force to exercise command over persons subject to the Act. A copy of every such order shall forthwith be sent to the Central Government ;

(e) when he is serving in any place in which or with any body of the regular Army with which, there is present any officer of the Indian Navy or the Air Force and the Central Government has by special order declared that it is necessary for officers of the Indian Navy or the Air Force to exercise command over persons subject to the Act in that place or with that body of the regular Army.

189. Prescribed Officer under Section 7 (1).—The prescribed officer for the purposes of sub-section (1) of section 7 shall be the officer commanding the army, army corps, division, or brigade or any equivalent formation with which the person subject to the Act under clause (i) of sub-section (1) of section 2 is for the time being serving.

190. Prescribed form under Section 13.—The prescribed form for the purposes of section 13 shall be the same as set forth in Appendix I.

191. Prescribed Officer under Section 78.—The prescribed officer for the purposes of section 78 shall be the officer commanding the forces in the field, or, in the case of a sentence which he confirms or could have confirmed or which did not require confirmation, the officer commanding the army, army corps, division, brigade or any detached portion of regular Army within which the trial was held.

192. Prescribed extent of Punishments under Section 80.—Subject to the other provisions of the Act, a commanding officer or other officer as is specified under section 80, may,—

(i) if not below field rank, award punishments specified in section 80 to the full extent :

(ii) if below field rank, award imprisonment and detention upto seven days and other punishments to the full extent. An officer having power not less than an officer commanding a division may, however, empower such officer to award imprisonment and detention to the full extent.

193. Prescribed Officer under Section 91 (i).—The prescribed officer for the purposes of clause (i) of section 91 shall be the Chief of the Army Staff.

194. Prescribed Officer under Section 93.—The prescribed officer for the purposes of section 93 shall be, in the case of an officer, the Chief of the Army Staff and, in the case of a person other than an officer, the officer empowered to convene a court-martial for his trial.

195. Prescribed Authorities under Section 97.—Any penal deduction from the pay and allowances of a person subject to the Act, made under Chapter VIII thereof, may be remitted as hereinafter provided, that is to say :—

(a) a penal deduction from the pay and allowances of any such person may be remitted by the Central Government,

(b) the commanding officer of any such person, other than an officer, who has been absent without leave for a period not exceeding five days may, unless the person is convicted by a court-martial on a charge for such absence, remit the forfeiture of pay and allowances to which that absence renders him liable,

(c) a forfeiture of pay and allowances incurred by any such person owing to his absence as a prisoner of war may, (unless it shall have been proved before a court of inquiry that he was taken prisoner through his own wilful neglect of duty, or that he served with or under, or aided, the enemy or that he did not, as soon as possible, return to the service) be remitted by the Chief of the Army Staff, by the officer commanding an army, army corps, division or independent brigade, or by the officer commanding the forces in the field.

196. Prescribed Authorities under Sections 98 and 99.—The prescribed authorities for the purposes of sections 98 and 99 shall be—

(i) in the case of officers of the Army Medical Corps, Director General, Armed Forces Medical Services,

(ii) in the case of all other officers, the Director of Personal Services, and

(iii) in all other cases, the officer not below the rank of Lieutenant-Colonel commanding a Training Battalion, Training Centre, Depot or Record Office who maintains the accounts of the individual, or any superior authority.

197. Prescribed Officer under Section 107 (1).—The prescribed officer for the purposes of sub-section (1) of section 107 shall be the officer commanding an army, army corps, division or independent brigade or an officer commanding the forces in the field.

197-A Prescribed Officer under Section 125.—The prescribed officer for the purpose of Section 125 of the Act shall, except in cases falling under Section 69 of the Act in which death has resulted, be the officer commanding the brigade or station in which the accused person is serving.

198. Prescribed Officer under Section 142.—The prescribed officer for the purposes of sub-section (1) of section 142 shall be the officer commanding the corps, department or detachment to which the person appears to have belonged or alleges that he belongs or had belonged.

199. Prescribed Manner of Custody and Prescribed Officers under Sections 145 and 146.—(1) The prescribed officer for the purposes of section 146 shall be—

(a) in the case of trial by summary court-martial, the commanding officer of the Corps, Department or Detachment to which the accused person belongs, or any authority superior to the commanding officer ;

(b) in the case of trial by any other court-martial, the convening officer or any authority superior to him.

(2) Where an officer who proposes to act as a prescribed officer under sub-rule (1) is under the command of the officer who has taken action in the case under sub-section (4) of section 145, he shall ordinarily obtain the approval of such officer before he acts; but, if he is of opinion that military exigencies, or the necessities of discipline, render it impossible or inexpedient to obtain such approval, he may act without obtaining such approval, but shall report his action and the reasons therefor to such officer.

(3) For the purposes of sub-section (4) of section 145 the manner in which an accused person shall be kept in custody shall be as follows :—

The accused shall be confined in such manner as may, in the opinion of the proper military authority, be best calculated to keep him securely without unnecessary harshness, as he is not to be considered as a criminal but as a person labouring under a disease.

200. Prescribed Officer under Section 162.—The prescribed officer for the purposes of section 162 shall, whenever any division or brigade is temporarily withdrawn from its territorial area, be the officer, not being below the rank of field officer, commanding the corresponding divisional or brigade area, within which the trial is held :

Provided that, when the officer who held the trial is himself the commander of such area, he shall forward the proceedings to superior authority.

When the trial is held on board a ship the prescribed officer shall be the officer commanding the troops on board the ship, or the officer who would have had power to deal with the proceedings had the trial been held at the port of disembarkation :

Provided that, when the officer who held the trial is himself the officer commanding the troops on board the ship, he shall forward the proceedings to the authority at the port of disembarkation.

201. Prescribed Officer under Section 164 (2).—The Prescribed officer for the purposes of sub-section (2) of section 164 shall be any officer superior in command to the confirming officer and in the case of a summary court-martial any officer superior in command to the officer who held the summary court-martial, provided that such superior officer has power not less than a brigade commander.

202. Prescribed Officer under Section 165.—The prescribed officer for the purposes of section 165 shall be the officer commanding an army, army corps, division or brigade in respect of proceedings confirmed by him or by a person under his command.

203. Prescribed Officer under Section 169.—The prescribed officer, under sub-section (1) of section 169, for the purposes of directing whether the sentence shall be carried out by confinement in a civil prison or by confinement in a military prison, shall be, in the case of a sentence which has been confirmed, any higher authority than the confirming officer, and in the case of a sentence which does not require confirmation, any higher authority to the officer holding the trial.

204. Prescribed Officer under Section 179.—The prescribed officer for the purposes of section 179 shall be—

(a) as regards persons undergoing sentence in a civil prison or any other place, the officer commanding the army, army corps, division, or independent brigade within the area of whose command the prisoner subject to such punishment may for the time be ;

(b) as regards persons convicted on active service, the officer commanding the forces in the field.

Authorised Deductions.

205. Authorised Deductions.—The following deductions may be made from the pay, non-effective pay and all other emoluments payable to a person subject to the Act, namely :—

(a) upon the general or special order of the Central Government, any sum required to meet any public claim there may be against him, any regimental debt that may be due from him or any regimental claim ;

(b) any sum required to meet compulsory contributions to any provident fund or any benevolent or other fund approved by the Central Government.

Explanation.—(i) "Public Claim" means any public debt or disallowance including any over-issue; or a deficiency or irregular expenditure of public money or store of which, after due investigation, no explanation satisfactory to the Central Government is given by the person who is responsible for the same.

(ii) The aforesaid deductions shall be in addition to those specified in the Act.

K. C. JAIN, Dy. Secy.

APPENDICES TO THE ARMY RULES

APPENDIX I . . . . Enrolment Forms [Not reproduced].

[APPENDIX II . . . . Form of Charges [Pending publication of this Appendix the forms of charges given in the Second Appendix to the IAA Rules on Pages 335 to 374 of the MIML (1942) may be used as guides in framing charges. Care will, however, be taken to ensure that the statement of offence agrees with the wording of the Army Act, 1950, and that the statement of particulars is sufficient to support all the essential ingredients of the offence—Army Rule 30 (3) (4) and note (B) to IAA Rule 20 on page 249 of the MIML refer].

APPENDIX III . . . . Part I—Forms as to courts-martial [Pending publication of this Appendix, or the forms, the forms as to courts-martial given in the Thir Appendix to the IAA Rules on pages 37 to 400 of the MIML (1942) may be use in respect of Courts-martial under the Army Act, 1950, subject to such additions, omissions or alterations as are necessary to make the said forms conform to the provisions of the Army Act, 1950 and the Army Ru es, 1954].

Part II—Form as to summary disposal of charges against non-commissioned officers and other ranks.

Part III—Forms of summons to witnesses.

Part IV—Forms of delay report.

APPENDIX IV . . . . Part I—Forms as to summary disposal of charges against officers, junior commissioned officers and warrant officers.

Part II—Forms of warrants of commitment to prison in cases of sentences, transportation or imprisonment.

APPENDIX V . . . Forms of warrants of commitment to prison in cases of sentence of death.

APPENDIX I

This Appendix consists of two forms of Enrolment, Form No. 1—Combatants and Form No. 2—Non-combatants including followers. These have not been reproduced

APPENDIX III

Form for use at Summary trials of N.C.Os and other ranks under Sec. 80-82 of the Army Act, 1950.

OFFENCE REPORT

Battery, Squadron, Company, etc.

Serial No.....

For week ending.....

Last report submitted on.....

Charges against No.....Rank.....Name.....

Place and date of offence	Offence	Plea	Names of Witnesses	Punishment awarded	Signature, Rank and Designation of Officer by whom awarded and date of award	Date of entry in Conduct sheet	Remarks

Signature of O. C. Unit

Instructions

Col. 1. In cases of absence without leave/desertion, the "date of offence" will be the first day of absence.

" 2. The section and sub-section of the AA under which the charge is preferred will be inserted above the statement of offence.

" 4. An officer cannot deal summarily with a case in which he is the sole prosecution witness.

" 5. Must be completed strictly in accordance with the heading.

" 7. In cases of absence without leave/destrition, the automatic forfeiture of pay and allowances under P & A Regulations must be entered here.

APPENDIX III

PART III

FORMS OF SUMMONS TO WITNESSES

(*a*) In the case of a summary of evidence:

To

Whereas a charge of having committed an offence triable by court-martial has been preferred before me against (No. , Rank , Name , Unit), and whereas I have directed a summary of the evidence to be taken in writing at (palce) on the day of at O'clock in the noon; I do hereby summon and require you (name) to attend as a witness at the said place and hour (and to bring with you the documents hereinafter mentioned, namely,).

Whereof you shall fail at your peril.

Given under my hand at on the.. ...day of , 19 .

(Signature)

Commanding Officer of the accused.

(*b*) In the case of a court-martial:

To

Whereas a court-martial has been ordered to assemble at on the day of 19 , for the trial of of the regiment, I do hereby summon and require you A. B. to attend, as a witness the sitting of the said court at on the day of at O'clock in the forenoon (and to bring with you the documents hereinafter mentioned, namely,), and so to attend from day to day until you shall be duly discharged, whereof you shall fail at your peril.

Given under my hand at on the day of 19 .

(Signature)

Convening officer (or judge-advocate or presiding officer of the court or commanding officer of the accused.)

APPENDIX III

PART IV

Form of Delay Report

CONFIDENTIAL

No.....

Unit address.....

Date.....

To .. ..
(Convening Officer)

SUBJECT:—1ST, (2ND), (3RD), (4TH), ETC. ETC. EIGHT-DAY DELAY REPORT PUSUANT TO AA SEC. 103 AND ARMY RULE 27

1. Army No.....Rank.....Name.
2. Offence.....
3. Date of offence.....
4. Date offence was discovered.....
5. Date of (open/close) arrest.....
6. Date of release to open arrest/release ..... without prejudice to re-arrest. (If NOT released, reasons).
7. Summary of evidence recorded on..... (if NOT recorded, reasons).....
8. Application for trial made on.....
9. Date due to be tried.....
10. Reason for delay.....

(Rank)

Officer Commanding.....

Copy to.—

Brigade/Sub-Area Commander (if he is NOT also the convening officer).
Headquarters. . . . . Command } in the case of the [1][6th] and
DJAG. . . . . Command } subsequent reports.

[1]Amended vide A.O. 236/55.

APPENDIX IV

PART I

Form I

Form for use at summary trials of officers, JCOs and WOs under sections 83-84 *Army Act.*

ACCUSED.....
RANK AND NAME.....
UNIT.....

When the authority dealing summarily with the case decides (with the written consent of the accused) to dispense with the attendance of witnesses—

Questions to accused

1. Have you received a copy of the charge sheet and summary or abstract of evidence? ANSWER.....
2. Have you had sufficient time to prepare your defence? ANSWER.....

The charge sheet is read.

3. Are you guilty or not guilty of the charge/s against you which you heard read? ANSWER.....

The summary or abstract of evidence is read aloud or the authority dealing summarily with the case informs the accused that he has already persued it.

4. Do you wish to make a statement? ANSWER.....

If the accused desires to make a statement, he should do so now.

If at the conclusion of the hearing the authority dealing summarily with the case considers that the charge should not be dismissed, he is to examine the accused's record of service or conduct sheet.

If the authority dealing summarily with the case proposes to award a punishment other than a reprimand, severe reprimand, or penal deductions, in the case of an officer, he shall put the following question to the accused :—

5. Do you elect to be tried by court-martial or will you accept my award?

FINDING .....
AWARD .....
STATION .....
DATE .....Signed.....

NOTE 1.—The oral statement of the accused made in answer to question 4 will not be recorded. If the accused has submitted a written statement such statement is only to be forwarded with or attached to this form when a copy of the summary or abstract of evidence is also required to be so forwarded or attached.

NOTE 2.—After disposal of a charge against an officer if the finding is that of guilty, this form accompanied by Army Form B 122M (in duplicate), summary or abstract of evidence and written consent of accused will be forwarded through the usual channels to Headquarters Command concerned who will show them to the DJAG of the Command before submission to the Adjutant General, (PSI) Army Headquarters, DHQ PO New Delhi-11. Where the finding is that of NOT guilty, only the finding will be communicated to Army Headquarters.

The summary or abstract of evidence need not be forwarded if the only award is a reprimand or severe reprimand.

In the case of a JCO or WO this form, together with the summary of evidence and written consent of the accused, will be attached to his Regimental Conduct Sheet (AFB 122M). The summary of evidence need not be attached if the only award is a reprimand or a severe reprimand.

APPENDIX IV

PART II

Form 2

Form for use at summary trials of officers, JCOs and WOs under sections 83-84 *Army Act.*

ACCUSED:.....
RANK AND NAME:.....
UNIT:.....

When the authority dealing summarily with the case does not decide to dispense with the attendance or witnesses or when the accused requires their attendance.

Question to accused :—

1. Have you received a copy of the charge sheet and summary or abstract of evidence ? ANSWER.....
2. Have you had sufficient time to prepare your defence ? ANSWER..... The Charge sheet is read.
3. Are you guilty or not guilty of the charges against you which you heard read?

The witnesses give their evidence, accused being permitted to cross examine.

4. Do you wish to make a statement ? ANSWER.....
5. Do you desire to call any witnesses ? ANSWER.....

The accused makes a statement and his witnesses give evidence.

If at the conclusion of the hearing the authority dealing summarily with the case considers that the charge should not be dismissed ; he is to examine the accused's record of service or conduct sheet.

If the authority dealing summarily with the case proposes to award a punishment other than a reprimand, severe reprimand to penal deductions, in the case of an officer, he shall put the following question to the accused :—

6. Do you elect to be tried by court-martial or will you accept my award ? ANSWER.....

FINDING.....
AWARD.....
STATION.....
DATE.....Signed.....

NOTE.—After disposal of a charge against an officer if the finding is that of guilty, this form accompanied by AFB 122M (in duplicate) and summary or abstract of evidence will be forwarded through the usual channels to Headquarters command concerned who will show them to the DJAG of the Command before submission to the Adjutant General (PSI), Army Headquarters, DHQ PO, New Delhi-11. Where the finding is that of NOT guilty only the finding will be communicated to Army Headquarters.

The summary or abstract of evidence need not be forwarded if the only award is reprimand or a severe reprimand.

In the case of a JCO or WO this form, together with the summary of evidence will be attached to his Regimental Conduct Sheet, (AFB 122M). The summary of evidence need not be attached if the only award is a reprimand or a severe reprimand.

APPENDIX IV

PART II

WARRANTS UNDER SECTIONS 168, 169 (2) AND 173 OF THE ARMY ACT.

FORM A

Warrant of commitment for use when a prisoner is sentenced for life imprisonment SRO 404/60 (*Army Act Section* 168).

To the Superintendent of the (a) *prison*

Whereas at a (b).....court-martial, held at.....

on the.....day of ....., 19....., (*Number, Rank, Name*).....

.....of the.....Regiment.....was convicted of (*the offence to be briefly stated here, as "desertion on active service", "corresponding with the enemy", as the case may be*).

And whereas the said (b).....court-martial on the.....

.....day of....., 19 passed the following sentence upon the said (*Name*)....., that is to say:—.....

(*Sentence to be entered in full, but without signature*).

And whereas the said sentence has been duly confirmed by (c) as required by law. (d).

This is to require and authorise you to receive the said (*Name*).....into your custody in the said prison as by law is required, together with this warrant, until he shall be delivered over by you with the said warrant to the proper authority and custody for the purpose of undergoing the aforesaid sentence of imprisonment for life. The aforesaid sentence has effect the (e).

Given under my hand at.....this the.....day of.....19 .

Signature (f)

(a) Enter name of civil prison.
(b) General, or summary general.
(c) Name and description of confirming authority.
(d) Add if necessary "with a remission of.....".
(e) Enter date on which the original sentence was signed.
(f) Signature of commanding officer of prisoner or other prescribed officer See rule 166.

FORM B

Warrant of commitment for use when a prisoner is sentenced to imprisonment which is to be undergoing in a civil prison [Army Act, Section 169(2)].

To

The Superintendent.....of.....

the (a).....Prison.

Whereas at a (b).....court-martial held at.....

on the.....day of....., 19 , (*Number, Rank, Name*).....of the.....Regiment.....

was duly convicted of (*the offence to be briefly stated here, as "desertion", "theft" "receiving stolen goods" "fraud", "disobedience of lawful command" or as the case may be*).....

And whereas the said (b).....Court-Martial.....

on the .....day of .... 19 ....

passed the following sentence upon the said (*Name*)..... .....

that is to say :—

.....

(*Sentence to be entered in full, but without signature*).

And whereas the said sentence

.....

(c) *has been duly confirmed by* (d) *as required by law* (e).....

is by law valid without confirmation.

This is to require and authorise you to receive the said (*name*) into your custody together with the warrant, and there carry the aforesaid sentence of imprisonment into execution according to law. The sentence has effect from the (f).....

Given under my hand at.....this the.....

day of ....., 19 .

Signature (g)

(a) Enter name of civil prison.

(b) General, district, summary general or summary.

(c) Strike out inapplicable words.

(d) Name and description of confirming authority.

(e) Add if necessary "with a remission of .....".

(f) Enter date on which the *Original* sentence was signed.

(g) Signature of commanding officer of prisoner or other prescribed officer. *See* rule 166.

FORM C

Warrant of commitment for use when a prisoner is sentenced to imprisonment which is to be undergone in a military prison [Army Act Section 169(2)].

To

The Commandant,.....

.....*of the Military Prison at*.....

Whereas at (a).....court-martial held at.....

on the.....day of ....., 19....., (*Number, Rank, Name*)..... ...

.....of the.....Regiment.....

was duly convicted of.....(*the offence to be briefly stated here, as "desertion", "theft", "receiving stolen goods", "fraud", "disobedience of lawful command" or as the case may be*).

And whereas the said (*a*).....court-martial on.....

the .....day of ..... 19 .... passed

the following sentence upon the said (*Name*).....;

that is to say :—

(*Sentence to be entered in full, but without signature*).

And whereas the said sentence has been duly confirmed by (*b*).

*as required by law (*c*).

*is by law Valid without confirmation.

This is to require and authorise you to receive the said(*Name*) .....

.....into your custody together with this warrant, and there carry the aforesaid sentence of imprisonment into execution according to law.

The sentence has effect from (*d*).

Given under my hand at.....this the.....

day of....., 19 .

Signature (*e*)

*Strike out inapplicable words.

(*a*) General, district, summary general or summary.

(*b*) Name and descriptionn of confirming authority.

(c) Add if necessary "with remission of.....".

(*d*) Enter date on which the original sentence was signed.

(*e*) Signature of commanding officer of prisoner or other prescribed officer. *See* rule 166.

FORM D

Warrant for use when a prisoner is pardoned or his trial set aside, or when the whole sentence, or the unexpired portion thereof, is remitted (Army Act, Section 173).

To

The Superintendent/Commandant of the (a) *Prison.*

Where as (*Number, Rank, Name*) (*late*) . . . . of the *Regiment is confined in the* (a) . . . . Prison under a warrant issued by (b) . . . . in Pursuance of a sentence of (c) passed upon him by a (d) court-martial held at on ; and whereas (e) has in the exercise of the powers conferred upon him by the Army Act, passed the following order regarding the aforesaid sentence ; that is to say:—(f)

This is to require and authorise you to forthwith discharge the said (*Name*) from your custody unless he is liable to be detained for some other cause; and for your so discharging him this shall be your sufficient warrant.

Given under my hand at this the day of , 19

Signature (g)

(a) Enter name of civil or military prison.

(b) Enter name or designation of officer who signed original warrant.

(c) Enter original sentence (if this was reduced by the confirming officer or other superior authority the sentence should be entered thus):—

"2 years' rigorous imprisonment reduced by confirming officer to 1 year".

(d) General, district, summary general or summary.

(e) Name and designation of authority pardoning prisoner, mitigating sentence or setting aside trial.

(f) Order to be set out in full.

(g) Signature of prescribed officer. *See* rule 167.

FORM E

Warrant for use when a sentence of imprisonment for life SRO 404/60 is reduced by superior authority to one of a shorter period of the same (Army Act, Section 173)

To

The Superintendent

Prison

Whereas (*Numbers, Rank, Name*) (*late*) of the Regiment is confined in the (*a*) prison under a warrant issued by (b) in pursuance of a sentence of (c) passed upon him by a (d) court-martial held at on , and whereas has, in the exercise of the powers conferred upon him by the Army Act, passed the following order regarding the aforesaid sentence; that is to say:—(f)———

This is to require and authorise you to keep the said (*Name*).....in your custody together with this warrant, in the said prison as by law is required until he shall be delivered over by you with the said warrant to the proper authority and custody, for the purpose of his undergoing the punishment of imprisonment for life (SRO 404/60) under the said order. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued. The period of such transportation will reckon from the (g).

Given under my hand at this the day of 19 .

Signature

(a) Enter name of civil prison.
(b) Enter name or designation of officer who signed original warrant.
(c) Enter original sentence (if this was reduced by the confirming officer or other superior authority the sentence should be entered thus):—
"14 years' transportation reduced by confirming officer to 10 years".
(d) General or summary general.
(e) Name and designation of authority varying the sentence.
(f) Order to be set out in full.
(g) Enter date on which *original* sentence was signed.
(h) Signature of prescribed officer. *See* rule 167.

FORM F

Warrant for use when a sentence of imprisonment is reduced by superior authority or when one of imprisonment for life SRO 464/60 *is reduce to one of imprisonment* (*Army Act, Section* 173).

To

The Superintendent/Commandant of the (*a*) *Prison.*

Whereas (*Number, Rank, Name*) (*late*) of the Regiment is confined in the (a) prison under a warrant issued by (b) in pursuance of sentence of (c) passed upon him by a (d) court-martial held at on , and whereas (e) has, in the exercise of the powers conferred upon him by the Army Act, passed the following order regarding the aforesaid sentence; that is to say: --(f).....

This is to require and authorise you to keep the said (*Name*) in your custody together with this warrant, and there to carry into execution the punishment of imprisonment under the said order according to law. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued. The period of such imprisonment will reckon from the (g).

Given under my hand at this the day of 19 .

Signature (*h*)

(a) Enter name of civil or military prison.
(b) Enter name or designation of officer who signed original warrant.
(c) Enter original sentence (if this was reduced by the confirming officer or other superior authority the sentence should be entered thus):--
"2 years' imprisonment reduced by confirming officer to 1 year".
(d) General, district, summary general or summary.
(e) Name and designation of authority varying the sentence.
(f) Order to be set out in full.
(g) Enter date on which *original* sentence was signed.
(h) Signature of prescribed officer. *See* rule 167.

FORM G

Warrant for use when prisoner is to be delivered into military custody, (Army Act, Section 173).

To

The Superintendent/Commandant of the (a)

Prison.

Whereas (*Number, Rank, Name*) (*late*) *of the* Regiment is confined in the (a) prison under a warrant issued by (b) in pursuance of a sentence of (c) passed upon him by a (d) court-martial held at ; and whereas (e) has, in the exercise of the powers conferred upon him by the Army Act passed the following order regarding the aforesaid sentence; that is to say :—(f).....

This is to require and authorise you to forthwith deliver the said (*Name*) to the officer, junior commissioned officer, warrant officer, or non-commissioned officer bringing this warrant.

Given under my hand at this the day of , 19 .

Signature (g)

(a) Enter name of civil or military prison.

(b) Enter name or designation of officer who signed original warrant.

(c) Enter original sentence (if this was reduced by the confirming officer or other superior authority the sentence should be entered thus):—
"2 years' rigorous imprisonment reduced by confirming officer to 1 year".

(d) General, district, summary general or summary.

(e) Name and designation of authority issuing order.

(f) Order to be set out in full.

(g) Signature of prescribed officer. *See* rule 167.

APPENDIX V

WARRANT UNDER ARMY RULES, 169, 170 AND 171

FORM H

Warrant committing to civil prison custody a person sentenced to death (Army Rule 169)

To

The Superintendent of the (a) *Prison*

Whereas a (b) court-martial held at on the day of , 19 , (*Number, Rank, Name*) of the Regiment was convicted of (offence to be briefly stated);

And whereas the said (b) court-martial, on the day of , 19 , passed sentence of death on the said (*Name*);

This is to require and authorise you to receive and hold the said (*Name*) into your custody in the said prison as by law is required, together with this warrant, until such time as a further warrant in respect of the said (*Name*) shall be issued to you.

Given under my hand at this the day of 19 .

Signature (c)

(a) Enter name of civil prison.
(b) General or summary general.
(c) Signature of commanding officer of prison.

FORM I

Warrant to obtain person sentenced to death from civil prison custody in order to carry out such sentence (Army Rule 170)

To

The Superintendent of the (a) *Prison.*

Whereas (*Number, Rank, Name*) (*Late*) of the Regiment having been sentenced to suffer death on the day of , 19 by a (b) court-martial held a is held in the said prison under a warrant issued by (c).

And whereas, the said sentence having been duly confirmed by (d) as by law required an order to carry out the said sentence has been issued to me (e) (Name and Rank) ;

This is to require and authorise you to deliver forthwith the said (*Name*), to the officer/junior commissioned officer/warrant officer/non-commissioned officer bringing this warrant.

Given under my hand at this day of , 19 .

Signature (f)

(a) Enter name of civil prison.
(b) General or summary general.
(c) Enter name or designation of officer who signed original warrant.
(d) Name and description of confirming authority.
(e) Name and designation of the officer to whom the order is issued.
(f) Signature of the officer by whom the order is issued.

FORM J

Warrant for use when the sentence of a person under sentence of death and committed to custody in a civil prison is commuted to a sentence of imprisonment for life (Army Rule 171)

To

The Superintendent of the (a) *Prison.*

Whereas (*Number, Rank and Name*) (*late*) of the Regiment, is held in the (a) prison under a warrant issued by (b) in pursuance of a sentence of death passed upon him by (c) court-martial held at on and whereas (d) has, in exercise of the powers conferred upon him by the Army Act, passed the following order regarding the aforesaid sentence; that is to say :—(e)

This is to require and authorise you to keep the said (*name*) in your custody together with this warrant in the said prison as by law is required until he shall be delivered over by you with the said warrant to the proper authority and custody for the purpose of his undergoing the punishment of imprisonment for life, under the said order. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued. The period of such imprisonment for life will reckoned from the (f)

Given under my hand at this the , 19 .

Signature (g)

(a) Enter name of civil prison.
(b) Enter name or designation of officer who signed original warrant.
(c) General or summary general.
(d) Name and designation of authority commuting the sentence.
(e) Order to be set out in full.
(f) Enter date on which original sentence was signed.
(g) Signature of commanding officer.

FORM K

Warrant for use when the sentence of a person under sentence of death and committed to custody in a civil prison is commuted to a sentence of imprisonment to be served in the same prison (Army Rule 171)

To

The Superintendent of the (a) *(Prison).*

Whereas (*Number, Rank and Name*) (*late*) of the Regiment is held in the (a) prison under a warrant issued by (b) in pursuance of a sentence of death passed upon him by a (c)

(a) Enter name of civil prison.
(b) Enter name or designation of officer who signed original warrant.
(c) General or summary general.

court-martial held at on and whereas (d) has in the exercise of the powers conferred upon him by the Army Act, passed the following order regarding the aforesaid sentence, that is to say :—(e).....

This is to require and authorise you to keep the said (*Name*) in your custody together with this warrant, and there to carry into execution the punishment of imprisonment under the said order according to law. And this is further to require and authorise you to return to me the original warrant of commitment in lieu where of this warrant is issued. The period of such imprisonment will reckon from the (f)

Given under my hand at this the day of, , 19 .

(g) Signature

(d) Name and designation of authority commuting the sentence.
(e) Order to be set out in full.
(f) Enter date on which original sentence was signed.
(g) Signature of commanding officer.

FORM L

Warrant for use when a person who, after having been sentenced to death, has been committed to custody in a civil prison is to be delivered into military custody for a purpose other than carrying out the sentence of death (Army Rule 171).

To

The Superintendent of the (a) Prison.

Whereas (*Number, Rank Name*) (*late*) of the Regiment is held in the (a) prison under a warrant issued by (b) in pursuance of a sentence of death passed upon him by a (c) court-martial held at on and whereas (d) has in the exercise of the powers conferred upon him by the Army Act passed the following order regarding the aforesaid sentence; that is to say :—(e).....

This is to require and authorise you to forthwith deliver the said (*Name*) to the officer, junior commissioned officer, warrant officer or non-commissioned officer bringing this warrant.

Given under my hand at this the day of, , 19 .

Signature (f)

(a) Enter name of civil prison.
(b) Enter name or designation of officer who signed original warrant.
(c) General or summary general.
(d) Name and designation of authority issuing order.
(e) Order to be set out in full.
(f) Signature of commanding officer.

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(a) It has been provided that wherever compulsory discharge is contemplated, an opportunity to show cause against it must be given, if the circumstances so permit—Army Rule 13.

(b) An opportunity to show cause against an order of dismissal or removal under AA Sec. 20(1) & (3) must be given also to every person subject to military law and not merely to Officers, JCOs and WOs as was previously the case—Army Rule 17.

(c) Unless a court martial has been ordered to assemble, any detention in military custody of a serviceman, not on active service, beyond two months now requires the sanction of the Commander-in-Chief. The Central Govt's sanction is required for such detention beyond three months—Army Rules 27(3) (i) and (ii).

(d) Accused has been given certain statutory rights in the matter of preparing his defence—Army Rules 33(1) to (6). The main ones are :—

(i) Correspondence between him and his legal advisers is not liable to be censored ;

(ii) He would have the right to interview any witness he may wish to call in defence ;

(iii) The CO of the accused is also required to take reasonable steps to obtain written statements from such witnesses, if so requested ;

(iv) The accused has the right to address an application to the DJAG or AJAG concerned after 48 days detention without trial ;

(v) The interval between the delivery of the charge sheet, summary of evidence and allied documents, and the trial must now be not less than 96 hours. On active service not less than 24 hours [see also Army Rule 34(1)].

(e) The Convening Officer of a GCM or DCM shall furnish to the senior member of the court with the Summary of Evidence only where no Judge Advocate has been appointed—Army Rule 37(4). Under this Rule he is also required to furnish to each member of the Court with a copy of the charge sheet and the Judge Advocate with a copy of the charge sheet as well as the Summary of Evidence.

(f) The form of oath or affirmation to be administered to each member of the court and to the Judge Advocate and other officers has now been considerably altered—Army Rules 45, 46 and 109.

(g) At the close of the case, for the prosecution, the court or the Judge Advocate may question the accused on the case. This is for enabling the accused to explain any circumstances appearing in his statement, if any, or in the evidence against him. The accused would not be liable to punishment for refusal to answer such questions or for giving false answers. Army Rule 58(2) (a). See also Rules 59 (b), 118 and 159(2). These provisions are intended to provide the accused with an opportunity to explain any circumstance, which, if unexplained, would affect him adversely. It is not to make him admit facts which would incriminate him.

(h) A judge Advocate must now in all cases sum up in open court and advise the court upon the law relating to the case—Army Rule 60(1).

(i) The finding on each charge is now announced forthwith in open court as subject to confirmation; similarly the sentence together with any recommendation to mercy and the reasons therefor—Army Rules 62(10) and 67(1).

(j) It has been now provided that where the finding is sent back for revision, the court shall reassemble in open court. It will read the revision order and proceed further—Army Rule 68(1).

(k) The Confirming Officer of a DCM must now, before confirmation, obtain the advice of the DJAG or AJAG concerned in all cases of sentences of dismissal or above—Army Rule 69.

(l) In the case of an absence of a Judge Advocate a qualified substitute can be appointed for the residue of the trial or until the Judge Advocate returns. This is to be resorted to when there is likely to be excessive delay or the interests of the service so require—Army Rule 104.

(m) The evidence of a witness as taken down is now read back to him only if he so requests before leaving the court. If evidence is not given in English and if the witness does not understand the language, the evidence is to be interpreted to him, provided he so requests before leaving the court—Army Rule 141(2) and (4).

(n) A copy of court martial proceedings is now to be furnished to an accused free of charge by the officer having custody of the proceedings—Army Rule 147. An extra copy of the proceedings will therefore be prepared in every case for delivery to the accused on his demand.

THE ARMY AND AIR FORCE (DISPOSAL OF PRIVATE PROPERTY) ACT, 1950

No. XL OF 1950

An Act to provide for the disposal of the private property of persons subject to the Army Act, 1950, or the Air Force Act, 1950, who or desert or are ascertained to be of unsound mind or while on active service are officially reported to be missing.

BE it enacted by Parliament as follows:—

1. Short title, extent and commencement.—(*1*) This Act may be called the Army and Air Force (Disposal of Private Property) Act, 1950.

(*2*) It extends to the whole of India, and applies to citizens of India and persons subject to the Army Act, 1950, or the Air Force Act, 1950, wherever they may be.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

2. Definitions.—In this Act, unless the context otherwise requires—

(*1*) "Committee" means the Committee of Adjustment constituted under section 4;

(*2*) "prescribed means prescribed by rules made under this Act;

(*3*) "regimental and other debts in camp or quarters" include—

(*i*) in relation to any person subject to the Army Act, 1950, moneys due as military debts, namely, sums due in respect of or of any advance in respect of—

(*a*) quarters;
(*b*) mess, band and other regimental accounts;
(*c*) military clothing, appointments and equipments, not exceeding a sum equal to three months' pay of the deceased and having become due within eighteen months before the date of his death; and

(*ii*) in relation to any person subject to the Air Force Act, 1950, moneys due as Air Force debts, namely, sums due in respect of or of any advance in respect of—

(*a*) quarters;
(*b*) mess, band and other service accounts;
(*c*) Air Force clothing, appointments and equipments, not exceeding a sum equal to three months' pay of the deceased and having become due within eighteen months before the date of his death;

(*4*) "representation" includes probate, letters of administration, with or without the will annexed and a succession certificate, constituting a person executor or administrator of the estate of a deceased person or authorising him to receive or realise the assets of a deceased person;

(*5*) "representative" means any person who has taken out representation, but does not include an Administrator General;

(*6*) all words and expressions used herein and defined in the Army Act, 1950, or the Air Force Act, 1950, and not in this Act defined shall be deemed to have the meanings respectively attributed to them by those Acts.

3. Property of deceased persons and deserters other than officers.—(*1*) On the death or desertion of any person, not being an officer, subject to the Army Act, 1950, or the Air Force Act, 1950, as the case may be, the commanding officer of the corps, department, detachment or unit to which the deceased or deserter belonged, shall, as soon as may be and subject to any rules that may be made in this behalf—

(*a*) secure all the movable property belonging to the deceased or deserter that is in camp or quarters, and cause an inventory thereof to be made,

(*b*) draw the pay and allowances due to such person,

(*c*) make due provision for the payment of regimental and other debts in camp or quarters, if any, of such persons.

(*2*) In the case of a deceased person, the commanding officer—

(*a*) if in any case not otherwise provided for by rules made under this Act it appears to him to be necessary to make provision for the payment of regimental and other debts in camp or quarters, the funeral expenses of the deceased and the expenses, if any, incurred by the commanding officer in respect of the estate of the deceasd, shall, and—

(*b*) in any other case, may—

collect all moneys left by the deceased in any banking company (including any post office savings bank, co-operative bank or society or any other institution receiving deposits in money however named) and for that purpose may require the agent, manager or other proper officer of such banking company, society or other institution to pay the moneys to the commanding officer forthwith, notwithstanding anything in the rules of the banking company, society or other institution and such agent, manager or other officer shall be bound to comply with the requisition.

(*3*) Where any money has been paid by a banking company, society or other institution in compliance with a requisition made under sub-section (*2*), no person shall have any claim against the banking company, society or other institution in respect of such money.

(*4*) Where the representative of a deceased has given security to the satisfaction of the commanding officer for the payment of the regimental and other debts in camp or quarters, if any, and of the funeral expenses of the deceased in cases where no provision for the payment of such expenses has been made otherwise and of the expenses, if any, incurred by the commanding officer in respect of the estate of the deceased, the commanding officer shall deliver over the property received by him under sub-sections (*1*) and (*2*) to that representative, whereupon his responsibility for the administration of the estate of the deceased shall cease.

(*5*) In the case of a deceased whose estate has not been dealt with under sub-section (*4*), or under section 10, and in the case of a deserter, the commanding officer,—

(*i*) if an any case it is necessary in his opinion so to do for the purpose of securing the payment of the regimental and other debts in camp or quarters of the deceased or deserter, the funeral expenses of the deceased, if any, and the expenses, if any, incurred by the commanding officer in respect of the estate of the deceased or deserter, shall, and

(*ii*) in any other case, may

cause the movable property of the deceased or deserter, as the case may be, to be sold or converted into money.

(*6*) The commanding officer shall, out of the moneys received, collected or realised under sub-sections (*1*), (*2*) and (*5*), pay the regimental and other debts in camp or quarters, if any, of the deceased or deserter, as the case may be, the expenses, if any, incurred by the commanding officer in respect of the estate of the deceased or deserter, and in the case of a deceased his funeral expenses in cases where no provision for the payment of such expenses has been made otherwise.

(*7*) The surplus, if any, after payment of the debts and expenses specified in sub-section (*6*), shall,—

(*a*) in the case of a deceased, be paid to his representative, if any, or in the event of no claim to such surplus being established within twelve months after the death, to the prescribed person ; and

(*b*) in the case of a deserter, be forthwith paid to the prescribed person and shall, on the expiry of three years from the date of desertion, be forfeited to the Central Government, unless the deserter shall have surrendered or been apprehended in the meantime :

Provided that the prescribed person may, if the deserter has not surrendered or been apprehended in the meantime, pay the whole or any part of the surplus received by him under clause (*b*) to the wife or children or any other dependent of the deserter at any time during the said period of three years.

Explanation.—In this section and in section 4, the word "officer" with reference to persons subject to the Air Force Act, 1950, includes a warrant officer who has died or deserted.

4. Property of officers who die or desert.—The provisions of section 3 shall also apply to the disposal of the property of any officer subject to the Army Act, 1950 or the Air Force Act, 1950, who dies or deserts, but with the following modifications, namely :—

(*i*) the functions of the commanding officer under section 3 shall be performed by a Committee of Adjustment constituted in this behalf in the prescribed manner ;

(*ii*) the surplus, if any, after payment of the debts and expenses specified in sub-section (*6*) of section 3, shall in the case of a deceased officer, be paid to the prescribed person.

5. Decision of questions as to regimental and other debts in camp or quarters.—If in, any case a doubt or difference arises as to what are the regimental and other debts in camp or quarters of a deceased or deserter or as to the amount payable in respect thereof, the decision of the prescribed person shall be final and shall be binding on all persons for all purposes.

6. Representative powers of commanding officer or Committee.—For the purpose of the exercise of his or its duties under section 3 or section 4, the commanding officer or the Committee, as the case may be, shall, to the exclusion of all other persons and authorities whomsoever or whatsoever have the same rights and powers as if he or it had taken out representation to the estate of the deceased, and any receipt given by the commanding officer or the Committee, as the case may be, shall have effect accordingly.

7. Power of Central Government to hand over estate of deceased person to the Administrator General.—(*1*) Notwithstanding anything contained in the Administrator General's Act, 1913 (III of 1913), an Administrator General shall not interpose in any manner in relation to any property of a deceased which

has been dealt with under the provisions of section 3 or section 4, except in so far as he is expressly required or permitted to do so by or under the provisions of this Act.

(2) The Central Government may, at any time and in such circumstances as *it thinks fit, direct that the estate of a deceased shall be handed over by the* commanding officer or the Committee, as the case may be, to the Administrator General of a State for administration, and thereupon the commanding officer or the Committee, as the case may be, shall make over the estate to such Administrator General.

(3) Where under this section any estate is handed over to the Administrator General, the Administrator General shall administer such estate in accordance with the provisions of the Administrator General's Act, 1913 (III of 1913), or, if that Act is not in force in any State, of the corresponding law in force in that State :

Provided that the regimental and other debts in camp or quarters of the deceased, if any, shall be paid by the Administrator General in priority to any other debts due by the deceased.

(4) The Administrator General shall pay the surplus, if any, remaining in his hands after discharging all debts and charges, to the heirs of the deceased, and, if no heir is traceable, shall make over the surplus in the prescribed manner to the prescribed person.

(5) The Administrator General shall not charge in respect of his duties under this section any fee exceeding three per cent. of the gross amount coming to or remaining in his hands after payment of the regimental and other debts in camp or quarters.

8. Disposal of surplus by prescribed persons.—On receipt of the surplus referred to in sub-section *(7)* of section 3 or clause *(ii)* of section 4 or sub-section *(4)* of section 7, the prescribed person shall,—

(*a*) if he knows of a representative of the deceased, pay the surplus to that representative ;

(*b*) if he does not know of any such representative and the surplus has not been disposed of under section 10, publish every year a notice in the prescribed form and manner for six consecutive years and if no claim to the surplus is made by a representative of the deceased within six months even after the publication of the last of such notices, the prescribed person shall deposit the surplus together with any income or accumulation of income accrued therefrom to the credit of the Central Government :

Provided that such deposit shall not bar the claim of any person to such surplus or any part thereof, if he is otherwise entitled to it.

9. Disposal of effects, not money.—Where any part of the estate of a deceased person consists of effects, securities or other property not converted into money, the provisions of sub-section *(7)* of section 3, clause *(ii)* of section 4 and section 8, with respect to the payment of the surplus, shall, save as may be prescribed, extend to the delivery, transmission or transfer of such effects, securities or property, and the prescribed person shall have the same power of converting the same into money as a representative of the deceased.

10. Disposal of certain property without production of probate, etc.—Property deliverable and money payable to the representative of a deceased under section 3 or section 4 or section 8 may, if the total amount or value thereof

does not exceed five thousand rupees and if the prescribed person thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased without requiring such person to produce any probate, letters of administration, succession certificate or other such conclusive evidence of title.

11. Discharge of commanding officer, Committee, prescribed persons and the Central Government.—Any payment or application of money or application, delivery, sale or other disposition of any property made, or purported to be made, by the commanding officer, the Committee or the prescribed person in good faith in pursuance of section 3, section 4, section 8, section 9 or section 10 shall be valid and shall be a full discharge to the commanding officer, the Committee or the prescribed person, as the case may be, and to the Central Government from all further liability in respect of that money or property; but nothing herein contained shall affect the right of any executor or administrator or other representative, or of any creditor of the deceased against any person to whom such payment or delivery has been made.

12. Property in the hands of commanding officer, Committee or prescribed person not to be assets where commanding officer, Committee or prescribed person is stationed.—Any property coming into the hands of the commanding officer or the Committee or the prescribed person under section 3, section 4 or sub-section (*4*) of section 7 shall not, by reason thereof, be deemed to be assets or effects at the place in which that commanding officer or the Committee or the prescribed person is stationed, and it shall not be necessary by reason thereof that representation be taken out in respect of that property for that place.

13. Saving of rights of representative.—After the commanding officer, or the Committee has paid to the prescribed person the surplus of the property of any deceased under sub-section (*7*) of section 3 or clause (*ii*) of section 4, any representative of the deceased or any Administrator General, shall, as regards any property of the deceased not collected by the commanding officer or the Committee, as the case may be, and not forming part of the aforesaid surplus, have the same rights and duties as if sections 3 and 4 had not been enacted.

14. Application of sections 3 to 13 to persons of unsound mind or to persons reported missing on active service.—The provisions of sections 3 to 13 shall, so far as they can be made applicable, also apply in the case of a person subject to the Army Act, 1950, or the Air Foce Act, 1950, as the case may be, who, notwithstanding anything contained in the Indian Lunacy Act, 1912 (IV of 1912), is ascertained in the prescribed manner to be of unsound mind, or who, while on active service, is officially reported missing, as if he had died on the day on which his unsoundness of mind is so ascertained or, as the case may be, on the day on which he is officially reported missing :

Provided that in the case of a person so reported missing, no action shall be taken under sub-sections (*2*) to (*6*) of section 3 or section 4 or section 7 until such time as he is officially presumed to be dead.

15. Appointment of Standing Committee of Adjustment in certain cases.—When an officer dies or deserts or is ascertained in the prescribed manner to be of unsound mind or while on active service is officially reported missing, the references in the foregoing provisions of this Act to the Committee shall be construed as references to the Standing Committee of Adjustment, if any, constituted in this behalf in the prescribed manner and such Standing Committee shall alone be entitled to perform all the functions of the committee under this Act.

16. Power to make rules.—(*1*) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(*a*) prescribe the manner in which any property belonging to a deceased or deserter may be secured or collected and his regimental and other debts in camp or quarters paid ;

(*b*) provide for the payment of the funeral expenses of any deceased;

(*c*) provide for the constitution of the Committee of Adjustment or any Standing Committee of Adjustment under this Act ;

(*d*) specify the person who shall be regarded as the prescribed person for the purposes of this Act ;

(*e*) prescribe the circumstances in which the estate of any deceased shall be handed over to the Administrator General ;

(*f*) prescribe the form and manner in which a notice under section 8 shall be published ;

(*g*) prescribe the procedure by which any person may be ascertained to be of unsound mind.

[Repealed by Act 36 of 1957, S. 2].

Comparative table by numbers of sections of Act VIII of 1911 *and Act XL of* 1950.

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The Gazette of India

NEW DELHI, SATURDAY, JULY 11, 1953

PART II—SECTION 4

Statutory Rules and Orders issued by the Ministry of Defence

S.R.O. 308.—In exercise of the powers conferred by section 16 of the Army and Air Force (Disposal of Private Property) Act, 1950 (XL of 1950), the Central Government hereby makes the following rules :—

1. Short title.—These rules may be called the Army and Air Force (Disposal of Private Property) Rules, 1953.

2. Definitions.—In these rules, unless the context otherwise requires,—

(1) "the Act" means the Army and Air Force (Disposal of Private Property) Act, 1950 ;

(2) "commanding officer" means the officer commanding the corps, department, detachment or unit to which the deceased or deserter belonged;

(3) "corps" means corps as prescribed by sub-rule (c) of the rule 161 of the Indian Army Act Rules, 1911;

(4) "officer" includes a Warrant Officer subject to the Air Force Act, 1950 ;

(5) "Section" means a section of the Army and Air Force (Disposal of Private Property) Act, 1950;

(6) "Sub-section" means a sub-section of a section of the Army and Air Force (Disposal of Private Property) Act, 1950.

PART II

Property of deceased persons other than officers

3. Securing of property.—The commanding officer shall keep the property secured by him under section 3 in a place of security.

4. Inventory.—The commanding officer shall also prepare an inventory of any moveable property left in camp or quarters of the deceased which for some reason cannot be collected, stating sufficient details and estimated value thereof and the reasons for its non-collection.

5. Savings as to the securing of property and preparation of inventory.—Where payment of the debts and expenses recoverable under the Act has been secured by a representative, or a person appearing to the commanding officer to be entitled to receive or to administer the estate or where there are no such debts and expenses to be recovered, the commanding officer may abstain from securing and making an inventory of the property of the deceased, if so requested by the representative, or such person.

6. Drawing of pay and allowances.—(1) The commanding officer may require the appropriate paying authority either to pay to him the pay and allowances due to the deceased or to hold the same on his behalf until disposed of by such commanding officer.

(2) Where the pay and allowances have been required under sub-rule (1) to be held on behalf of the commanding officer, the appropriate paying authority shall not effect any recoveries therefrom on account of any public claim against the deceased after the receipt of such requisition from the commanding officer.

7. Listing of regimental and other debts in camp or quarters.—The commanding officer shall ascertain and verify and prepare a list of all the regimental and other debts in camp or quarters of the deceased and shall, before providing for their payment, have any doubt or difference about them settled.

8. Funeral expenses.—The actual and necessary expenses of the funeral, in or out of India of any person subject to the Army Act, 1950, or the Air Force Act, 1950 shall be borne by the Government to such extent as may be provided for in the relevant regulations issued under the authority of the Government of India from time to time.

9. Security for the payment of debts and expenses recoverable under the Act.—The security required to be given under sub-section (4) of section 3 shall be a bond in the form given in Forms I and II of Schedule I to these rules, accompanied by a surety if considered necessary by the commanding officer.

10. Time limit for securing debts and expenses recoverable under the Act.—If payment of the debts and expenses recoverable under the Act is not made or secured by a representative under sub-section (4) of section 3, or by other person appearing to the prescribed person to be entitled under section 10, within three months from the date of death, the commanding officer shall proceed to provide for their payment himself.

11. Custody of moneys.—Any cash collected or moneys realized by sale or conversion of property or from any bank shall be deposited, if practicable, in the civil treasury or nearest branch of the Reserve Bank of India or of the Imperial Bank of India, in a current account to the credit of the commanding officer, otherwise in a regimental treasure chest or unit imprest account.

12. Saving of certain property from sale or conversion.—(1) The commanding officer may, if he thinks fit, postpone any sale or conversion of the property of the deceased until such time as a representative or a person appearing to the prescribed person to be entitled under section 10 has had an opportunity of notifying his wishes regarding the sale or conversion or the withholding from sale or conversion of any portion of the property.

(2) The commanding officer may comply with the wishes of a representative or such other person, but if he considers any such demand unreasonable, having regard to the insolvency of the estate or other similar reason, he may refuse to comply.

13. Mode of sale.—The property to be sold will be disposed of in the most advantageous manner either by private sale or by public auction. When property is sold by a public auction, a representative of the commanding officer shall be present at the auction, and shall furnish a certified statement of the particulars of the sale to the commanding officer.

14. Disposal of private firearms and ammunition.—Private firearms and ammunition forming part of the property of the deceased shall not be delivered to a representative or to other person to whom the property or surplus of the property is handed over under section 10, or to a purchaser not being duly licensed, or authorised without licence, to possess them. When the firearms and ammunition are not so delivered, they shall, be deposited at the nearest police station, or with a licensed dealer with the sanction of the District Magistrate concerned.

15. Disposal of medals, orders and decorations.—(1) Medals and decorations of the deceased, whether issued before or after his death, shall not be sold for the purpose of paying the debts and expenses recoverable under the Act, nor shall they be handed over to the Administrator General when an estate is handed over to him for administration under section 7.

(2) When secured by the commanding officer, medals shall be disposed of as follows :—

(a) If the deceased has left any directions about their disposal whether in his will or otherwise, according to those directions ;

(b) if he has not, they may be sent to the widow, or next-of-kin of the deceased in the following order of relationship ; eldest surviving son or grandson ; eldest surviving daughter or daughter's son ; father ; mother ; elder surviving brother or sister ;

(c) if medals cannot be disposed of as above, they may be sent to any relative or other person, who, in the opinion of the prescribed person will preserve them with due care as a memorial to the deceased.

(3) Orders and decorations, other than medals, shall also be disposed of in the manner aforesaid, except where the rules or terms of the order and decoration provide otherwise.

16. Expenses of administration.—Only necessary and reasonable expenses will be incurred by the commanding officer in relation to the disposal of an estate.

PART III

Property of deceased officers

17. Property of deceased officers.—The provisions of the preceding rules shall also apply to the property of deceased officers subject to the Army Act, 1950, or the Air Force Act, 1950, but with the following modifications, namely :—

(a) references to the commanding officer shall be construed as references to a committee of adjustment or a standing committee of adjustment, as the case may be, constituted in this behalf in the manner provided hereinafter ;

(b) references to sub-section (4) of section 3 in rules 9 and 10 shall be construed as references to section 4.

18. Committee of Adjustment.—(1) A committee of adjustment shall consist of three officers. Where practicable, the president should not be below the rank of Major or Squadron Leader.

(2) A committee of adjustment shall be constituted by the following officers :—

(a) if the deceased was serving with his corps, department, detachment, or unit, by the commanding officer of the corps, department, detachment or unit, not being below the rank of Lieutenant Colonel or Wing Commander; if he is below that rank, then by the Brigade or equivalent Commander, the Air Officer Commanding, Command, or in the case of persons subject to the Army Act, 1950, the Station Commander ;

(b) if the death occurred at sea, by the officer commanding the troops on board the ship;

(c) in all other cases, by the Brigade or equivalent Commander.

(3) Where a committee cannot be constituted on board a ship, it shall be constituted as soon as possible after the ship reaches its destination, in accordance with the provisions of sub-rule (2).

(4) If the officer authorised by sub-rule (2) or (3) to constitute a committee is, from any reason, unable to do so, he shall apply to superior authority.

19. Standing Committee of Adjustment.—(1) The Standing Committee of Adjustment shall consist of three officers. Where practicable, the president should not be below the rank of Major or Squadron Leader.

(2) The Standing Committee of Adjustment shall be constituted by order of the [Commander-in-Chief][1] or of such other officer as he may authorize in this behalf, at such time and place as is thought fit by the [Commander-in-Chief][1] or the officer so authorized.

(3) The Standing Committee of Adjustment may be dissolved at any time by the authority which constituted it.

20. Constitution of committees when Standing Committee constituted.—No committee of adjustment shall be constituted so long as the Standing Committee of Adjustment remains constituted, and all references to a committee in these rules shall, during the period the Standing Committee remains constituted, be construed as references to the Standing Committee.

PART IV

Property of persons subject to the Army Act, 1950, *or the Air Force Act,* 1950, *who desert, or are ascertained to be of unsound mind, or while on active service are officially reported missing.*

21. Property of deserters.—The provisions of the preceding rules except rules 5, 8, 9, 10 and 12, shall apply, to the property of a deserter subject to the Army Act, 1950, or the Air Force Act, 1950, with the following modifications, namely :—

(a) private arms and ammunition shall be deliverable only to a purchaser ;

(b) the medals, orders and decorations of the deserter shall, if secured, be sent to the Adjutant General, Army Headquarters, in the case of a deserter subject to the Army Act, 1950, and to the Director of Personnel, Air Headquarters in the case of a deserter subject to the Air Force Act, 1950, for disposal according to the relevant regulations or orders of the Government of India.

22. Property of persons of unsound mind.—The provisions of the preceding rules, except rules 8 and 21, shall apply to the property of a person subject to the Army Act, 1950, or the Air Force Act, 1950, who is ascertained to be of unsound mind in the manner hereinafter provided, as they apply to the property of a deceased person, with the following modification, namely :—

Whenever possible, the sale or conversion of his property may be deferred until he is removed from the active list or discharged from service.

23. Property of missing persons.—The provisions of the preceding rules, except rules 8, 21 and 22, shall apply to the property of a person subject to the Army Act, 1950, or the Air Force Act, 1950, who, while on active service, is officially reported missing, as they apply to the property of a deceased person, with the proviso that no action beyond the securing of his property, the drawing of his pay and allowances and ascertaning the regimental and other debts in camp or quarters shall be taken until he is officially presumed to be dead.

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[1]To be construed as chief of the Army Staff or Chief of the Air Staff. See Act No. 19 of 1955.

PART V

Prescribed person and the manner of paying him the surplus

24. Prescribed person for purposes of sections 3, 4, 5, 7, 8, 9, 11, 12 and 13.—The prescribed person for purposes of sections 3, 4, 5, 7, 8, 9, 11, 12 and 13 shall be :—

(a) in relation to the estates of officers subject to the Army Act, 1950, the Secretary, Ministry of Defence ;

(b) in relation to the estates of officers subject to the Air Force Act, 1950, the Secretary, Ministry of Defence ;

(c) in relation to the estates of persons, other than officers, subject to the Army Act, 1950, Brigade or equivalent Commander or Military Attache to the Indian Embassy at Nepal in respect of persons domiciled in Nepal and Brigade or equivalent commander in respect of others ; and

(d) in relation to the estates of persons other than officers, subject to the Air Force Act, 1950, the air or other officer in charge of a Command or Group Headquarters in respect of persons under their respective Commands, and the Director of Personnel, Air Headquarters, in respect of persons in any of the units directly administered by Air Headquarters.

25. Prescribed person for the purpose of section 10.—The prescribed person for the purpose of section 10 shall be the persons referred to in rule 24, and, so long as the commanding officer has under the Act the control of the property of a person, not being an officer or a deserter, or of the proceeds of sale or conversion of such property, shall also include such commanding officer provided the total amount of or value of the said property does not exceed one thousand rupees.

26. Payment of surplus by commanding officer or committee of adjustment to the prescribed person under section 3 or section 4.—(1) The surplus of an estate shall be paid to the prescribed person by deposit in an imprest account or deposit in the civil treasury to the credit of the officer maintaining the pay accounts of the deceased.

(2) On receipt of the statement of the imprest account or the treasury receipt as the case may be, the authority to whose credit the surplus has been deposited shall hold the amount until disposed of by the prescribed person.

(3) That part of the surplus which does not consist of money shall be kept by the commanding officer or the committee, as the case may be, in a place of security until disposed of by the prescribed person.

27. Payment of surplus by the Administrator General to the prescribed person under section 7.—The surplus in the hands of an Administrator General shall be made over to the prescribed person in the manner provided for in rule 26.

PART VI

Other Provisions

28. Circumstances in which estate to be handed over to the Administrator General.—The Central Government may direct that the estate of a person not being a deserter, liable to be dealt with under the Act, shall be handed over to the Administrator General having jurisdiction in relation to that estate, in case it is apprehended that considerable difficulty or delay may arise in or about the collection or realisation of the effects in consequence of the character of any investment, or in consequence of it being requisite to institute some action or suit in

relation to the property, or in case there is some other peculiar circumstance connected with the property making it, in the judgment of the Central Government, expedient to take that course.

29. Form of Notice under section 8.—(1) The notice required to be published under section 8 shall be in the form given in Form III in Schedule I to these rules, with such variation as circumstances may require.

(2) The notice will be published in the *Gazette of India* and the Gazette of the State to which the deceased belonged. If considered necessary by the prescribed person, it may also be published once yearly in two newspapers to be selected by him.

30. Delivery of property or surplus under section 10.—In determining the person to whom the property or surplus may be delivered or paid under section 10, the prescribed person shall take into consideration the law or custom of succession applicable to the person whose property is under disposal and the wishes, if any, of such person in this respect.

31. Mode of delivering property or surplus to a representative or other person.—Property deliverable and money payable to a representative under section 3, 4 or 8, or to any other person under section 10, may be either handed over to him personally, or despatched or remitted to his last known address according to the procedure specified in this respect in the relevant regulations of the Government of India.

32. Manner in which a person may be ascertained to be of unsound mind.—The manner in which a person subject to the Army Act, 1950, or the Air Force Act, 1950, shall be ascertained to be of unsound mind for the purposes of the Act shall be by the finding of a medical board according to the procedure specified in this respect in the relevant regulations of the Government of India.

33. Reports.—(1) When the commanding officer or a committee of adjustment conclude the disposal of an estate in so far as they are empowered by the Act and these rules, he or it shall send to the person prescribed in rule 24 a detailed report of such disposal as soon thereafter as possible.

(2) When an estate is handed over to an Administrator General under the Act, he shall submit to the Central Government a return every six months of the estates handed over to him under section 7 and the manner in which they have been disposed of.

(3) The reports referred to in sub-rule (1) shall be accompanied by all the necessary documents and papers including those given in Schedule II to these rules.

(4) When an estate or surplus thereof is finally handed over under the Act to a representative or other person, a copy of the reports referred to in sub-rule (1) or (2) shall be supplied to him free of charge.

(5) If the commanding officer or a committee of adjusttment does not dispose of an estate to the extent he or it is concerned therewith, within twelve months in the case of subjects of Nepal and five months in all other cases of the date of death, or desertion, or the date on which the person whose estate is being dealt with is ascertained to be of unsound mind, or on which he is officially presumed dead, he or it will after that period submit to the Adjutant General, Army Headquarters,

in the case of persons subject to the Army Act, 1950, or to the Director of Personnel, Air Headquarters, in the case of persons subject to the Air Force Act, 1950, a report, showing the stage of, and the cause of delay in the disposal of an estate.

(6) The Standing Committee of Adjustment shall submit to the person prescribed in rule 24 a return, every six months, of all the estates being dealt with by it, showing in brief important details thereof including stage of disposal and the progress made.

34. Exercise of powers of commanding officer in certain cases.—(1) Where a person not being an officer, subject to the Army Act, 1950, or the Air Force Act, 1950, at the time of his death, or desertion, or being ascertained under the Act to be of unsound mind, or being officially reported missing while on active service, was serving outside India, he shall, for the purpose of the Act, be also deemed to have belonged to his record office, depot or regimental centre, as the case may be, at the said time, but the commanding officer of only one of them will dispose of the property of such person in India.

(2) Where a corps, department, detachment or unit to which a person, not being an officer, subject to the Army Act, 1950, or the Air Force Act, 1950, belonged at the time of his death, or desertion or being ascertained to be of unsound mind or being officially reported missing while on active service, ceases to exist, such person shall, for the purposes of the Act, be deemed to have belonegd to his record office, depot or regimental centre, as the case may be, at the said time, but the commanding officer of only one of them will dispose of the property of such person.

SCHEDULE I

Form I

FORM OF BOND TO BE EXECUTED BY THE REPRESENTATIVE OF A DECEASED PERSON (OFFICER) *Vide* sub-section (4) of section 3 of the Army and Air Force (Disposal of Private Property) Act, 1950 (XL of 1950).

To

The President of India.

WHEREAS I.....son of.....of..... have applied to the Committee of Adjustment (hereinafter called "the said Committee") that the property received by the said Committee under sub-sections (1) and (2) of section 3 of the Army and Air Force (Disposal of Private Property) Act, 1950 (hereinafter referred to as "the said Act") may be delivered over to me AND WHEREAS the said Committee has agreed to deliver over the property provided security as required by section 3(4) of the said Act is given and has ordered me to give security for the payment of the regimental and other debts in camp or quarters, if any, outstanding against the estate of my.....(relationship) late .....and of the funeral expenses of the deceased and of the expenses, if any, incurred by the said Committee in respect of the estate of the deceased with one/two surety/sureties AND WHEREAS.....son of..... of...../.....son of.....of.....and .....son of.....of.....has/have agreed to execute this bond as surety/sureties on my behalf.

NOW, in consideration of the said Committee delivering over the property as aforesaid to me.....(Name of representative of the deceased) we (1).....(Name of the representative of the deceased) and (2)..... (Surety) son of.....of.....(Sureties) son of..... of.....of.....and.....son of..... of.....hereby jointly and severally agree and undertake to pay and guarantee the payment to you and to your certain attorneys, successors and assigns, in full all the regimental and other debts in camp or quarters which the deceased .....owed at his decease, the funeral expenses of the deceased to the extent not paid by the Government and the expenses incurred by the said Committee in respect of the estate of late.....and agree to indemnify and keep you harmless in the event of a claim being made by any other person or persons against you and against all manner of actions, suits and other legal proceedings, costs, charges, damages and expenses whatsoever which shall or may at any time or times hereafter be brought, commenced, or sued by any person or body corporate whomsoever or whatsoever against or be occasioned to you, your successors and assigns or any of the officers or servants of the Government for or on account of, in respect of, by reason of, or consequent upon the property being delivered as aforesaid and we shall jointly and severally make good any loss which may be suffered by you and shall otherwise indemnify and keep you indemnified against such loss.

As WITNESS our hands the.....day of.....

Signed and delivered by the above-named .....
(Name of the representative of the deceased)
in the presence of—
(1) .....
(2) .....

Signature.....
Designation.
Address.....

Signed and delivered by the above-named surety
in the presence of—
(1) .....
(2) .....

Signed and delivered by the above-named surety
in the presence of—
(1) .....
(2) .....

SCHEDULE I

Form II

FORM OF BOND TO BE EXECUTED BY THE REPRESENTATIVE OF A DECEASED PERSON (other than an officer)

[*Vide* sub-section (4) of section 3 of the Army and Air Force (Disposal of Private Property) Act, 1950 (XL of 1950).]

To

The President of India.

WHEREAS I.....son of.....of.....have applied to the Commanding Officer of the.....Corps/Department/Detachment/Unit (hereinafter called "the said Commanding Officer") that the property received by the said Commanding Officer under sub-sections (1) and (2) of section 3 of the Army and Air Force (Disposal of Private Property) Act, 1950 (hereinafter referred to as "the said Act") may be delivered over to me AND WHEREAS the said Commanding Officer has agreed to deliver over the property provided security as required by sub-section (4) of section 3 of the said Act is given and has ordered me to give security for the payment of the regimental and other debts in camp or quarters, if any, outstanding against the estate of my..... (relationship) late.....and of the funeral expenses of the deceased and of the expenses, if any, incurred by the said Commanding Officer in respect of the estate of the deceased with one/two surety/sureties AND WHEREAS..... .....son of.....of...../.....son of .....of.....and.....son of..... .....has/have agreed to execute this bond as surety/sureties on my behalf.

NOW, in consideration of the said Commanding Officer delivering over the property as aforesaid to me.....(Name of representative of the deceased) we (1).....(name of the representative of the deceased) and (2)..... (Surety) son of.....of...../(Sureties).....son of .....of.....and.....son of .....of.....hereby jointly and severally agree and undertake to pay and guarantee the payment to you and to your certain attorneys, successors, and assigns, in full all the regimental and other debts in camp or quarters which the deceased.....owed at his decease, the funeral expenses of the deceased to the extent not paid by the Government and

the expenses incurred by the said Commanding Officer in respect of the estate of late.....and agree to indemnify and keep you harmless in the event of a claim being made by any other person or persons against you and against all manner of actions, suits, and other legal proceedings, costs, charges, damages and expenses whatsoever which shall or may at any time or times hereafter be brought, commenced, or sued by any person or body corporate whomsoever or whatsoever against or be occasioned to you, your successors and assigns or any of the officers or servants of the Government for or on account of, in respect of, by reason of or consequent upon the property being delivered as aforesaid and we shall jointly and severally make good any loss which may be suffered by you and shall otherwise indemnify and keep you indemnified against such loss.

AS WITNESS our hands the.....day of.....

Signed and delivered by the above-named .....,
(Name of the representative of the deceased) in the presence of—

(1) .....

(2) .....

Signature.....
Designation.....
Address.....

Signed and delivered by the above-named surety.....in the presence of—

(1) .....
(2) .....

Signed and delivered by the above-named surety.....in the presence of—

(1) .....
(2) .....

SCHEDULE I

Form III

Form of Notice

(Rule 29)

Re the estate of.....(No., Rank, Name, Unit).....who *died on
was ascertained to be of unsound mind from
was officially presumed to be dead from

Notice is hereby given under section 8 of the Army and Air Force (Disposal of Private Property) Act, 1950 (XL of 1950), that the sum of rupees..... representing the surplus of the above-mentioned estate is available with the †..... for payment to the representative of the said.....(No., Rank and Name) ..... Any person claiming to be representative of the said..... (No., Rank and Name). .....should submit his claim to the†..... ..... within two months from the date of notice for payment of the said surplus.

(Signature, designation and address of prescribed person)

Place.....
Date.....

*Strike out whichever is inapplicable.

†Designation and address of the prescribed person to be given.

SCHEDULE II

(Rule 33)

List of documents which should accompany (in duplicate) the report (A.F.A. 2) of disposal referred to in rule 33

A. When estate is handed over under sub-section (4) of section 3, or section 4 or section 10.—(1) Statement of particulars respecting the person whose estate has been disposed of. (IAFE-925).

(2) Certified true copy of will (if any) authenticated by the commanding officer or the committee or the standing committee.

(3) Certified true copy of power of attorney or probate or letters of administration, or succession certificate, if any, authenticated by the commanding officer, the committee or the standing committee, in case the estate is taken over by a representative.

(4) Bond securing payment of the debts and expenses recoverable under the Act, Schedule I, Forms I-II.

(5) Stamped receipt for the estate. (IAFE-923).

(6) Inventory of the property—(IAFE-924).

(a) Collected by the C.O. or Committee
(b) Not collected by the C.O. or Committee. } If made.

(7) Six monthly and/or final statement of pay accounts.

B. When surplus of estate is remitted to the prescribed person.—(1) Statement of particulars respecting the person whose estate has been disposed of. (IAFE-925).

(2) Original will or authenticated copy, as available.

(3) Inventory of the property :—(IAFE-924).

(a) Collected by the C.O. or Committee
(b) Not collected by the C.O. or Committee } If made.

(4) Sale and conversion accounts.

(5) Stamped receipt for reserved articles, and medals and decorations, if any, disposed of.

(6) Account of sums received and disbursed.

(7) Account of surplus assets, showing the credit balance, estimated value of reserved articles and outstanding assets due to the estate.

(8) Certificate required to be furnished under rule 13.

(9) Other receipts and vouchers, if any.

(10) Six monthly and/or final statement of pay accounts.

PART IV

MISCELLANEOUS ENACTMENTS AND STATUTORY RULES

ACT NO. IV OF 1888

The Indian Reserve Forces Act, 1888

An Act to regulate the Indian Reserve Forces.

WHEREAS it is expedient to provide for the government, discipline and regulation of the Indian Reserve Forces; It is hereby enacted as follows:—

1. Title and commencement.—(1) This Act may be called the Indian Reserve Forces Act, 1888; and

(2) It shall come into force on such day as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

2. Division of Reserve Forces into Regular and Supplementary Reserves.—The Indian Reserve Forces shall consist of the Regular Reserve and the Supplementary Reserve.

3. Locality of service of Reserves.—A person belonging to the Indian Reserve Forces shall be liable to serve beyond the limits of India as well as within those limits.

4. Power to make rules for regulation of Reserve Forces.—The Central Government may make rules and orders for the government, discipline and regulation of the Indian Reserve Forces.

5. Liability of Reserve Forces to military law.—Subject to such rules and orders as may be made under section 4, a person belonging to the Indian Reserve Forces shall as an officer or soldier, as the case may be, be subject to military law in the same manner and to the same extent as a person belonging to the Regular Army.

6. Punishment of certain offences by persons belonging to Reserve Forces.—(1) If a person belonging to the Indian Reserve Forces—

(*a*) when required by or in pursuance of any rule or order under this Act to attend at any place fails without reasonable excuse to attend in accordance with such requirement, or

(*b*) fails without reasonable excuse to comply with any such rule or order, or

(*c*) fraudulently obtains any pay or other sum contrary to any such rule or order,

he shall be liable—

(i) on conviction by a Court-martial, to such punishment other than death, transportation or imprisonment for a term exceeding one year as such Court is by the Army Act, 1950, empowered to award, or

(ii) on conviction by a Presidency Magistrate or a Magistrate of the first class, to imprisonment for a term which may extend, in the case of a first offence under this section, to six months, and, in the case of any subsequent offence thereunder, to one year.

(2) Where a person belonging to the Indian Reserve Forces is required by or in pursuance of any rule or order under this Act to attend at any place, a certificate purporting to be signed by an officer appointed by such a rule or order in this behalf, and stating that the person so required to attend failed to do so in accordance with such requirement, shall, without proof of the signature or appointment of such officer, be evidence of the matters stated therein.

(3) Any person charged with an offence under this section may be taken into and kept in either military or civil custody, or partly into and in one description of custody and partly into and in the other, or be transferred from one description of custody to the other.

7. Reinstatement in civil employ of persons belonging to Reserve Forces on termination of period of training, muster or army service.—(1) If a person belonging to the Indian Reserve Forces is, during the period of his employment under an employer, called up for training, muster or army service in pursuance of his liability under any rule or order under this Act, it shall be the duty of every such employer to reinstate the person in his employment on the termination of the period of his training, muster or army service in an occupation and under conditions not less favourable to him than those which would have been applicable to him had his employment not been so interrupted :

Provided that if the employer refuses to reinstate such person or denies his liability to reinstate such person, or if for any reason reinstatement of such person is represented by the employer to be impracticable, either party may refer the matter to the authority prescribed in this behalf by rules made under this Act, and that authority shall, after considering all matters which may be put before it and after making such further inquiry into the matter as may be prescribed in the said rules, pass an order—

(*a*) exempting the employer from the provisions of this section, or

(*b*) requiring the employer to re-employ such person on such terms as the authority thinks suitable, or

(*c*) requiring the employer to pay to such person by way of compensation for failure or inability to re-employ a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer.

(2) If any employer fails to obey the order of any such authority as is referred to in the proviso to sub-section (1), he shall be punishable with fine which may extend to one thousand rupees, and the court by which an employer is convicted under this section shall order him (if he has not already been so required by the said authority) to pay to the person whom he has failed to re-employ a sum equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer, and any amount so required to be paid either by the said authority or by the court shall be recoverable as if it were a fine imposed by such court.

(3) In any proceeding under this section it shall be a defence for an employer to prove that the person formerly employed did not apply to the employer for reinstatement within a period of two months from the termination of the period of his training, muster or army service.

(4) The duty imposed by sub-section (1) upon an employer to reinstate in his employment a person such as is described in that sub-section shall attach to an employer who, before such person is actually called up for training, muster or army service, terminates his employment in circumstances such as to indicate an intention to evade the duty imposed by that sub-section, and such intention shall

be presumed until the contrary is proved, if the termination takes place after the issue of orders calling him up for training, muster or army service under this Act.

8. Preservation of certain rights of persons belonging to Reserve Forces when called up for training, muster or army service.—When any person belonging to the Indian Reserve Forces and called up for training, muster or army service in pursuance of his liability under any rule or order under this Act has any rights under any provident fund or superannuation fund or other scheme for the benefit of employees maintained in connection with the employment he relinquishes, he shall continue, so long as he is engaged in training, muster or army service and if he is reinstated, until such reinstatement under the provisions of this Act, to have in respect of such fund or scheme such rights as may be prescribed by rules made under this Act.

RULES (1925) UNDER THE INDIAN RESERVE FORCES ACT, 1888.

The following rules and orders have been made by the Governor General in Council for the government, discipline and regulation of the Indian Reserve Forces under section 4 of the Indian Reserve Forces Act, 1888 :—

1. These rules and orders may be called the Indian Reserve Forces Rules, 1925.

2. In these rules and orders "Commanding Officer" means the officer in command of a reserve centre or of the corps or portion of a crops to which a reservist is attached for training or muster :

Provided that in the case of a reservist of the Indian Hospital Corps, who is attached for training or muster to a unit of his corps, his Commanding Officer will be :—

(a) When the reservist is not called up for training, or muster, the Officer in charge, Indian Hospital Corps Records.

(b) When the reservist is called up for training, or muster, the Commanding Officer of the unit to which he is attached for such training, or muster.

3A. The reserve shall consist of :—

(a) Viceroy's Commissioned officers commissioned under Rules 4A and 4B.

(b) Indian Warrant Officers appointed under Rule 4B.

(c) Persons enrolled under the Indian Army Act, 1911, and transferred to the Reserve either with their own consent or in pursuance of the conditions of their enrolment.

(d) Persons enrolled under the said Act for service in the reserve.

3B. Every reservist other than a reservist of the Indian Supplementary Reserve, shall be subject to military law until duly discharged or dismissed.

3C. A reservist of the Indian Supplementary Reserve shall be subject to military law only when called out for service or when carrying out the annual trade test.

4A. (a) Commissions as Risaldars or Jemadars in the Reserve of the Indian Army Service Corps may be granted to gentlemen of influence who being not more than 30 years of age are pronounced medically fit for service.

(b) Such Viceroy's Commissioned officers will ordinarily be retired on attaining 45 years of age.

(c) When called out for army service or for training, such Viceroy's Commissioned officers will, for the purposes of pay, allowances and other concessions in cash and kind, be on the same footing as Viceroy's Commissioned officers of corresponding rank serving on the active list in A. T. units with the exception that they will not be entitled to clothing allowance for the period of training in peace. For the purposes of disability and family pensions they will be governed by the same rules as are applicable to the corresponding ranks mentioned above.

(d) Viceroy's Commissioned officers of the Reserve will rank among themselves according to the dates of their commissions and, when employed on army service, will rank with Viceroy's Commissioned officers of corresponding rank in

the Indian Army, but as juniors of each rank. Viceroy's Commissioned officers commissioned under clause (a) will exercise no military command except over persons belonging or attached to the Indian Army Service Corps.

(e) Commissions already granted under the provisions of Military Department Notification No. 112, dated the 10th February 1905, shall be deemed to have been granted under the provisions of this rule.

4B. (a) Gentlemen possessing the requisite medical and other qualifications may be granted commissions as jemadars or higher commissioned rank, or may be appointed as warrant officers, in the Indian Medical Department Sub-Assistant Surgeon Reserve.

(b) Such Viceroy's Commissioned officers and warrant officers will serve for a period of five years, which may be further extended by periods of two years at a time, until attaining the age of 55 years.

(c) When called up for periodical training such Viceroy's Commissioned officers and warrant officers will receive pay at the minimum of their rank admissible to regular military sub-assistant surgeons, and when called out for army service they will receive pay at the minimum of their rank as admissible to regular military sub-assistant surgeons, with increments as admissible for each year's completed army service. Pension will be drawn in addition by pensioned military sub-assistant surgeons. For the purpose of disability and family pensions they will be under the same rules as regular military sub-assistant surgeons. A gratuity at the rate of one month's pay for each year's army service, based on the rate of pay drawn at the time of release, will be admissible on conclusion of army service.

(d) Viceroy's Commissioned officers and warrant officers of the I. M. D., S. A. S. Reserve will rank with regular Viceroy's Commissioned officers and warrant officers of the sub-assistant surgeon branch of the I. M. D. as follows :—

Viceroy's Commissioned officers—according to the date of joining the Reserve as Viceroy's Commissioned officers, or from the date of promotion to Viceroy's Commissioned officer if promoted on a date subsequent to joining the Reserve.

Warrant officers—from the date of appointment to the Reserve.

(e) Appointments to the I. M. D., S. A. S. Reserve already made shall be deemed to have been made under the provisions of this rule.

5A. Every reservist other than a reservist of the Indian Medical Department Sub-Assistant Surgeon Reserve shall come up for service, training or muster, when required to do so by order of his commanding officer : or for service when required to do so by order of the Commander-in-Chief in India or of any authority empowered by him in this behalf, and shall for this purpose attend at any place specified in such order.

5B. Every reservist of the Indian Medical Department Sub-Assistant Surgeon Reserve shall come up for training when required to do so by order of his commanding officer, or for service when required to do so by a notification in the *Gazette of India*, and shall for this purpose attend at any place specified in such order or notifications.

NOTE.

A reservist in Civil Government employ will, when called up for periodical training, receive military pay and allowances. He will also receive the excess, if any, of his civil pay over his military pay, provided that this concession is specifically sanctioned by the Department of the Government of India affected, or its attached and subordinate offices, or by the local Government concerned in whose employ the reservist is serving in his

civil capacity, and provided also that (except where his civil pay is also met from the Army Estimates) the extra expenditure involved does not constitute a charge against the Army Estimates. A civil sub-assistant surgeon belonging to the I. M. D., S. A. S. Reserve will, when called up for periodical training, receive civil pay in addition to military pay. Civil pay will not be admissible in addition to military pay for periods of mobilized army service.

The periods spent in training and on the journey to and from the place of training will be treated as duty for purposes of civil leave, pension and increments of civil pay.

6. Every reservist shall inform his commanding officer of his address, and shall, on any change of such address, at once inform the said commanding officer of such change.

7. No reservist shall leave India except with the permission of his commanding officer, and in the case of Indian Medical Department Sub-Assistant Surgeon Reserve, with the permission of the A. G. in India. For the purpose of this Rule, Nepal shall, as regards Gurkha reservists, be deemed to be included in the term "India" except in the case of Gurkha Reservists of the ambulance and nursing sections of the Indian Hospital Corps.

8. A reservist who has, for any reason, failed to attend at any place when required to do so in pursuance of Rule 5-A or 5-B may be required by his commanding officer to attend for medical examination at the nearest military station to his home, and if so required, shall attend at such military station on the date appointed for such examination.

9. Notwithstanding anything contained in Section 126 of the Indian Army Act, 1911, it shall not be necessary to assemble a Court of Inquiry under that section merely because a reservist has failed to attend when required to do so in pursuance of Rule 5-A, 5-B or 8. Such a Court of Inquiry may, however, at the discretion of the commanding officer of the reservist, be assembled in such a case.

10. A reservist who fails to attend at any place on the date on which required to do so in pursuance of Rule 5-A or 5-B, shall be liable, at the discretion of his commanding officer, to forfeit all or a portion of arrears of pay and allowances due to him. In determining the amount of such forfeiture regard shall be had to the length of the reservist's absence and to the cause, whether reasonable or otherwise, to which it is due. The absence continues until the reservist is apprehended or satisfies his commanding officer by surrender or otherwise that he is available to fulfil his obligations as a reservist.

11. (a) A reservist, who is discharged at his own request at any time within three calendar months from the date fixed for the next training or muster, shall forfeit all pay and allowances due to him with effect from the first day of the third calendar month preceding the date of such training or muster, provided that if a reservist is discharged on obtaining permanent civil employment under the central or a provincial government, he shall be eligible for pay and allowances up to the date of discharge.

(b) A reservist who is discharged for misconduct shall forfeit pay and allowances due to him with effect from the date of misconduct or the first day of the third calendar month preceding the date fixed for the next training or muster whichever is earlier.

12. The certificate referred to in clause (2) of Section 6 of the Indian Reserve Forces Act, 1888, may be signed by the commanding officer of the reservist concerned, or, in respect of a reservist who fails to attend for medical inspection

when required to do so in pursuance of Rule 8, by the commanding officer of the military station at which such reservist was required to attend.

13. When a person subject to the Indian Army Act, 1911, is to be transferred to the Reserve, his commanding officer shall, previous to such transfer, explain or cause to be explained to him the obligations and restrictions imposed by Rules 5-A to 8 and the forfeiture which may be incurred under Rules 10 and 11. When a person not subject to the said Act is enrolled thereunder for service in a reserve establishment, the officer enrolling him shall explain the aforesaid obligations, restrictions and forfeiture.

14. The authority referred to in the proviso to sub-section (1) of section 7 shall—

(a) in the presidency towns of Bombay, Calcutta and Madras be the Chief Judge of the Court of Small Causes within the local limits of whose jurisdiction the person claiming reinstatement was employed immediately before he was called up for training, muster or army service under these Rules; and

(b) elsewhere, be the District and Sessions Judge within the limits of whose jurisdiction such person was so employed.

[Nature of inquiry by prescribed authority.]

15. Where a reference is made by any party under the proviso to sub-section (1) of section 7 to the authority referred to in Rule 14, a copy of such reference shall be served upon the opposite party and the said authority shall decide the matter after giving both the parties a reasonable opportunity of being heard and after making such further inquiry, if any, as it thinks fit.

[Prescribed rights under Section 8.]

16. When any reservist is called up for training, muster or Army service under these Rules—

(a) he may, at his option, continue to subscribe to any provident or superannuation fund or other scheme for the benefit of employees maintained in connection with the employment which he relinquished immediately before he was called up for training, muster or Army service, at such rates as were applicable to him under the rules of such fund or scheme;

(b) the employer by whom such reservist was employed shall continue to credit his account in the fund or scheme with the amount subscribed and the interest on the amount in such account in accordance with the rules of the fund or scheme;

(c) such reservist may, if the rules of the fund or scheme so permit and in accordance with such rules, withdraw sums from the amount standing at his credit in the fund or scheme; and

(d) for the purpose of calculating the amount of contribution or withdrawal admissible, such reservist's salary shall be deemed to be the salary which he would have received had he not been so called up.

TERRITORIAL ARMY ACT, 1948

An Act to provide for the constitution of a Territorial Army

WHEREAS it is expedient to provide for the constitution of a Territorial Army;

It is hereby enacted as follows :—

1. Short title, extent and application.—(1) This Act may be called the Territorial Army Act, 1948.

(2) It extends to the whole of India and applies to all classes of persons in the Territorial Army, wherever they may be.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(a) "enrolled" means enrolled in the Territorial Army under the provisions of this Act ;

(b) "officer" means an officer of any of the two classes specified in section 5 ;

(c) "non-commissioned officer" means a person holding a non-commissioned rank in the Territorial Army, and includes an acting non-commissioned officer ;

(d) "prescribed" means prescribed by rules made under this Act ;

(dd) "public utility service" means any undertaking which supplies power, light, gas or water to the public, or carries on a public transport, or maintains any system of public conservancy or sanitation and which is declared, by notification in the Official Gazette, by the Central Government to be a public utility service to which this Act applies :

Provided that no such notification shall be issued unless the Central Government is satisfied that, having regard to the needs of the Territorial Army, the persons employed in any such public utility service should, in the public interest, be made compulsorily liable for service in that Army under this Act ;

(e) the expression "regular army" means officers and other ranks who, by their commission, terms of enrolment or otherwise, are liable to render continuously for a term military service under the Army Act, 1950 (XLVI of 1950) ; and

(f) all words and expressions used herein and defined in the Army Act 1950 (XLVI of 1950) and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Act.

3. Constitution of the Territorial Army.—(1) There shall be raised and maintained in the manner hereinafter provided an army to be designated the Territorial Army.

(2) The Central Government may constitute such number of units of the Territorial Army as it thinks fit and may disband or reconstitute any unit so constituted.

4. Personnel of the Territorial Army.—There shall be the following classes of persons in the Territorial Army, namely,—

(a) Officers ; and

(b) enrolled persons.

5. Officers.—Officers in the Territorial Army shall be of the two following classes, namely,—

(a) Officers holding commissions in the Territorial Army granted by the President with designations of rank corresponding to those of Indian commissioned officers of the regular army ; and

(b) Junior commissioned officers holding commissions in the Territorial Army granted by the President with designation of rank corresponding to those of junior commissioned officers of the regular army.

6. Persons eligible for enrolment.—Any person who is a citizen of India may offer himself for enrolment in the Territorial Army, and may, if he satisfies the prescribed conditions, be enrolled for such period and subject to such conditions as may be prescribed.

6A. Liability—certain persons for compulsory service in the Territorial Army.—(1) Without prejudice to the provision contained in section 6, every person employed under the Government or in a public utility service who has attained the age of twenty years but has not completed the age of forty years shall, subject to the other provisions contained in this section and subject to such rules as may be made in this behalf, be liable, when so required to do, to perform service in the Territorial Army.

(2) Where it appears to the prescribed authority that, having regard to the strength of the Territorial Army or of any unit thereof in any area or place or, having regard to the exigencies of service in the Territorial Army, it is necessary that persons compulsorily liable to perform service in the Territorial Army under sub-section (1) should be called upon for such service, the prescribed authority may call upon such number of persons as he thinks fit for the purpose of performing service in the Territorial Army.

(3) In requisitioning the services of any persons under sub-section (2) the prescribed authority shall have regard to the age, physical fitness, qualifications and experience of the persons to be called upon for service and the nature of the work previously performed by them while employed under the Government or in the public utility service, and the work to be performed by them in the Territorial Army.

(4) Every person liable to perform service under sub-section (1) shall, if so required by the prescribed authority, be bound to fill up such forms as may be prescribed and sign and lodge them with the prescribed authority within such time as may be specified in the requisition.

(5) The prescribed authority may require any person incharge of the management of a public utility service to furnish within such time as may be specified in the requisition such particulars as may be prescribed with respect to persons employed under him, who may be liable to perform service under sub-section (1).

(6) Any person whose services are requisitioned under this section may be required to join the Territorial Army as an officer or as an enrolled person according to the rules made in this behalf by the Central Government, and where any person has so joined the Territorial Army, he shall be entitled to the same rights and privileges and be subject to the same liabilities as an officer or enrolled person under the provisions of this Act.

Explanation.—For the purposes of this section, the expression "person employed under the Government or in a public utility service" shall not include :—

(a) a woman ;

(b) a member of the regular Army, the Navy or the Air Force or a member of any Reserve Force ;

(c) a person who is not a citizen of India ;

(d) a person employed under the Govt. in any country or place outside India for so long as he is so employed ; and

(e) any other persons as may be exempted from the operation of this Act by the Central Government, by notification in the Official Gazette, on the ground that, having regard to the nature of the service performed by such persons or to the exigencies of the service in which they are employed, it is, in the opinion of the Central Government, expedient in the public interest that they should not be liable to perform service under this Act.

7. Liability for military service.—(1) No officer or enrolled person shall be required to perform military service beyond the limits of India save under a general or special order of the Central Government.

(2) Subject to the provisions of sub-section (1), every officer or enrolled person shall, subject to such conditions as may be prescribed, be bound to serve in any unit of the Territorial Army to which he is for the time being attached, and shall be subject to all the rules made under this Act in relation to such unit.

(3) Every officer or enrolled person shall be liable to perform military service,—

(a) when called out in the prescribed manner to act in support of the civil power or to provide essential guards ;

(b) when embodied in the prescribed manner for training or for supporting or supplementing the regular forces ; and

(c) when attached to any regular forces either at his own request or under the prescribed conditions.

7A. Reinstatement in civil employ of persons required to perform military service.—(1) It shall be the duty of every employer by whom a person who is required to perform military service under section 7 was employed to reinstate him in his employment on the termination of the military service in an occupation and under conditions not less favourable to him than those which would have been applicable to him had his employment not been so interrupted :

Provided that if the employer refuses to reinstate such person or denies his liability to reinstate such person, or if for any reason reinstatement of such person is represented by the employer to be impracticable, either party may refer the matter to the prescribed authority and that authority shall, after considering all matters which may be put before it and after making such further inquiry into the matter as may be prescribed, pass an order—

(a) exempting the employer from the provisions of this section, or

(b) requiring him to re-employ such person on such terms as he thinks suitable, or

(c) requiring him to pay to such person by way of compensation for failure or inability to re-employ a sum not exceeding an amount equal to six

months' remuneration at the rate at which his last remuneration was payable to him by the employer.

(2) If any employer fails to obey the order of any such authority as is referred to in the proviso to sub-section (1), he shall be punishable with fine which may extend to one thousand rupees, and the court by which an employer is convicted under this section shall order him (if he has not already been so required by the said authority) to pay to the person whom he has failed to re-employ a sum equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer, and any amount so required to be paid either by the said authority or by the court shall be recoverable as if it were a fine imposed by such count.

(3) In any proceeding under this section it shall be a defence for an employer to prove that the person formerly employed did not apply to the employer for reinstatement within a period of two months from the termination of his military service.

(4) The duty imposed by sub-section (1) upon an employer to reinstate in his employment a person such as is described in that sub-section shall attach to an employer, who, before such person is actually required to perform military service under section 7, terminates his employment in circumstances such as to indicate an intention to evade the duty imposed by that sub-section, and such intention shall be presumed until the contrary, is proved if the termination takes place after the issue of orders requiring him to perform military service under this act.

7B. Preservation of certain rights of persons required to perform military service.—When any person required to perform military service under section 7 has any rights under any provident fund or superannuation fund or other scheme for the benefit of employees maintained in connection with the employment he relinquishes, he shall continue, so long as he is engaged in military service and if he is reinstated, until such reinstatement under the provisions of this Act, to have in respect of such fund or scheme such rights as may be prescribed.

8. Discharge.—Every person enrolled under this Act shall be entitled to receive his discharge from the Territorial Army on the expiration of the period for which he was enrolled and any such person may, prior to the expiration of that period, be discharged from the said army by such authority and subject to such conditions as may be prescribed :

Provided that no enrolled person who is for the time being engaged in military service under the provisions of this Act, shall be entitled to receive his discharge before the termination of such service.

9. Application of the Army Act, 1950 (XLVI of 1950).—(1) Every officer, when doing duty as such officer, and every enrolled person when called out or embodied or attached to the Regular Army, shall, subject to such adaptations and modifications as may be made therein by the Central Government by notification in the official Gazette, be subject to the provisions of the Army Act, 1950 (XLVI of 1950), and the rules or regulations made thereunder in the same manner and to the same extent as if such officer or enrolled person held the same rank in the regular army as he holds for the time being in the Territorial Army.

(2) When an offence punishable under the Army Act, 1950 (XLVI of 1950), has been committed by any person whilst subject to that Act under the provisions of sub-section (1) such person may be taken into and kept in military

custody, and tried and punished, for such offence as aforesaid in like manner as he might have been taken into and kept in military custody, tried and punished, if he had continued to be so subject.

10. Summary trial and punishments.—In addition to, or in substitution for, any punishment or punishments to which he may be liable under the Army Act, 1950 (XLVI of 1950) any enrolled person may be punished either by a criminal Court or summarily by order of the prescribed authority for any offence under that Act or for the contravention of any of the provisions of this Act or of any rules made thereunder with fine which may extend to one hundred rupees to be recovered in such manner and by such authority as may be prescribed :

Provided that no fine shall be summarily inflicted by order of the prescribed authority in any case in which the accused claims to be tried by a criminal Court.

10A. Punishment for failure to lodge forms duly filled up etc.—If any person fails without sufficient cause :—

(a) to comply with any requisition under sub-section (4) or sub-section (5) of section 6A, or

(b) to report himself for service when so required to do by the prescribed authority under sub-section (2) of that section, or

(c) to submit himself to medical or other examination when so called upon to do by the prescribed authority under rules made under this Act,

he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

11. Jurisdiction to try offences.—No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence made punishable by or under this Act.

12. Presumption as to certain documents.—Where an enrolled person is required by or in pursuance of any rule made under this Act to attend at any place a certificate purporting to be signed by the prescribed officer stating that the person so required to attend failed to do so in accordance with such requirement shall, without proof of the signature or appointment of such officer, be evidence of the matters stated therein.

13. Persons subject to this Act to be deemed part of regular army for certain purposes.—For the purposes of sections 128, 130 and 131 of the Code of Criminal Procedure, 1898 (V of 1898), all officers, non-commissioned officers and other enrolled persons who have been attached to a unit shall be deemed to be officers, non-commissioned officers and soldiers respectively of the regular army.

14. Power to make rules.—(1) The Central Government may make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing Power, such rules may—

(a) prescribe the form under sub-secion (4) of section 6A, the particulars that should be furnished therein and the authority with which, and the period within which, the form should be lodged ;

(aa) prescribe the procedure for requiring persons liable for compulsory service in the Territorial Army to be medically or otherwise examined with a view to determining whether they satisfy the conditions imposed under this Act,

(aaa) prescribe the manner in which, the period for which and the conditions subject to which any person may be enrolled under this Act or may be required to perform compulsory service in the Territorial Army ;

(b) prescribe the manner in which and the conditions subject to which officers and enrolled persons may be called out for service, or embodied for training or for supporting or for supplementing the regular army or attached to the regular army ;

(c) prescribe preliminary and periodical military training, compulsory and voluntary, for any enrolled person and provide for the embodiment of any unit for that purpose ;

(d) define the manner in which and the conditions under which any enrolled person may be excused from training ;

(dd) specify the authority for the purpose of the proviso to sub-section (1) of section 7A and the manner in which any inquiry may be held by him ;

(ddd) define the rights under section 7B ;

(e) prescribe the authorities by which and the conditions subject to which enrolled persons may be discharged under section 8 ;

(f) prescribe the authorities by which offences under this Act may be punished and the fine inflicted may be recovered ;

(g) prescribe the officers by whom certificates may be signed under section 12 ;

(h) generally provide for any other matter which under this Act is to be or may be prescribed.

15. Repeal of Act XLVIII of 1920.—The Indian Territorial Force Act, 1920 (XLVIII of 1920), is hereby repealed.

THE TERRITORIAL ARMY ACT RULES, 1948

In exercise of the powers conferred by section 14 of the Territorial Army Act, 1948 (LVI of 1948), the Central Government is pleased to make the following rules—

1. Short title.—These rules may be called the Territorial Army Rules, 1948. They extend to the whole of India.

2. Definitions.—In these rules, unless there is any thing repugnant in the subject or context;

(a) "the Act" means the Territorial Army Act, 1948;

(b) "Form" means a Form as set out in Schedule I;

(c) "schedule" means a schedule to these rules;

(d) "section" means a section of the Act;

(e) "training year" means a period of twelve months beginning on the first day of April and ending on the thirty-first day of March;

(f) the expression "Officer Commanding the Area" means the General or other officer commanding an Area or an Independent Sub-Area, or an equivalent commander within the limits of whose command the headquarters of a unit constituted under the Act is situated or such other officer as may be specified by the Central Government in this behalf.

(g) "Provincial Unit" means a unit recruited mainly from rural areas and training annually in camp;

(h) "Urban Unit" means a unit recruited mainly from a town and undergoing training throughout the year on the weekly drill system and at an annual camp.

3. Constitution and zones.—(a) Units of the Territorial Army shall be raised on a zonal basis.

(b) Zones shall be constituted and defined by the Central Government by notification in the official Gazette.

(c) The Central Government may, by notification in the official Gazette, constitute for any zone, one or more provincial units or one or more urban units of the Territorial Army.

(d) An urban unit or a provincial unit of the Territorial Army, may be recruited from persons residing in or near such town or such rural areas as may be specified in this behalf by the Central Government.

PART I—ENROLMENT

4. Qualifications for enrolment.—No person shall be eligible for enrolment as a member of the Territorial Army—

(a) unless he is of good character;

(b) unless he has attained the age of 18 years and has not attained the age of—

(i) 40 years in the case of enrolment in the Railway or Electrical and Mechanical Engineer units;

(ii) 45 years in the case of enrolment in the Communication Z Signal Posts and Telegraphs) units;

(iii) 45 years in the case of women employees of Posts and Telegraphs Department enrolled in the Communication Z Signal (Posts and Telegraphs) units; and

(iv) 35 years in all other cases ;

(c) unless he is a resident of the zone for which the unit in which enrolment has been applied for is constituted ;

(d) unless he satisfies such standards of physical fitness in height, chest measurement and other respects as may be specified by the Ministry of Defence, Government of India ;

(e) if he is in the service of the Central or a State Government unless he has obtained from that Government permission for enrolment and also a certificate to the effect that his services will forthwith be made available for service in the Territorial Army, whenever required ;

(f) if he belongs to any Reserve Force ;

(g) if he has any reserve liability ;

(h) if he has at any time been convicted of an offence involving moral turpitude and a sentence other than one of fine or of imprisonment in default of payment of fine has been passed in respect of such offence, such sentence not having been subsequently reversed or remitted or the offence pardoned ;

(i) if he has been ordered to give security for good behaviour under the Code of Criminal Procedure, 1898 ;

(j) if he has been dismissed from the Territorial Army or the Auxiliary Forces (India), or the Indian Territorial Force, Militia or the Scouts, regular army or the Navy or the Air Force ;

(k) if he has more than one wife living :

Provided that—

(i) the Chief of the Army Staff, in any case, and any authority empowered by the Chief of the Army Staff in this behalf, in such cases and to such extent as the Chief of the Army Staff may specify, may relax the age limits prescribed by clause (b) ;

(i-a) the Central Government may relax the condition specified in clause (c) in respect of any unit and specify the zones or areas from which recruitment to that unit may be made ;

(ii) a person who is ineligible by virtue of the provisions in clause (h) or (i) may be enrolled if he produces a certificate that he is fit to be enrolled from the Government of the State of which he is a resident ;

(iii) the Central Government may, for special reasons, exempt any person from the operation of clause (k).

5. Application for enrolment.—(1) A person desirous of being enrolled shall apply to the Officer Commanding a unit for service in which he desires to be enrolled or to an officer who is a recruiting officer or assistant recruiting officer for the purpose of the enrolment of persons under the Army Act, 1950, or to such other officer as may be appointed by the Central Government in this behalf.

(2) The officer to whom an application under sub-rule (1) is made shall cause the applicant to fill up and sign in his presence a statement set forth in Form I.

6. Verification.—The officer aforesaid—

(a) shall satisfy himself in the manner laid down by the Central Government that the application is in order and that the applicant is eligible for enrolment under rule 4, and

(b) may make such further inquiry as he thinks necessary regarding the suitability of the applicant for enrolment in the unit.

7. Medical Examination.—Where such officer is satisfied that the application is in order, that the applicant fulfils the conditions of enrolment, that he is suitable for enrolment in the unit in which he desires to be enrolled, and that a vacancy exists in that unit, he shall cause the applicant to be served with a notice requiring him to present himself for medical examination at a time and place to be specified in the notice.

8. Rejection.—Where such officer is satisfied that the application is not in order or that the applicant does not fulfil the conditions of enrolment or that he is not suitable to be enrolled in the unit of his choice or if the applicant fails to comply with the notice served on him under rule 7 or is found to be medically unfit for service in the Territorial Army, such officer shall reject the application and shall inform the applicant accordingly. Such applicant shall, however, have a right of appeal against the decision of the officer who rejected his application to the Commander of the Sub-Area in which the unit of his choice is located.

9. Method of enrolment.—(a) If the applicant is accepted for enrolment, he shall be required to sign a declaration at the foot of Form I.

(b) Where the officer referred to in sub-rule (1) of rule 5 is satisfied that the applicant understands the questions put to him, and consents to the conditions of service, he shall sign a certificate to that effect on the said Form, and the applicant shall thereupon be deemed to be enrolled.

10. Attestation.—(a) Every person enrolled shall be attested by his Commanding Officer, and for this purpose an oath or affirmation shall be administered to him in one of the forms specified in Form II, or in such other form to the same purport as the Commanding Officer deems to be in accordance with the religion of the person to be attested or otherwise binding on his conscience.

(b) An entry of the fact that a person enrolled has taken the oath or affirmation directed by this rule shall be endorsed on the enrolment from signed by him and shall be authenticated by the signature of the Commanding Officer.

11. Period of enrolment.—Subject to the provisions of Part III of these rules, every person accepted for enrolment shall be enrolled for a period of seven years in the Territorial Army and eight years in the Territorial Army Reserve from the date of his enrolment under rule 9. The service in the Territorial Army may be extended by two years at a time or such longer period as may be specified in this behalf by the Director, Territorial Army, so as to complete total period of fifteen years' service in the Territorial Army :

Provided that persons accepted for enrolment as non-combatants shall be enrolled for the same period for which non-combatants are enrolled in the regular army.

PART II—APPOINTMENT AND TRANSFER

12. Appointment.—(a) A person enrolled in the Territorial Army shall be appointed by the officer who enrolled him to a unit of the Territorial Army constituted for the zone in which he for the time being resides.

(b) Rules for appointments of officers of the Territorial Army shall be the same as for the regular army.

13. Transfer and attachment.—(1) Any person appointed to a unit under rule 12 may be transferred by the prescribed authority whether on disbandment of the unit or otherwise to another unit of the Territorial Army.

(2) Nothing contained in sub-rule (1) shall be deemed to authorise the transfer without his own consent of any person appointed to a unit except when such transfer is deemed necessary during a period of emergency declared in this behalf in a notification published in the official Gazette by the Central Government or such transfer is from one provincial unit to another similar provincial unit within the same zone or from one urban unit to another similar urban unit in the same town.

(3) A person who desires to be transferred to another unit shall submit his application in writing to his Commanding Officer and in such application shall state reasons for desiring the transfer and the unit to which he desires to be transferred. Thereupon the transfer shall be effected in the case of an enrolled person by mutual agreement between his Commanding Officer and the Commanding Officer of the unit to which he desires to be transferred, and in the case of an officer by order of the prescribed authority.

(4) When a person belonging to a unit ceases to reside in the zone for which such unit is constituted he may be compulsorily transferred by the prescribed authority to a unit constituted for the zone in which he for the time being resides provided that he can be absorbed in such unit.

(5) Any person belonging to a unit may be attached by the prescribed authority at his own request or otherwise to any unit of the Territorial Army or to any unit of the regular army.

(6) Any person belonging to a unit who leaves his place of residence for the time being and thereby leaves the zones in which the unit wherein he is serving is constituted shall, if he does not intend to return to that zone notify the prescribed authority in that zone of his change of residence.

(7) Where a person mentioned in sub-rule (6) intended to return but did not in fact return to his zone within three months of his departure, he shall immediately on the expiry of the said period send intimation in writing to the prescribed authority.

Explanation.—In this rule, the expression "prescribed authority" means—

(1) in the case of an enrolled person the Officer Commanding the Sub-Area/Div/Independent Sub-Area/Indep Bde Gp/Indep Bde as the case may be within which the unit of the person is constituted ;

(2) in the case of an officer the Director, Territorial Army.

PART III

14. Discharge.—(a) Every person enrolled shall, on becoming entitled to receive his discharge under the Act or these rules, be so discharged with all convenient speed.

(b) Any such person may be discharged as hereinafter provided on any of the following grounds, namely—

(i) that he has been convicted by a criminal court of an offence punishable with transportation or imprisonment;

(ii) that he has in filling up any form prescribed by these rules or otherwise for the purpose of obtaining his enrolment made any statement which was false and which he knew to be false or did not believe to be true;

(iii) that his services are no longer required;

(iv) that he is medically unfit for further service.

(c) *Discharge, dismissal, removal, retirement—Officers.*—Rules for the discharge, dismissal, removal and retirement of the officers of the Territorial Army shall be the same as for the regular army provided that the retiring age for the officers of the Territorial Army shall be as specified in the table below—

TABLE

Rank	Retiring age
Above Lieut-Colonel	Such age as from time to time be specified for the regular Army.
Lieut-Colonel	52 Years. 57 Years in the case of A. M. C.
Majors and below	50 Years. 52 Years in the case of A. M. C.
Subedar-Major/Risaldar-Major .. .	52 Years or on completion of 32 years of service or for a period of service specified in the Regulations for the Army in India for his appointment, whichever event may occur first
Subedar/Risaldar/Jemadar Head Clerk .	52 Years or on completion of 28 years of service whichever event occurs first.
Jemadar	52 Years or on completion of 24 years service whichever event occurs first.

15. (1) The authority competent to authorise the discharge of an enrolled person under the provisions specified in column 1 of the annexed table shall subject to the provisions of sub-rule (2) be the authority specified in the corresponding entry in column 2 thereof.

TABLE

Provision under which discharge authorised 1	Authority competent to authorise discharge of enrolled person 2
Sub-rule (a) of rule 14	The Commanding Officer.
Clause (i) of sub-rule (b) of rule 14	Sub-Area Commander.
Clause (ii) of sub-rule (b) of rule 14	Ditto.
Clause iii) of sub-rule (b) of rule 14	At any time during the enrolled person's first two years of training if he is unlikely to become an efficient soldier, or is untraceable, or does not report for training for a period of one year, or in the case of an unattested recruit at his own request, the Commanding Officer; in all other cases, the Sub-Area Commander.
Clause (iv) of sub-rule (b) of rule 14	The Commanding Officer.

(1A) Where a discharge is authorised under the provisions of clauses (ii) and (iii) of sub-rule (b) of rule 14, the competent authority before authorising the discharge shall, if the circumstances of the case permit, give the enrolled person an opportunity to show cause against the discharge, unless such discharge is at the request of the enrolled person.

(2) In a case in which the authority competent to authorise discharge under sub-rule (1) is the Commanding Officer, the discharge may also be authorised by the Officer Commanding the Sub-Area, the Area, General Officer Commanding-in-Chief a Command, the Chief of the Army Staff or the Central Government; and in a case in which the authority competent to authorise discharge thereunder is the Officer Commanding Sub-Area, the discharge may also be authorised by the Officer Commanding the Area, the General Officer Commanding-in-Chief the Command, the Chief of the Army Staff or the Central Government.

(3) Any enrolled person discharged under sub-rule (1) or sub-rule (2) shall Government; and in a case in which the authority competent to authorise his discharge to the next higher authority provided that there shall be no appeal where the order of discharge is made by the Central Government.

(4) A discharge duly authorised under this rule shall be carried out by the Commanding Officer with all convenient speed.

16. Discharge on application.—(1) Any enrolled person not entitled to his discharge under the Act or these rules who is desirous of being discharged before the expiration of the period for which he was enrolled, shall apply in writing stating the reason for his application to the officer Commanding the unit to which he is for the time being appointed.

(2) The Officer Commanding the unit shall, on receipt of such an application, forward the same to the Sub-Area Commander who may in his discretion authorise the discharge of such applicant.

17. Discharge certificate.—Every enrolled person who is discharged from the Territorial Army shall be furnished by his commanding officer with a certificate similar to that referred to in section 23 of the Army Act, 1950.

PART IV—TRAINING

18. Military training.—Military training for Territorial Army unit shall consist of—

(a) Recruit training.

(b) Annual training,

(c) Voluntary training, and

(d) Service on the permanent staff.

19. Recruit training.—(a) Every person appointed to a provincial unit shall be liable, for the purpose of undergoing recruit training, to be embodied under the orders of the Officer Commanding the Area in which the unit is located, for a period or periods not exceeding in the aggregate 30 days in any one year.

(b) Every member of an urban unit other than Railway Engineers units or Signal (Posts and Telegraphs) units, shall be liable to undergo recruit training for a period of 32 days, during which period he may be embodied for not less than four consecutive days. This embodied period, may, however, be extended

up to a maximum of fourteen consecutive days in all provided that, in so far as the additional period beyond the initial period of four days is concerned, the individual volunteers and obtains the written consent of his employer, if any.

(c) Every member of a Railway Engineers unit or Signal (Posts and Telegraphs) unit, shall be liable, for the purpose of undergoing recruit training, to be embodied under the orders of the Officer Commanding the Area in which the unit is located, for a period of 30 days during the first year of service.

(d) Every member of an urban unit shall be liable for the purpose of firing the annual musketry course to be embodied for one day in the year in addition to the period prescribed in clause (b). Such periods of embodiment shall only take place on Sundays or other recognised holidays.

(e) The Officer Commanding of any unit may exempt either wholly or in part from liability to undergo recruit training any person who has in his opinion undergone adequate military training in the regular army or otherwise.

Explanation.—For the purpose of clause (b), a day shall consist of 4 hours of actual military drill or instruction, and may be made up of fractions of a day not more than 4 in number.

20. Annual training.—(1) Every person who has undergone the recruit training required by rule 19, or has been exempted from undergoing such training shall be liable to undergo annual training as hereinafter provided, namely—

(a) Every such person who is appointed to a provincial unit shall be liable to be embodied, under the orders of the Officer Commanding the Area in which the unit is located, for annual training for period not exceeding two calendar months in each training year, whether or not such person has been embodied for recruit training that year.

(b) Every such person who is appointed to an urban unit other than Railway Engineers unit or Signal (Posts and Telegraphs) unit, shall be liable to undergo annual training for a period of not less than 36 days, and not more than 60 days, subject to the provision that he shall attend a minimum of three days training during every month for 9 months in the year excluding the days spent in camp. During the aforesaid period of training, he may, under orders of the Officer Commanding the Area in which the unit is located, be embodied for an annual camp of not less than eight consecutive days. The period spent in the camp may, however, be extended up to a maximum of fourteen consecutive days in all, provided the individual volunteers and obtains the written consent of his employer, if any, for the period which is in excess of the said eight days.

(c) Every member of a Railway Engineers unit or Signal (Posts and Telegraphs) unit shall be liable for the purpose of undergoing annual training, to be embodied under the orders of the Officer Commanding the Area in which the unit is located, for a period of 30 days in a year during the second and subsequent years of service.

(d) Every such person who is appointed to an Urban unit shall be liable, for the purpose of firing the annual musketry course, to be embodied for a period of one day in the year in addition to the period prescribed in clause (b). The period of one day of embodiment for the purpose of firing annual musketry course may be increased to two days in cases where the training could not be completed in one day provided that the increased period of one day is within the maximum period of annual training laid down in clause (b). Such period of embodiment shall only take place on Sundays or recognised holidays.

(e) Junior Commissioned Officers and other ranks (other than permanent staff) up to five per cent of the authorised establishment of the unit, may be employed at the discretion of the Area or Independent Sub-Area Commander for a period of seven days before training commences and for a period of four days after training ends, for the purpose of pitching and striking camp and issuing and taking into stores clothing and equipment etc.

(f) Every such person who is appointed to an Urban unit may, under the orders of the Area or Independent Sub-Area Commander, be embodied for a period not exceeding seven days for the purpose of passing prescribed trade tests. provided the individual volunteers and obtains the written consent of his employer, if any. The period of embodiment shall count against the extended period of annual camp as prescribed in clause (b).

(g) Every officer commissioned in the Territorial Army shall, for the purpose of appearing at the prescribed test in Hindi, be embodied for the period of actual duration of the test. Such period of embodiment shall count towards the period prescribed for annual training.

(h) Every such person may, under the orders of the Officer Commanding the Area, be embodied with the consent of his employer, if any, for the purpose of participating in a ceremonial parade for a period up to four consecutive days. This period of embodiment shall be in addition to the period of annual training prescribed in clauses (a), (b) and (c).

(i) A person, while embodied for annual training under clauses (a), (b) or (c) may be ordered to participate in a ceremonial parade for a period up to four consecutive days, in which case, the period of annual training for which such person was embodied shall be deemed to have been extended by the number of days spent by him in training for and participating in such ceremonial parade.

(2) The Officer Commanding of any unit may exempt, wholly or in part, any person from the obligation to undergo the annual training prescribed by sub-rule (1)

21. Voluntary training.—Every person may be permitted to be embodied, under the orders of the Officer Commanding the Area in which the unit to which he is appointed is located, for such periods of voluntary training as may from time to time be sanctioned by the Central Government in addition to the training prescribed by rules 19 and 20.

21-A. Service on the permanent staff.—(a) Every enrolled person who volunteers with the written consent of his employers, if any, for employment on the permanent staff of a Territorial Army unit, may, if found suitable by the Commanding Officer of the unit, be embodied under the orders of the Officer Commanding the Area in which the unit is located, for such period as he is required to fill a vacancy on the permanent staff of the unit.

(b) Every officer who volunteers with the written consent of his employer, if any, for employment on the permanent staff of a Territorial Army Unit, may, if found suitable, be embodied under the orders of the Director, Territorial Army, for such period as he is required to fill a vacancy on the permanent staff of that unit or of any other unit of the Territorial Army to which he may be transferred.

22. Embodiment.—For the purposes of clause (a) of rule 19, rule 20, rule 21 and rule 21-A a person shall be deemed to be embodied with effect from the date specified for such embodiment in the order issued under the authority of the Officer Commanding the Area in which the unit is located or the Director, Territorial Army, as the case may be.

PART V—PAY AND ALLOWANCES

23. Pay and allowances.—(a) Every person subject to the Act, shall be entitled to such pay and allowances as are specified in Schedule III—

(i) For every day of military training completed or duty performed in accordance with paragraph 15 of TA Regulations, provided that no pay and allowances shall be admissible for any days of such training or duty in excess of the number of days for which these rules provide and for the actual periods of journey to and from their permanent place of residence subject to a maximum of 7 days in all. Pay and allowances during journey will not be admissible to Government servants who draw pay and allowances for such period from Civil estimates.

NOTE.—In the case of an urban unit, a day shall consist of 4 hours of actual military drill or instruction, and may be made up of fractions of a day not more than 4 in number.

(ii) For periods of actual attendance, and for such period, not exceeding two days, as is required by the students to reach a school of army instruction before the commencement of course, at authorised course of instruction in army schools with regular units or otherwise, including intervening Sundays and holidays and for the actual periods of journey not exceeding 7 days in all to and from their permanent place of residence; pay and allowances during the journey period will not be admissible to Government servants who draw pay and allowances for such period from Civil estimates:

Provided that no such person shall be entitled to any such pay and allowances for any day or days for which he may be absent, except that a member of a provincial unit, who is embodied or called out for training, may be granted casual leave with pay and allowances on Sundays and notified public holidays at the discretion of the Commanding Officer, and a member of Provincial or Urban unit, who is attending an authorised course of instruction in any army school, may be granted casual leave with pay and allowances on intervening Sundays and holidays at the discretion of the Commandant of the School.

NOTE.—'Periods of journey' will include any period spent on journey from permanent place of residence to parent unit and *vice-versa.*

(iii) For such period as a person is borne on the establishment of the permanent, administrative or instructional staff of a unit in the Territorial Army and for the actual periods of journey to and from their permanent place of residence subject to a maximum of 7 days in all. Pay and allowances for journey period will not, however, be admissible under these Rules to Government servants who draw pay and allowances for such periods from civil estimates.

Explanation.—For the purpose of this sub-clause, an officer other than a Junior Commissioned Officer shall be deemed to be borne on the establishment of the permanent staff of a unit during the period, not exceeding four days, he is taking over charge of an appointment on the said establishment from an officer holding that appointment.

NOTE.—Pay and allowances to personnel of the Territorial Army (employed on the permanent, administrative or instructional staff or embodied for service otherwise than for training) while under arrest or suspension, otherwise than for absence without leave, shall be governed by the terms of clause (b) of section 90 of the Army Act, 1950.

Any such personnel of the Territorial Army undergoing training shall not be entitled to any pay and allowances while under arrest or suspension.

(b) Every person subject to the Act shall be entitled to such pay and allowances as are specified in Schedule IV for every day during which he is called out or embodied for military service.

NOTE.—Such persons shall also be entitled to pay and allowances for the actual periods of journey to and from their permanent place of residence subject to a maximum of 7 days in all :

NOTE.—Such persons shall also be entitled to pay and allowances for the actual periods these Rules to Government servants who draw pay and allowances for such periods from civil estimates.

(c) *Pay of Government servants.*— Government servants who are members of the Territorial Army are entitled, when called out or embodied for training to pay and allowances at the rates admissible for the Territorial Army.

In cases where a Department of the Government of India, or its attached and subordinate offices or a State Government may have specially authorised in respect of its own servants who belong to the Territorial Army the payment of the difference if any, between their civil pay and military pay at the rates above referred to, the extra expenditure involved shall constitute a charge against the ordinary head of expenditure to which the civil pay of the individuals concerned is debitable.

Every Government servant who is a member of the Territorial Army will intimate to his Commanding Officer the designation of head of the office or department to which he belongs for the time being during the period of his enrolled service. Summons to military training or service of any kind will be issued by the Commanding Officer through the head of the office with copies to the Controller of Defence Accounts concerned. After payment to the individual of whatever military pay and allowance are due to him, the Controller of Defence Accounts will intimate periodically to the head of the office, in the case of a non-gazetted Government servant, and to the audit officer, in the case of a gazetted officer, what remuneration and for what period, has been disbursed to the individual from Defence Estimates.

PART VI—DISCIPLINE DURING TRAINING

24. Application of the Army Act, 1950, to enrolled persons.—(1) The Army Act, 1950, and the rules and regulations made thereunder in their application to enrolled persons of the Territorial Army shall, subject to the provisions of sub-rule (2), be modified in the manner and to the extent specified in Schedule II in the case of males and Schedule II-A in the case of females.

(2) Enrolled persons not being females who are serving on the permanent staff of a unit or are undergoing training at the National Defence Academy shall be subject to the said Act and the rules and regulations made thereunder without any modification.

25. Authority for purpose of Section 10.—The prescribed authority for the purposes of Section 10 of the Act shall, in case where the accused is below the rank of warrant officer, be the Officer Commanding the unit to which the accused belongs, and in the case of a warrant officer be the Officer Commanding the Sub-Area or equivalent Commander in which the accused's unit is located.

26. Recovery of fines.—(a) A fine imposed under Section 10 of the Act or under clause (b) of rule 30 or sub-clause (v) of clause (a) of rule 31 may be recovered in the following manner, that is to say—

(i) By the officer imposing the fine from the pay and allowances and other public money due to the person on whom the fine is imposed.

(ii) If the officer imposing the fine is unable to recover the same he shall send a certified copy of the order to the District Magistrate or the Chief Presidency Magistrate, as the case may be, having jurisdiction in the area in which the fine has been inflicted, and such Magistrate shall recover the fine in accordance with the provisions of the Code of Criminal Procedure, 1898, as if it had been imposed by him, and shall remit the amount recovered to the officer concerned.

(b) All fines recovered shall be credited to the Government.

27. Prescribed Officer under Section 12.—The certificate referred to in section 12 of the Act shall be signed by the Commanding Officer of the unit to which the person concerned belongs.

URBAN UNITS

28. Offences.—Every enrolled person of an urban unit when undergoing military training without having been embodied for the purpose commits an offence, if he does any of the following acts, namely—

(a) when on parade, engaged on any military duty or wearing the uniform of the Territorial Army—

(i) strikes, or uses or offers violence to, or uses threatening or insubordinate language to, or behaves with contempt to, his superior officer ; or

(ii) disobeys any standing order of, or lawful command given by his superior officer ; or

(iii) neglects to obey a general or garrison order made specially applicable to the Territorial Army, by the Officer Commanding the unit to which he belongs ; or

(iv) is in a state of intoxication ; or

(v) being a warrant officer or a non-commissioned officer strikes or ill-treats any person subject to the Army Act, 1950, or to the Act, who is his subordinate in rank or position ;

(b) without sufficient cause fails to appear at the place of parade at the time fixed or to attend at any place in his capacity as a member of the Territorial Army, when duly required so to attend, or when on parade, without sufficient cause quits the rank ;

(c) without sufficient cause fails to perform any part of the training which by or under the Act he is required to perform ;

(d) strikes, or uses or offers violence to any person whether subject to the Army Act, 1950, or to the Act or not, in whose lawful custody he is placed, and whether such person is or is not his superior officer ;

(e) resists an escort whose duty it is to arrest him or detain him in military custody ;

(f) being under arrest or detention or otherwise in lawful military custody escapes or attempts to escape ;

(g) when in charge of any property belonging to the Government, or to a unit of the Territorial Army, dishonestly misappropriates or converts to his own use, or is concerned in such misappropriation or conversion of any such property ;

(h) wilfully injures, or by culpable neglect loses or causes injury to, any such property as is mentioned in clause (g);

(i) wilfully ill-treats a horse or other animal used in the public service;

(j) knowingly furnishes a false return or report of the number or state of men under his command or charge, or of any money, arms or ammunition, clothing, equipment, stores or other public property in his charge;

(k) through design or culpable neglect, omits to make or send any return of any matter mentioned in clause (j) which it is his duty to make or send;

(l) when it is his official duty to make a declaration respecting any matter, makes a declaration respecting such matter which he either knows or believes to be false or does not believe to be true;

(m) knowingly makes against any person subject to the Army Act, 1950, or to the Act, an accusation which he either knows or believes to be false or does not believe to be true;

(n) falsely personates any other person at any parade or on any occasion when such other person is required by or under the Act to do any act or attend at any place; or abets any such act of personation.

29. Disposal of offences.—An Officer Commanding an urban unit shall, subject to the provisions of section 10 of the Act and after investigation of a charge made against an enrolled person appointed to that unit, or any offence specified in rule 28, deal with the matter in one or other of the following ways, that is to say, he may—

(a) dismiss the charge; or

(b) deal with the case summarily; or

(c) take steps for bringing the offender to trial by a criminal court; or

(d) refer the matter to superior authority for instructions and deal with it accordingly.

30. Summary punishments.—A commanding officer dealing summarily with an offence under rule 28 may inflict punishment according to the following scale, that is to say, he may—

(a) order dismissal of the offender, below the rank of a non-commissioned officer from the Territorial Army with or without forfeiture of all or any arrears of pay and allowances and other public money due to him at the time of such dismissal; or

(b) order the offender to pay a fine not exceeding Rs. 100; or

(c) order stoppages of pay and allowances until any proved damage or loss occasioned by the offence of which the offender is charged is made good; or

(d) severely reprimand the offender; or

(e) reprimand the offender;

Provided that in every case in which the officer proposes to order the offender to pay a fine he shall first ask the offender whether he claims to be tried by criminal court, and if the offender does so claim, he shall take steps for bringing the offender to trial by a criminal court.

31. Summary punishment of Warrant Officer and Non-Commissioned Officer.—An Officer having powers not less than that of Sub-Area or equivalent

Commander dealing summarily with an offence under rule 28 may award any of the following punishments—

(a) In the case of a Warrant Officer—

(i) Dismissal.

(ii) Reduction to a lower grade or place in the list of his rank or to the ranks.

(iii) Forfeiture of seniority or rank.

(iv) Severe reprimand or reprimand.

(v) Fine.

(vi) Stoppages of pay and allowances until any proved loss or damage occasioned by the offence of which the offender is charged is made good.

Provided that in every case in which the officer proposes to order the offender to pay a fine he shall first ask the offender whether he claims to be tried by a criminal court, and if the offender does so claim, he shall take steps for bringing the offender to trial by a criminal court.

(b) In the case of Non-Commissioned Officer—

(i) Dismissal.

(ii) Reduction to a lower class or a lower rank or to the ranks.

(iii) Forfeiture of seniority of rank.

32. (a) Any enrolled person who deems himself wronged by any superior or other officer may complain to the officer under whose command or orders he is serving.

(b) When the officer complained against is the officer to whom any complaint should, under sub-rule (a) be preferred, the aggrieved person may complain to such officer's next superior officer.

(c) Every officer receiving such complaint shall inquire into it, and when necessary, refer it to superior authority ; provided that a decision by an authority competent to dispose of the matter complained of shall be final.

(d) Every such complaint shall be preferred through such channels as may from time to time be specified by the appropriate authority.

PART VII

33. Every officer and every enrolled person of the Territorial Army shall by order of the Central Government or by order of such other authority as may be empowered by the Central Government in this behalf, be liable, to be called out to act in support of the civil power or to provide essential guards or to be embodied for the purpose of supporting or supplementing the regular army.

Provided that an officer or an enrolled person who volunteers with the written consent of his employer, if any, for an appointment with a Headquarters or a unit of the Regular Army, may, if found suitable, be embodied with the Headquarters or the unit of the Regular Army, as the case may be, under the orders of the Director Territorial Army.

34. Every officer and every enrolled person when called out or embodied as in rule 33, shall under the orders of the Commander of the Sub-Area in which the unit to which he is attached may for the time being be serving, act in support of the civil power, provide essential guards or support or supplement the regular army.

PART VIII—REINSTATEMENT AFTER COMPLETION OF MILITARY SERVICE

35. Prescribed authority under Section 7A.—The prescribed authority, referred to in the proviso to sub-section (1) of Section 7A, shall—

(a) in respect of any area within the presidency town of Bombay, Calcutta or Madras, be the Chief Judge of the Court of small Causes within the local limits of whose jurisdiction, the person claiming reinstatement was employed immediately before he was required to perform military service under section 7, and

(b) in respect of any other area, be the District and Sessions Judge within the limits of whose jurisdiction such person was employed.

36. Nature of inquiry by prescribed authority.—Where a reference is made by any party under the proviso to sub-section (1) of section 7A to the authority referred to in rule 35, a copy of such reference shall be served upon the opposite party and the said authority shall decide the matter after giving both the parties a reasonable opportunity of being heard and after making such further inquiry, if any, as it thinks fit.

37. Prescribed rights under section 7B.—When any person subject to the Act is required to perform military service under section 7—

(a) he may, at his option, continue to subscribe to any provident or superannuation fund or other scheme for the benefit of employees maintained in connection with the employment which he relinquished immediately before he was called out, embodied or attached for military service, at such rates as were applicable to him under the rules of such fund or scheme;

(b) the employer by whom such person was employed shall continue to credit such person's account in the fund or scheme with the amount subscribed and the interest on the amount in such account in accordance with the rules of the fund or scheme; and

(c) such person may, if the rules of the fund or scheme so permit and in accordance with such rules, withdraw sums from the amount standing at his credit in the fund or scheme; and for the purpose of calculating the amount of contribution or withdrawal admissible, such person's salary shall be deemed to be the salary which he would have received had he not been so called out, embodied or attached.

Territorial Army Enrolment Form

FORM I

(*See* Rules 2, 5, 9, (*a*) and 10 (*a*)

NOTE—*Names should be hand-printed*

Enrolment of

No.....Name.....in the.....Unit

Questions to be put before enrolment	Number
1. What is your name?	1
2. What is your father's/husband's name and address?	2
2A. (*i*) Are you married?	2A(*i*)
(*ii*) If married, how many wives have you got living at present?	2A(*ii*)
(*iii*) If you have more than one wife living, state whether permission of the Government of India to your enrolment has been obtained quoting authority.	2A(*iii*)
3. Are you a citzen of India?	3
4. What is your village, Thana/Police Station/Taluk, Tehsil, District and State?	4
5. What is your (*a*) Post Office?	5(*a*)
(*b*) Telegraph Office?	(*b*)
6. What is (*a*) your nearest Railway station?	6(*a*)
(*b*) the distance from Railway station to your home ?	(*b*)
7. What is your present trade, profession or occupation ? (*See* note 1 below)	7
8. What is your (*a*) nationality?	8(*a*)
(*b*) religion?	(*b*)
9. Where are you employed?	9
10. What are your education qualifications?	10
11. What is your age?.	11
12. Have you ever been convicted by a Criminal Court, and if so, in what circumstances, and what was the sentence?	12
13. Do you now belong to the regular forces, the Reserve or the Indian States Forces or the Nepal State Army?	13
14. Have you ever served in the regular forces, the Reserve or the Indian State Forces or the Nepal State Army? If so, state in which, the period of service and the cause of discharge?	14
15. Are you willing to be enrolled under the Territorial Army Act, 1948?	15

Questions to be put before enrolment	Number
16. In which unit do you desires to be enrolled?	16
17. Are you willing to undergo militray training and to perform military service as specified in the Act and to allow no caste usages to interfere with your military duty?	17
NOTE.—Non-interference with caste usages will be observed exactly as in the case of the regular forces.	
18. Are you willing to serve until discharged as provided in the Act?	18
19. Have you ever previously applied for enrolment under the Act, and if so, w tq what result?	19
20. Have you been dismissed from the Territorial Army?	20
21. Are you willing to be vaccinated or re-vaccinated?	21
22. Are you in receipt of any allowance from Government? If so, on what Account?	2 2

NOTE 1.—In the case of technical personnel a certificate or other documentary evidence of technical proficiency will be required from his employer.

Signature or thumb impression of applicant.....

Witnessed by.....

Declaration on acceptance for enrolment

I solemnly declare that the answers I have given to the questions in this form are true and that no part of them is false, and that I am willing to fulfil the engagement made.

Signature or thumb impression.....

Certified that the applicant understands and agrees to the conditions of enrolment.

Signature of enrolling officer .....

Date of enrolment ....

FORM II

FORM OF OATH

I.....do swear in the name of God that I will bear true faith and allegiance to the Constitution of India as by law established and that I will, as in duty bound, honestly and faithfully serve in the Territorial Army of the Union of India and go wherever ordered, by air, land or sea, and that I will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life.

FORM OF AFFIRMATION

I.....do solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will, as in duty bound, honestly and faithfully serve in the Territorial Army of the Union of India and go wherever ordered, by air, land or sea and that I will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life.

Signature.....

Sworn/duly affirmed before me at.....this.....day of .....19 .

Signature of Attesting Officer.....

EXTENSION OF TERRITORIAL ARMY SERVICE IN LIEU OF TRANSFER TO THE RESERVE

(1) I agree to extend my Territorial Army Service for.....years with liability to transfer to the Reserve until I have completed the total period of Service for which I am liable under this enrolment.

Signature.....

Signed in my presence at.....this.....day of.....19.

Signature of Commanding Officer.....

(2) I agree to extend my Territorial Army Service for..... years with liability to transfer to the Reserve until I have completed the total period of Service for which I am liable under this enrolment.

Signature.....

Signed in my presence at.....this.....day of.....19.

Signature of Commanding Officer.....

(3) I agree to extend my Territorial Army Service for.....years with liability to transfer to the Reserve until I have completed the total period of Service for which I am liable under this enrolment.

Signature.....

Signed in my presence at.....this.....day of 19

Signature of Commanding Officer.....

TRANSFER TO THE RESERVE

Name.....was transferred to the Reserve from (date).

Strike out the line which is not applicable :—

{ He was not given the option of extending his Army Service.

{ He was given the option of extending his Army Service but elected not to exercise it.

Signed at.....this.....day of.....19 .

Signature of Commanding Officer.....

DESCRIPTION ON ENROLMENT

(*See* instructions below)

To be completed by Recruiting Officer

*Date of birth/Apparent age Years.

(a) Chest measurement—

Minimum.....inches.

Maximum.....inches.

Height.....feet.....inches.

Weight.....pounds.

To be completed by Medical Officer.....

I consider him fit/unfit for the Army

**Category (A, B or C),

---

*Should tally with the age given in one of these certificates:—

(*i*) Birth Certificate, (*ii*) High School Examination (or equivalent examination) Certificate, (*iii*) School Leaving Certificate. If a man is not in possession of any of these certificates, the age shall be assessed by the enrolling officer.

**Insert here A, B, C.

Identification marks
or
Cause of unfitness.

Date .....

Place .....

(a) To be completed by the M.O. of the unit in the case of a recruit enrolled at unit headquarters.

(b) The measuring tape should be applied evenly but not lightly, its upper edge touching the lower border of the shoulder blades and its lower edge passing just over the nipples, the arms hanging by the sides. The minimum measurement will be taken after the breath has been expelled from the chest and the maximum when the chest is fully expanded. There should be a difference of at least 2 inches between the minimum and maximum measurements.

SCHEDULE II

(*See* Rule 24)

Modification of the Army Act, 1950

1. Sections 2, 4 to 8, 13 to 17 and 22 to 24 shall be omitted.

2. In clauses (a) and (b) of Section 80, for the words "Twenty-eight days" the words "Ten days" shall be substituted.

3. Subject to the provisions of Section 73 of the Army Act, 1950, the punishment awarded for any of the military offences under the said Act, except those under Sections 34, 37 and 49 thereof shall not exceed a term of imprisonment for a period of six months.

4. Sections 69, 70, 75, 76, 78, clause (j) of Section 80, Sections 98 and 106 shall be omitted.

Modification of Army Rules

1. Chapter II shall be omitted.

2. Chapter III shall be omitted excluding Rules 17 and 18.

3. Rule 183 shall be omitted.

4. In Rule 187, sub-rules (1) and (2) shall be omitted and in sub-rule (3) the following item shall be added, namely—

"(g) Each unit constituted under sub-section (2) of section 3 of the Territorial Army Act, 1948".

5. Rules 189, 190 and 191 shall be omitted.

SCHEDULE II-A

(*See* Rule 24)

Modification of the Army Act, 1950, in so far as it is capable of application to females.

1. All the Sections directed to be omitted in Schedule II shall also be omitted for the purpose of this Schedule.

2. Of Sections 34 to 68 only clauses (a) and (b) of Section 39 and Section 63 shall apply and in their application shall be read as follows :—

'39. Absence without leave—

Any person subject to this Act who commits any of the following offences that is to say—

(a) absents herself without leave ;

(b) without sufficient cause overstays leave granted to her

shall, on conviction by court-martial, be liable to suffer any one or more of the punishments specified in clauses (e) to (l) of Section 71 of the Act.'

'63. Violation of good order and discipline.

Any person subject to this Act who is guilty of an act or omission prejudicial to good order and discipline, shall, on conviction by court-martial, be liable to suffer any one or more of the punishments, specified in clauses (e) to (l) of Section 71 of the Act.'

3. Clauses (a), (b), (c) and (d) of section 80 shall be omitted.

Modification of Army Rules

1. Chapter II shall be omitted.

2. Chapter III shall be omitted excluding Rules 17 and 18.

3. Rule 183 shall be omitted.

4. In Rule 187, sub-rules (1) and (2) shall be omitted and in sub-rule (3) the following item shall be added, namely :—

"(g) Each unit constituted under sub-section (2) of Section 3 of the Territorial Army Act, 1948"

5. Rules 189, 190 and 191 shall be omitted.

SCHEDULE III

Pay and allowances admissible under Rule 23

I. Officers (other than Junior Commissioned Officers)—

(a) Pay of rank and dearness allowance as may be admissible for corresponding ranks of the regular army in accordance with the regulations for the time being in force.

(b) An allowance of Rs. 5 per day for every day of—

(i) actual attendance at recruit, annual or voluntary training in camp, provided that a minimum period of three consecutive days at any one time is spent in camp and provided the officers concerned live, mess and sleep in camp ;

(ii) voluntary training, when such voluntary training consists of attachment to a regular unit or a Territorial Army unit ;

(iii) actual attendance at authorised or local courses of instructions with a regular unit or otherwise.

II. Junior Commissioned Officers, Warrant Officers, Non-Commissioned Officers, Other Ranks and Non-Combatants (Enrolled).—

(a) Pay of rank, appointment, increments of pay, if any, and dearness allowance as may be admissible for corresponding ranks of the regular army in accordance with the regulations for the time being in force. Pay of rank and appointment include basic pay.

(b) Non-commissioned officers employed on the permanent administrative or instructional staff of any Territorial Army unit shall be entitled to good service pay as may be admissible for corresponding ranks of the regular army. Service on such staff only will count for this purpose.

(c) Ration allowance when travelling on duty will be admissible as for the regular army.

SCHEDULE IV

Pay and allowances admissible under rule 23(b)

The pay and allowances admissible under rule 23(b) will be as for the corresponding ranks of the regular army.

ACT No. XIX of 1923.

Indian Official Secrets Act, 1923.

An Act to consolidate and amend the law relating to official secrets.

WHEREAS it is expedient that the law relating to official secrets should be consolidated and amended ;

It is hereby enacted as follows :—

1. Short title, extent and application.—(*1*) This Act may be called the Indian Official Secrets Act, 1923.

(*2*) It extends to the whole of India and applies also to servants of the Government and to citizens of India outside India.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(*1*) any reference to a place belonging to Government includes a place occupied by any department of the Government, whether the place is or is not actually vested in Government ;

(*2*) expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect or description thereof only be communicated or received ; expressions referring to obtaining or retaining any sketch, plan, model, article, note or document, include the copying or causing to be copied of the whole or any part of any sketch, plan, model, article, note, or document ; and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document ;

(*3*) "document" includes part of a document ;

(*4*) "model" includes design, pattern and specimen ;

(*5*) "munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo, or mine intended or adapted for use in war, and any other article, material, or device, whether actual or proposed, intended for such use ;

(*6*) "Office under Government" includes any office or employment in or under any department of the Government or of the Government of the United Kingdom or of any British possession ;

(*7*) "photograph" includes an undeveloped film or plate ;

(*8*) "prohibited place" means—

(a) any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, camp, ship or aircraft belonging to, or occupied by or on behalf of Government, any military telegraph or telephone so belonging or occupied, any wireless or signal station or office so belonging or occupied and any factory, dockyard or other place so belonging or occupied and used for the purpose of building, repairing, making or storing any munitions of war, or any sketches, plans, models or documents relating thereto or for the purpose of getting any metals, oil or minerals of use in time of war ;

(b) any place not belonging to Government where any munitions of war or any sketches, models, plans or documents relating thereto, are being made, repaired, gotten or stored under contract with or with any person on behalf of Government, or otherwise on behalf of Government;

(c) any place belonging to or used for the purpose of Government which is for the time being declared by the Central Government, by notification in the official Gazette, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or damage thereto, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality;

(d) any railway, road, way or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith) or any place used for gas, water or electricity works or other works for purposes of a public character, or any place where any munitions of war or any sketches, models, plans, or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of Government, which is for the time being declared by the Central Government by notification in the official Gazette, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or the destruction or obstruction thereof or interference therewith, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality;

(*9*) "sketch" includes any photograph or other mode of representing any place or thing, and

(*9*A) (Omitted).

(*10*) "Superintendent of Police" includes any police officer of a like or superior rank, and any person upon whom the powers of a Superintendent of Police are for the purposes of this Act conferred by the Central Government.

3. Penalties for spying.—(*1*) If any person for any purpose prejudicial to the safety or interests of the State—

(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or

(b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or

(c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy;

he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years.

(2) On a prosecution for an offence punishable under this section with imprisonment for a term which may extend to fourteen years, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State such sketch, plan, model, article, note, document or information shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State.

4. Communications with foreign agents to be evidence of commission of certain offences.—(1) In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without India, shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated to be or might be, or is intended to be, directly or indirectly, useful to an enemy.

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provision,—

(a) a person may be presumed to have been in communication with a foreign agent if—

(i) he has, either within or without India, visited the address of a foreign agent or consorted or associated with a foreign agent, or

(ii) either within or without India, the name or address of, or any other information regarding a foreign agent has been found in his possession, or has been obtained by him from any other person;

(b) the expression "foreign agent" includes any person who is or has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power, either directly or indirectly, for the purpose of committing an act, either within or without India, prejudicial to the safety or interests of the State, or who has or is reasonable suspected of having, either within or without India, committed, or attempted to commit, such an act in the interests of a foreign power;

(c) any address, whether within or without India, in respect of which it appears that there are reasonable grounds for suspecting it of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, may be presumed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent.

5. Wrongful communication, etc., of information.—(*1*) If any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under Government, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under Government, or as a person who holds or has held a contract made on behalf of Government, or as a person who is or has been employed under a person who holds or has held such an office or contract—

(a) wilfully communicates the code or pass word, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorised to communicate it, or a Court of Justice or a person to whom it is, in the interests of the State, his duty to communicate it; or

(b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; or

(c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article note, document, secret official code or pass word or information;

he shall be guilty of an offence under this section.

(*2*) If any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.

(*3*) If any person having in his possession or control any sketch, plan, model, article, note, document or information, which relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section.

(*4*) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

6. Unauthorise use of uniforms, falsification of reports, forgery, personation and false documents.—(*1*) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State—

(a) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform: or

(b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(c) forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document) or knowingly uses or has in his possession any such forged, altered, or irregular official document; or

(d) personates or falsely represents himself to be, a person holding, or in the employment of a person holding, office under Government, or to be or not to be a person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person, knowingly makes any false statement; or

(e) uses, or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used, made or provided by, any department of the Government, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of Government, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive or counterfeits any such die, seal or stamp, or knowingly uses, or has in his possession or under his control, any such counterfeited die, seal or stamp;

he shall be guilty of an offence under this section.

(2) If any person for any purpose prejudicial to the safety of the State—

(a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof; or

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or pass word so issued or, without lawful authority or excuse, has in his possession any official document or secret official code or pass word issued for the use of some person other than himself, or, on obtaining possession of any official document by finding or otherwise, wilfully fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer; or

(c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale, any such die, seal or stamp as aforesaid;

he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(4) The provisions of sub-section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the State, to any prosecution for an offence under this section relating to the naval, military or air force affairs of Government, or to any secret official code in like manner as they apply,

for the purpose of proving a purpose prejudicial to the safety or interests of the State to prosecutions for offences punishable under that section with imprisonment for a term which may extend to fourteen years.

7. Interfering with officers of the police or members of The Armed Forces of the Union.—(*1*) No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, any police officer, or any member of The Armed Forces of the Union, engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place.

(*2*) If any person acts in contravention of the provisions of this section, he shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

8. Duty of giving information as to commission of offences.—(*1*) It shall be the duty of every person to give on demand to a Superintendent of Police or other police officer not below the rank of Inspector, empowered by an Inspector-General or Commissioner of Police in this behalf, or to any member of The Armed Forces of the Union, engaged on guard, sentry, patrol or other similar duty, any information in his power relating to an offence or suspected offence under section 3 or under section 3 read with section 9 and, if so required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information.

(*2*) If any person fails to give any such information or to attend as aforesaid, he shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

9. Attemps, incitements, etc.—Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment, and be liable to be proceeded against in the same manner as if he had committed such offence.

10. Penalty for harbouring spies.—(*1*) If any person knowingly harbours any person whom he knows or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence under section 3 or under section 3 read with section 9 or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, he shall be guilty of an offence under this section.

(*2*) It shall be the duty of every person having harboured any such person as aforesaid, or permitted to meet or assemble in any premises in his occupation or under his control any such persons as aforesaid, to give on demand to a Superintendent of Police or other police officer not below the rank of Inspector empowered by an Inspector-General or Commissioner of Police in this behalf, any information in his power relating to any such person or persons, and if any person fails to give any such information, he shall be guilty of an offence under this section.

(*3*) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

11. Search warrants.—(*1*) If a Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search-warrant authorising any police officer named therein, not being below the rank of an officer in charge of a

police station, to enter at any time, any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note or document, or anything of a like nature, or anything which is evidence of an offence under this Act having been or being about to be committed which he may find on the premises or place or any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

(*2*) Where it appears to a police officer, not being below the rank of Superintendent, that the case is one of great emergency, and that in the interests of the State immediate action is necessary, he may by a written order under his hand give to any police officer the like authority as may be given by the warrant of a Magistrate under this section.

(*3*) Where action has been taken by a police officer under sub-section (2) he shall, as soon as may be, report such action, in a Presidency town to the Chief Presidency Magistrate, and outside such town to the District or Subdivisional Magistrate.

12. Power to arrest.—Notwithstanding anything in the Code of Criminal Procedure, 1898 (V of 1898),—

(a) an offence punishable under section 3 or under section 3 read with section 9 with imprisonment for a term which may extend to fourteen years shall be a cognizable and non-bailable offence;

(b) an offence under clause (a) of sub-section (*1*) of Section 3 shall be a cognizable and bailable offence; and

(c) every other offence under this Act shall be a non-cognizable and bailable offence, in respect of which a warrant of arrest shall ordinarily issue in the first instance.

13. Restriction on trial of offences.—(*1*) No Court (other than that of a Magistrate of the first class specially empowered in this behalf by the appropriate Government) which is inferior to that of a District or Presidency Magistrate shall try any offence under this Act.

(*2*) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that Court, notwithstanding that it is not a case exclusively triable by that Court.

(*3*) No Court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the appropriate Government, or some officer empowered by the appropriate Government in this behalf:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed and any such person may be remanded in custody or on bail, notwithstanding that such complaint has not been made, but no further or other proceedings shall be taken until such complaint has been made.

(*4*) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in India in which the offender may be found.

(5) In this Section, the appropriate Government means—

(a) in relation to any offences under section 5 not connected with a prohibited place or with a foreign power, the State Government; and

(b) in relation to any other offence, the Central Government.

14. Exclusion of public from proceedings.—In addition and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a Court against any person for an offence under this Act or the proceedings on appeal, or in the course of the trial of a person under this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing, the Court may make an order to that effect, but the passing of sentence shall in any case take place in public.

15. Offences by companies, etc.—Where the person guilty of an offence under this Act is a company or corporation, every director and officer of the company or corporation with whose knowledge and consent the offence was committed shall be guilty of the like offence.

16. (Section 16 repealed.)

ACT No. IV of 1925

The Indian Soldiers (Litigation) Act, 1925

An Act to consolidate and amend the law to provide for the special protection in respect of civil and revenue litigation of Indian soldiers serving under special conditions.

WHEREAS it is expedient to consolidate and amend the law to provide for the special protection in respect of civil and revenue litigation of Indian soldiers serving under special conditions; It is hereby enacted as follows :—

1. Short title, extent and commencement.—(*1*) This Act may be called the Indian Soldiers (Litigation) Act, 1925.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on the first day of April, 1925.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(a) "Court" means a Civil or Revenue Court ;

(b) "Indian soldier" means any person subject to the Army Act, 1950 (46 of 1950), or the Air Force Act, 1950 (45 of 1950);

(c) "prescribed" means prescribed by rules made under this Act ; and

(d) "proceeding" includes any suit, appeal or application.

3. Circumstances in which an Indian soldier shall be deemed to be serving under special conditions.—For the purposes of this Act, an Indian soldier shall be deemed to be or, as the case may be, to have been serving—

(a) under special conditions—when he is or has been serving under war conditions, or overseas, or at any place beyond India ;

(b) under war conditions—when he is or has been, at any time during the continuance of any hostilities declare by the Central Government by notification in the official Gazette to constitute a state of war for the purposes of this Act or at any time during a period of six months thereafter,—

(i) serving out of India,

(ii) under orders to proceed on field service,

(iii) serving with any unit which is for the time being mobilised, or

(iv) serving under conditions which, in the opinion of the prescribed authority, preclude him from obtaining leave of absence to enable him to attend a Court as a party to any proceeding, or when he is or has been at any other time serving under conditions service under which has been declared by the Central Government by notification in the Official Gazette to be service under war conditions ; and

(c) overseas —when he is or has been serving in any place outside India (other than Ceylon) the journey between which and India is ordinarily undertaken wholly or in part by sea.

Explanation.—For the purposes of this section and with effect from the 3rd day of September, 1939, a soldier who is or has been a prisoner of war shall be deemed to be or to have been serving under war conditions.

NOTE (*b*) (*iv*).—Prescribed authority. See Rule 3 of the Indian Soldiers (Litigation) Rules, 1938.

4. Particulars to be furnished in plaints applications or appeals to Court.—If any person presenting any plaint, application or appeal to any Court has reason to believe that any adverse party in an Indian soldier who is serving under special conditions, he shall state the fact in his plaint, application or appeal.

5. Power of Collector to intervene in case of unrepresented Indian soldier.—If any Collector has reason to believe that any Indian soldier, who ordinarily resides or has property in his district and who is a party to any proceeding pending before any Court, is unable to appear therein, the Collector may certify the facts in the prescribed manner to the Court.

NOTE.—Prescribed manner. See Rule 4 of the Indian Soldiers (Litigation) Rules, 1938, and Form A of the Schedule annexed thereto.

6. Notice to be given in case of unrepresented Indian soldier.—(*1*) If a Collector has certified under section 5, or if the Court has reason to believe, that an Indian soldier, who is a party to any proceeding pending before it, is unable to appear therein, and if the soldier is not represented by any person duly authorised to appear, plead or act on his behalf, the Court shall suspend the proceeding, and shall give notice thereof in the prescribed manner to the prescribed authority:

Provided that the Court may refrain from suspending the proceeding and issuing the notice if—

(a) the proceeding is a suit, appeal or application instituted or made by the soldier, alone or conjointly with others with the object of enforcing a right of pre-emption, or

(b) the interests of the soldier in the proceeding are, in the opinion of the Court, either identical with those of any other party to the proceeding and adequately represented by such other party or merely of a formal nature.

(*2*) If it appears to the Court before which any proceeding is pending that an Indian soldier though not a party to the proceeding is materially concerned in the outcome of the proceeding, and that his interests are likely to be prejudiced by his inability to attend, the Court may suspend the proceeding and shall give notice thereof in the prescribed manner to the prescribed authority.

NOTE.—Prescribed manner. See Rule 5 of the Indian Soldiers (Litigation) Rules, 1938, and Form B of the Schedule annexed thereto.

Prescribed authority. See Rule 3 *ibid.*

7. Postponement of proceedings.—If, on receipt of a notice under section 6 the prescribed authority certifies in the prescribed manner to the Court in which the proceeding is pending that the soldier in respect of whom the notice was given in serving under special conditions, and that a postponement of the proceeding in respect of the soldier is necessary in the interests of justice, the Court shall thereupon postpone the proceeding in respect of the soldier for the prescribed period, or, if no period has been prescribed, for such period as it thinks fit.

NOTE.—Prescribed authority. See Rule 3 of the Indian Soldiers (Litigation) Rules, 1938.

Prescribed manner. See Rule 5 *ibid* and Form C of the Schedule annexed thereto.

Prescribed period. See Rule 7 *ibid.*

8. Court may proceed when no certificate received.—If, after issue of a notice under section 6, the prescribed authority either certifies that the soldier is not serving under special conditions or that such postponement is not necessary, or fails to certify, in the case of a soldier resident in the district in which the

Court is situated, within two months or, in any other case, within three months from the date of the issue of the notice that such postponement is necessary, the Court may, if it thinks fit, continue the proceeding.

NOTE.—Prescribed authority. See Rule 3 of the Indian Soldiers (Litigation) Rules, 1938.

9. Postponement of proceedings against Indian soldier on leave.—When any document purporting to be signed by the Commanding Officer of an Indian soldier who is a party to any proceeding is produced by or on behalf of the soldier before the Court in which the proceeding is pending and is to the effect that the soldier—

(a) is on leave of absence for a period not exceeding two months, and is on the expiration of his leave to proceed on service under special conditions, or

(b) is on sick leave for a period not exceeding three months, and is on the expiration of his leave to rejoin his unit with a view to proceeding on service under special conditions,

the proceeding in respect of such soldier may, in any case such as is referred to in the proviso to sub-section (1) of Section 6, and shall, in any other case, be postponed in the manner provided in section 7.

10. Power to set aside decrees and orders passed against an Indian soldier serving under war or special conditions.—(*1*) In any proceeding before a Court in which a decree or order has been passed against any Indian soldier whilst he was serving under any special conditions, the soldier or, if he is dead, his legal representative may apply to the Court which passed the decree or order for an order to set aside the same, and, if the Court, after giving an opportunity to the opposite party of being heard, is satisfied that the interests of justice require that the decree or order should be set aside as against the soldier, the Court shall, subject to such conditions, if any, as it thinks fit to impose, make an order accordingly.

(*2*) The period of limitation for an application under sub-section (*1*) shall be ninety days from the date of the decree or order, or, where the summons or notice was not duly served on the soldier in the proceeding in which the decree or order was passed, from the date on which the applicant had knowledge of the decree or order; and the provisions of section 5 of the Indian Limitation Act, 1908, (IX of 1908), shall apply to such applications.

(*3*) When the decree or order in respect of which an application under sub-section (*1*) is made is of such a nature that it cannot be set aside as against the soldier only, it may be set aside as against all or any of the parties against whom it has been made.

(*4*) Where a Court sets aside a decree or order under this section, it shall appoint a day for proceeding with the suit, appeal or application, as the case may be.

11. Modification of law of limitation where Indian soldier or his legal representative is a party (IX of 1908).—In computing the period of limitation prescribed by sub-section (*2*) of section 10 of this Act, the Indian Limitation Act, 1908, or any other law for the time being in force, for any suit, appeal or application to a Court, any party to which is or has been an Indian soldier, or is the legal representative of an Indian soldier, the period during which the soldier has been serving under any special conditions, and, if the soldier has died while so serving, the period from the date of his death to the date on which official intimation thereof was sent to his next of kin by the authorities in India, shall be excluded:

Provided that this section shall not apply in the case of any suit, appeal or application instituted or made with the object of enforcing a right of pre-emption except where the said right accrues in such circumstances, and is in respect of agricultural land and village immovable property situated in any such area, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

12. Power of Court to refer questions to prescribed authorities.—If any Court is in doubt whether, for the purposes of section 10 or section 11, an Indian soldier is or was at any particular time serving under special conditions, or has died while so serving, or as to the date of such death or as to the date on which official intimation of such death was sent to his next of kin by the authorities in India, the Court may refer the point for the decision of the prescribed authority, and the certificate of that authority shall be conclusive evidence on the point.

NOTE.—Prescribed authority. See Rule 8 of the Indian Soldiers (Litigation) Rules 1938.

13. Rule making Power.—The Central Government, after consulting the High Court concerned, may, by notification in the Official Gazette, make rules to provide for all or any of the following matters, namely :—

(a) the manner and form in which any notice or certificate under this Act shall be given ;

(b) the period for which proceedings or any class of proceedings shall be postponed under section 7 ;

(c) the persons who shall be the prescribed authorities for the purposes of this Act ;

(d) any other matter which is to be or may be prescribed ; and

(e) generally, any matters incidental to the purposes of this Act.

NOTE.—The Rules framed by the Central Government under this section were published in Defence Department Notification No. 455, dated the 14th May, 1938.

14. Power to apply the provisions of the Act to other persons in the service of the Government.—(*1*) As respects the State Public Services, the State Government, and in other cases, the Central Government may, by notification in the Official Gazette, direct that all or any of the provisions of this Act shall apply to any other class of persons in the service of Government specified in such notification in the same manner as they apply to Indian soldiers.

(*2*) Where, under this section, the State Government has directed that all or any of the provisions of this Act shall apply to any class of persons in the service of Government, the powers vested in the Central Government by section 3 and section 13 shall be exercised in respect of that class of persons by the State Government.

NOTE.—The Act has been applied to the following classes of persons:—

(*a*) Indian personnel of the Hong Kong-Singapore Brigade, Royal Artillery, by Home Department Notification No. D. 3877, dated the 7th December, 1925 :

(*b*) senior officers of the Indian Territorial Force, by Defence Department Notification No. 251, dated the 24th February, 1940 ;

(*c*) Indian seamen in the service of His Majesty, by Defence Department Notification No. 1168, dated the 10th August, 1940 ;

(*d*) persons who are subject to the Burma Army Act and to persons belonging to any force, or forces, to which the provisions of the Burma Army Act have been applied by notification under section 5 of that Act, by War Department Notification No. 790, dated the 12th June, 1943, in supersession of Defence Department Notification No. 387, dated the 28th February, 1942 ;

(*e*) persons of Indian domicile who are subject to the Army Act and the Air Force Act, by War Department Notification No. 653, dated the 15th May, 1943 ; and

(*f*) persons who, not being members of His Majesty's Forces, are attached to or employed by the Royal Indian Navy, by War Department Notification No. 1296, dated the 25th September, 1943.

14A. (Repealed).

15. (Repealed).

THE INDIAN SOLDIERS (LITIGATION) RULES, 1938.

Simla, the 14th May, 1938.

No. 455.—In exercise of the powers conferred by section 13 of the Indian Soldiers (Litigation) Act, 1925 (IV of 1925), the Central Government, after consulting the High Courts concerned, is pleased to make the following rules, namely :—

1. These rules may be called the Indian Soldiers (Litigation) Rules, 1938.

2. (*1*) In these rules, "the Act" means the Indian Soldiers (Litigation) Act, 1925 (IV of 1925).

(*2*) All words used herein and defined in the Act shall be deemed to have the meanings respectively attributed to them by the Act.

3. The prescribed authority for the purposes of sub-clause (iv) of clause (b) of section 3 and sections 6, 7 and 8 of the Act shall be the Officer Commanding the unit or the Depôt of the unit to which the soldier belongs.

4. The certificate given by a Collector under section 5 of the Act shall be in Form A of the Schedule.

5. The notice given by the Court under section 6 of the Act shall be in Form B of the Schedule and shall be sent to the prescribed authority care of the General Officer Commanding-in-Chief of the Command in which the Court is situated, and the certificate of the prescribed authority under section 7 of the Act, shall be in Form C of the Schedule.

6. If at any time it appears to the prescribed authority that the circumstances in which he certified to the Court under section 7 of the Act that a postponement of the proceedings was necessary in the interests of justice, no longer exist, he shall forthwith certify to the Court to that effect in Form D of the Schedule.

7. On receipt of a certificate from the prescribed authority under section 7 of the Act that a postponement of the proceedings is necessary in the interests of justice, the Court shall postpone the proceedings until the receipt of a certificate in Form D from the prescribed authority, or until the soldier is represented in the proceedings by some person duly authorised to appear, plead or act in his behalf.

8. The prescribed authority for the purposes of section 12 of the Act shall be the General Officer Commanding-in-Chief of the Command in which the Court is situated.

SCHEDULE

FORM A

(*See* rule 4)

Collector's certificate under section 5 of the Indian Soldiers (Litigation) Act, 1925.

From

The Collector,

District ——————————

——————————

To

——————————

——————————

——————————

In *re*..... No. ....of 19.....

versus

No. , dated

Sir,

I have the honour to certify under section 5 of the Indian Soldiers (Litigation) Act, 1925 (IV of 1925), that I have reason to believe that..... ....son of,.....,

who is an Indian soldier ordinarily residing / having property in my district and who is a party in the above-mentioned (enter suit, appeal, application or other proceedings), now pending in (enter name of court), is unable to appear therein.

Yours faithfully,

Collector.

NOTES.—(1) This certificate should be sent by post in a registered cover or by hand and an acknowledgment should be obtained for it.

(2) It should be addressed, in the case of a High Court, to the Registrar of the Court, or in the case of a Board of Revenue to the Secretary of such Board, or in the case of a Financial Commissioner, to the Clerk of the Court, or in other cases to the Presiding Officer of the Court.

FORM B

(*See* rule 5)

Notice under section 6 of the Indian Soldiers (Litigation) Act, 1925.

In the .....

No. ..... of .....

versus

To

The Officer Commanding (enter name of unit. / depot of unit).

Care of the General Officer Commanding-in-Chief.
..... Command.

Please take notice that [upon the certificate of the Collector of ——— under section 5 of the Indian Soldiers (Litigation) Act, 1925 (IV of 1925)] [having had reason to believe]* that ———, son of ———, an Indian soldier, who is a party in the above-mentioned proceeding now pending in this Court and is not represented by any person duly authorized to appear, plead or act on his behalf, is unable to appear therein, this Court has, under section 6 of the said Act, suspended the proceeding. If, within the period prescribed in section 8 of the said Act, no certificate is received from you under section 7 thereof, the Court will, if it thinks fit, continue the proceeding.

Given under my hand and the seal of the Court, this the ——— day of ———19 .

Presiding officer of the Court.

Registrar.

NOTE.—This notice should be sent by post in a registered cover, or by hand, and an acknowledgment should be obtained for it.

*One of the two portions within the square brackets should, according to the circumstances of each case, be penned through.

FORM C.

(*See* rule 5)

Certificate under section 7 of the Indian Soldiers (Litigation) Act, 1925.

From

The Officer Commanding,

(enter name of $\frac{\text{unit.}}{\text{depot of unit.}}$).

To

_____

_____

_____

... .No.....of 19 .

_____

versus

_____

No. , dated

Sir,

I have the honour to acknowledge receipt of your notice, dated , under section 6 of the Indian Soldiers (Litigation) Act, 1925 (IV of 1925), in the above-mentioned proceeding, and to certify under section 7 of the said Act that ....., son of ....., in respect of whom the above mentioned notice has been given, is serving under special conditions and that a postponement of the proceeding in respect of that soldier is necessary in the interests of justice.

Yours faithfully,

Officer Commanding.

NOTES.—(1) This certificate should be sent by post in a registered cover, or by hand, and an acknowledgment should be obtained for it.

(2) It should be addressed in the case of a High Court, to the Registrar of the Court, or in the case of a Board of Revenue to the Secretary of such Board, or in the case of a Financial Commissioner, to the Clerk of the Court, or in other cases to the Presiding Officer of the Court.

FORM D

(*See* rule 6)

Certificate under rule 6 of the Indian Soldiers (Litigation) Rules, 1938.

From

_____

_____

_____

To

_____

_____

In re .....No. ..... of 19 .

_____

versus

_____

No. , dated

Sir,

I have the honour to invite a reference to my letter No. , dated , and to certify under rule 6 of the Indian Soldiers (Litigation) Rules, 1938, that circumstances no longer exist for the postponement of the above-mentioned (enter suit, appeal, application or other proceeding), now pending in (enter name of court), wherein ....., son of ....., an Indian soldier, is a party.

Yours faithfully,

Officer Commanding.

NOTES.—(1) This certificate should be sent by post in a registered cover, or by hand, and an acknowledgment should be obtained for it.

(2) It should be addressed, in the case of a High Court, to the Registrar of the Court, or in the case of a Board of Revenue to the Secretary of such Board, or in the case of a Financial Commissioner, to the Clerk of the Court, or in other cases to the Presiding Officer of the Court.

THE INDIAN TOLLS (ARMY AND AIR FORCE) ACT, 1901

Act No. 2 of 1901

An Act to amend the law relating to the exemption from tolls of persons and property belonging to the Army or Air Force.

It is hereby enacted as follows :—

1. Short title, extent and commencement. (*1*) This Act may be called the Indian Tolls (Army and Air Force) Act, 1901.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on the force on the first day of April, 1901.

2. Definitions. In this Act, unless there is anything repugnant in the subject or context,—

(a) the expression "authorised followers" means persons other than officers, soldiers or airmen, who are employed by, or are in the service of, the Forces or Corps concerned, or are in the service of any officer, soldier or airman of such Forces or Corps ;

(b) "carriage" means a vehicle for carriage or haulage other than one specially constructed for use on rails ;

(c) "ferry" includes every bridge and other thing which is a ferry within the meaning of any enactment authorising the levy of tolls on ferries, but does not include any ferry or other thing which is included in the definition of "railway" in section 3 of the Indian Railways Act, 1890 (9 of 1890) ;

(d) the expression "the regular forces" means "the regular Army" as defined in clause (xxi) of section 3 of the Army Act, 1950, (46 of 1950) and includes the "Air Force" as defined in clause (iv) of section 4 of the Air Force Act, 1950 (45 of 1950);

(e) "horse" includes a mule and any beast of whatever description which is used for burden or draught or for carrying persons;

(f) the expression "Irregular Corps" means any force (other than the Regular Forces or the Territorial Army or the National Cadet Corps) raised and maintained in India under the authority of the Central Government, or any other force which may be notified in this behalf by order published in the Official Gazette;

(g) the expression "Indian Reserve Forces" means the forces constituted by the Indian Reserve Forces Act, 1888 (5 of 1888) and includes officers belonging to the Army in India Reserve of Officers or to the Regular Reserve of Officers and members of the Indian Air Force Volunteer Reserve when subject to military or air force law, as the case may be;

(h) "landing-place" includes a pier, wharf, quay, jetty and a stage, whether fixed or floating;

(i) "public authority" means the Central Government or a State Government or a local authority; and, so far as regards tolls levied by a railway company under section 4 of the Indian Guaranteed Railways Act, 1879, (42 and 43 Vict. c. 41) or section 51 of the Indian Railways Act 1890 (9 of 890) includes such a railway company; and

(j) "tolls" includes duties, dues, rates, rents, fees and charges, but does not include customs duties levied under the Indian Tariff Act, 1934, 32 of 1934) octori duties or town duties on the import of goods, or fares paid for the conveyance of passengers on a tramway.

3. **Exemptions from tolls.**—The following persons and property, namely :—

(a) all officers, soldiers and airmen of—

(i) the Regular Forces,

(ii) any Irregular Corps,

(b) all members of the Territorial Army or of the National Cadet Corps when on duty or when proceeding to or returning from duty,

(c) all officers, soldiers and airmen of the Indian Reserve Forces when proceeding from their place of residence on being called out for service, training, or muster or when proceeding back to their place of residence after such service, training or muster,

(d) all authorized followers of—

(i) the Regular Forces,

(ii) the Territorial Army or the National Cadet Corps,

(iii) any Irregular Corps,

(e) all members of the families of officers, soldiers, airmen or authorized followers of—

(i) the Regular Forces, or

(ii) any Irregular Corps,

when accompanying any body of troops, or any officer, soldier, airman or authorized follower thereof on duty or on the march.

(f) all prisoners under military or air-force escort,

(g) the carriages, horses, and baggage, and the persons (if any) employed in driving the carriages or in carrying the baggage, of any persons exempted under any of the foregoing clauses, when such carriages, horses, baggage, or persons accompanying the persons so exempted under the circumstances mentioned in those clauses respectively,

(h) all carriages and horses belonging to Government or employed in the Indian military or air-force service and all persons in charge of or accompanying the same, when conveying any such persons as hereinbefore in this section mentioned or when conveying baggage or stores, or when returning, unladen from conveying such persons, baggage or stores,

(i) all carriages and horses, when moving under the orders of military or air-force authority for the purpose of being employed in the Indian military or air-force service,

(j) all animals accompanying any body of troops which are intended to be slaughtered for food or kept for any purpose connected with the provisioning of such troops, and

(k) all persons in charge of any carriage, horse or animal exempted under any of the foregoing clauses when accompanying the same under the circumstances mentioned in those clauses respectively,

shall be exempted from payment of any tolls—

(i) on embarking or disembarking, or on being shipped or landed, from or upon any landing-place, or

(ii) in passing along or over any turnpike or other road or bridge, or

(iii) on being carried by means of any ferry,

otherwise demandable by virtue of any Act, Ordinance, Regulation, order or direction of any legislature or other public authority in India:

Provided that nothing in this section shall exempt any boats, barges or other vessels employed in conveying the said persons or property along any canal from payment of tolls in like manner as other boats, barges and vessels.

Explanation.—The persons or property exempted under clauses (d), (e), (g) and (j) shall be deemed to accompany the Forces, troops, persons or property concerned, when the move of the former is the direct result of, or is connected with the move of the latter, irrespective of the interval of space and time between the two moves.

4. Tolls on vessels transporting troops and baggage etc., of troops embarked or disembarked.—(1) No tolls shall be leviable by any local authority in respect of—

(a) any vessel employed by the Central Government solely for the transport of troops, or

(b) the horses, baggage or other effects of any troops embarking or disembarking at any port, or

(c) carriages belonging to Government or employed in the Indian military or air force service embarking or disembarking at any port.

(2) In respect of all such vessels or troops, their families, their horses, baggage, and their effects, or any such carriages as aforesaid, the local authority concerned shall, in addition to its duties in the embarking and disembarking of the same, perform and supply all such reasonable services and accommodation as may, from time to time, be required by the Central Government, and shall receive payment for all such services and accommodation on such terms and for such periods as may, from time to time, be determined by the Central Government in consultation with such local authority.

5. Penalty.—Any person who demands and receives any toll in contravention of the provisions of section 3 or section 4 shall be punishable with fine which may extend to fifty rupees.

6. Compensation.—(1) If any owner or lessee, or any Company, railway administration or local authority claims compensation for any loss alleged to have been incurred owing to the operation of this Act, the claim shall be submitted to the Central Government.

(2) On receiving any such claim, the Central Government shall pass such order thereon as justice requires, and shall give all necessary directions for the purpose of ascertaining the facts of the case and of assessing the compensation, if any, to be paid.

7. Rules.—(1) The Central Government may make rules to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Central Government may make rules providing for the form of passes to be given to persons or bodies of persons or in respect of property entitled to exemption from the payment of tolls under this Act.

(3) The power to make rules under this section is subject to the condition of the rules being made after previous publication.

(4) All rules made under this section shall be published in the Official Gazette and, on such publication, shall have effect as if enacted by this Act.

8. Repeals.—Rep. by the Repealing and Amending Act, 1914 (10 of 1914) s. 3 and Sch. II.

The Schedule.—Enactments repealed. Rep. by the Repealing and Amending Act, 1914 (10 of 1914) s. 3 and Sch. II.

INDIAN TOLLS (ARMY AND AIR FORCE) RULES

No. 1580. In exercise of the powers conferred by sub-sections (1) and (2) of section 7 of the Indian Tolls (Army and Air Force) Act, 1901 (II of 1901), and in supersession of the rules published with the notification of the Government of India in the late Military Department No. 1093, dated the 13th November 1903, the Central Government is pleased to make the following rules, the same having been previously published as required by sub-section (3) of the said section, namely :—

1. (*1*) These rules may be called the Indian Tolls (Army and Air Force) Rules, 1942.

(*2*) They extend to the whole of India.

2. Save as hereinafter otherwise provided in rule 3, where exemption from the payment of tolls is claimed under the Indian tolls (Army and Air Force) Act, 1901 (II of 1901), in respect of any person or body of persons or any property, a pass, in the Form annexed, shall be presented on the demand of the person authorized to demand the tolls.

3. (*1*) No passes shall be required in the case of—

(a) Officers, soldiers and airmen of—

(i) the Regular Forces,

(ii) any Irregular Corps, or

(iii) Armed Forces maintained by Part B States, in unifor mwhen on duty or on the march;

(b) members of the Territorial Army or of the National Cadet Corps in uniform when on duty or when proceeding to or returning from duty ;

(c) officers, soldiers and airmen of the Indian Reserve Forces in uniform when proceeding from their place of residence on being called out for service, training, or muster or when proceeding back to their place of residence after such service, training or muster;

(d) authorized followers of—

(i) the Regular Forces,

(ii) the Territorial Army or the National Cadet Corps,

(iii) any Irregular Corps, or

(iv) Armed Forces maintained by Part B States, when they accompany any body of such Forces or Corps on the march;

(e) members of the families of officers, soldiers, airmen or authorized followers of—

(i) the Regular Forces, or

(ii) any Irregular Corps,

when accompanying any body of troops, on duty or on the march;

(f) prisoners under military or air force escort in uniform;

(g) the carriages, horses, and baggage, and the persons (if any) employed in driving the carriages or in carrying the baggage, of any persons exempted

under any of the foregoing clauses, when such carriages, horses, baggage, or persons accompany the persons so exempted under the circumstances mentioned in those clauses, respectively;

(h) carriages and horses belonging to the Government or employed in the Indian military or air force service and all persons in charge of or accompanying the same, when conveying any such persons as hereinbefore in this rule mentioned, or when conveying baggage or stores;

(i) animals accompanying any body of troops which are intended to be slaughtered for food or kept for any purpose connected with the provisioning of such troops; and

(j) persons in charge of any carriage, horse or animal exempted under any of the foregoing clauses when accompanying the same under the circumstances mentioned in those clauses respectively.

(2) No passes shall be required in the case of officers of the Regular Forces, the Territorial Army, the National Cadet Corps or of any Irregular Corps or of any Armed Forces maintained by Part B States, when travelling on duty, though not in uniform :

Provided that the officer so travelling shall furnish in writing to the person authorized to demand toll his name, rank and a statement that he is travelling on duty.

4. Every pass shall be signed by the Commanding Officer of the regiment, corps, unit, or detachment concerned, or by a station staff officer.

FORM OF PASS

[*Issued under the Indian Tolls (Army and Air Force) Act* 1901 (*II of* 1901)]

This pass is issued subject to the rules on the reverse in respect of the persons and property specified in the annexed schedule, and exempt from the payment of tolls on the occasion of :—

Eambarking or being shipped at
Disembarking or being landed at
Proceeding from to
It will remain in force from up to the 19 .

SCHEDULE

Number	Name of Corps	Remarks
PART I		
PERSONS		
Officers		
Soldiers		
Airmen		
Members of the Territorial Army or the National Cadet Corps.		

	Number	Name of Corps	Remarks
Authorized followers of Forces or Corps.			
Members of families of officers, soldiers, airmen or authorized followers.			
Persons in charge of carriages, horses, slaughter animals or baggage.			
Prisoners			

PART II

PROPERTY

Horses as defined in the Act*			
Carriages			
Slaughter animals			
Baggage			

*"Horse" includes a mule and any beast of whatever description which is used for burden or draught or for carrying persons. Section 2, clause (e).

Place-

Date–

(Sd)

Commanding Officer or
Station Staff Officer at

Endorsement

[Here enter rules 1 to 3]

ACT No. XLV of 1860

THE INDIAN PENAL CODE

CHAPTER I

INTRODUCTION

Preamble.—WHEREAS it is expedient to provide a general Penal Code for India, it is enacted as follows :—

1. Title and extent of operation of the Code.—This Act shall be called the Indian Penal Code, and shall extend to the whole of India except the State of Jammu and Kashmir.

2. Punishment of offences committed within the said territories.—Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within India.

3. Punishment of offences committed beyond, but which by law may be tried within the territories.—Any person liable, by any Indian Law to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India.

4. Extension of Code to extra territorial offences.—The provisions of this Code apply also to any offence committed by—

(*1*) any citizen of India in any place without and beyond India;

(*2*) any person on any ship or aircraft registered in India wherever it may be.

Explanation.— In this section the word "offence" includes every act committed outside India, which, if committed in India, would be punishable under this Code.

Illustration

A, who is a citizen of India, commits a murder in Uganda. He can be tried and convicted of murder in any place in India in which he may be found.

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CHAPTER II

GENERAL EXPLANATIONS

6. Definitions in the Code to be understood subject to exceptions.—Throughout this Code every definition of an offence, every penal provision and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision, or illustration.

Illustrations.

(*a*) The sections in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(*b*) A, a police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it".

7. Sense of expression once explained.—Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

8. Gender.—The pronoun "he" and its derivatives are used of any person, whether male or female.

9. Number.—Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

10. "Man" "Woman".—The word "man" denotes a male human being of any age : the word "woman" denotes a female human being of any age.

11. "Person".—The word "person" includes any Company or Association, or body of persons, whether incorporated or not.

12. "Public".—The word "public" includes any class of the public or any community.

13. "Queen".—Repealed.

14. "Servant of Government".—The words "servant of Government" denote any officer or servant continued, appointed or employed in India by or under the authority of Government.

15. Repealed.

16. Repealed.

17. "Government".—The word "Government" denotes the Central Government or the Government of a State.

18. "India".—"India" means the territory of India excluding the State of Jammu and Kashmir.

19. "Judge".—The word "Judge" denotes not only every person who, is officially designated as a Judge, but also every person—

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

(*a*) A Collector exercising jurisdiction in a suit under Act X of 1859, is a Judge.

(*b*) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment with or without appeal, is a Judge.

(*c*) A member of a panchayat which has power, under Regulation VII, 1816, of the Madras Code to try and determine suits, is a Judge.

(*d*) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

20. "Court of Justice".—The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration.

A panchayat acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

21. "Public servant".—The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely :—

First.—Repealed;

Second.—Every Commissioned Officer in the Military, Naval or Air Forces of India;

Third.—Every Judge ;

Fourth.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court; and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth.—Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.—Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience ;

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government, and every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty;

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh.—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election.

Illustration.

A Municipal Commissioner is a public servant.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Explanation 3.—The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by or under, any law prescribed as by election.

22. "Moveable property".—The words "moveable property" are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

23. "Wrongful gain".—"Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss".—"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully, Losing wrongfully.—A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

24. "Dishonestly".—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

25. "Fraudulently".—A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.

26. "Reason to believe".—A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing, but not otherwise.

27. Property in possession of wife, clerk or servant.—When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation.—A person employed temporarily or on a particular occasion in the capacity of a clerk, or servant, is a clerk or servant within the meaning of this section.

28. "Counterfeit".—A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

Explanation 1.—It is not essential to counterfeiting that the imitation should be exact.

Explanation 2.—Where a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.

29. "Document".—The word "document" denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.—It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

30. "Valuable security".—The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration.

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security".

31. "A will".—The words "a will' denote any testamentary document.

32. Words referring to acts include illegal omissions.—In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

33. "Act" "Omission".—The word "act" denotes as well a series of acts as a single act : the word "omission" denotes as well a series of omissions as a single omission.

34. Acts done by several persons in furtherance of common intention.—When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

35. When such an act is criminal by reason of its being done with a criminal knowledge or intention.—Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

36. Effect caused partly by act and partly by omission.—Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

37. Co-operation by doing one of several acts constituting an offence.—When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations.

(*a*) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(*b*) A and B are joint jailors, and, as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(*c*) A, a jailor, has the charge of Z, a prisoner. A intending to cause Z's death, illegally omits to supply Z with food ; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not co-operate with B, A is guilty only of an attempt to commit murder.

38. Persons concerned in Criminal act may be guilty of different offences.—Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B having ill-will towards Z and intending to kill him, and not having been subject to the provocations, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

39. "Voluntarily".—A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration.

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating robbery, and thus causes the death of a person. Here, A may not have intended to cause death, and may even be sorry that death has been caused by his act: yet, if he knew that he was likely to cause death, he has caused death voluntarily.

40. "Offence".—Except in the chapters and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, Chapter VA and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined:

And in sections 141, 176, 177, 201, 202, 212, 216 and 441 the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

41. "Special law".—A "special law" is a law applicable to a particular subject.

42. "Local law".—A "local law" is a law applicable only to a particular part of India.

43. "Illegal" "Legally bound to do".—The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action : and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

44. "Injury".—The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

45. "Life".—The word "life" denotes the life of a human being, unless the contrary appears from the context.

46. "Death".—The word "death" denotes the death of a human being unless the contrary appears from the context.

47. "Animal".—The word "animal" denotes any living creature, other than a human being.

48. "Vessel".—The word "vessel" denotes anything made for the conveyance by water of human beings or of property.

49. "Year" "Month".—Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

50. "Section".—The word "section" denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.

51. "Oath".—The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

52. "Good faith".—Nothing is said to be done or believed in good faith which is done or believed without due care and attention.

52A. "Harbour".—Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.

CHAPTER III

OF PUNISHMENTS

53. "Punishments".—The punishments to which offenders are liable under the provisions of this Code are,—

First.—Death;

Secondly.—Imprisonment for life;

Thirdly.—Repealed;

Fourthly.—Imprisonment, which is of two descriptions, namely:—

(1) Rigorous, that is with hard labour;

(2) Simple;

Fifthly.—Forfeiture of property;

Sixthly.—Fine.

53A. Construction of reference to transportation.—(*1*) Subject to the provisions of sub-section (2) and sub-section (3), any reference to "transportation for life" in any other law for the time being in force or in any instrument or order having effect by virtue of any such law or of any enactment repealed shall be construed as a reference to "imprisonment for life".

(*2*) In every case in which a sentence of transportation for a term has been passed before the commencement of the Code of Criminal Procedure (Amendment) Act, 1955, the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term.

(*3*) Any reference to transportation for a term or to transportation for any shorter term (by whatever name called) in any other law for the time being in force shall be deemed to have been omitted.

(*4*) Any reference to "transportation" in any other law for the time being in force shall,—

(a) if the expression means transportation for life, be construed as a reference to imprisonment for life;

(b) if the expression means transportation for any shorter term, be deemed to have been omitted.

54. Commutation of sentence of death.—In every case in which sentence of death shall have been passed, the appropriate Government may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

55. Commutation of sentence of imprisonment for life.—In every case in which sentence of imprisonment for life shall have been passed, the appropriate Government may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

55A. Definition of "appropriate Government".—In sections fifty-four and fifty-five the expression "appropriate Government" means,—

(a) in cases where the sentence is a sentence of death or is for an offence against any law relating to a matter to which the executive power of the Union extends, the Central Government; and

(b) in cases where the sentence (whether of death or not) is for an offence against any law relating to a matter to which the executive power of the State extends, the Government of the State within which the offender is sentenced.

56. Repealed.

57. Fractions of terms of punishment.—In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.

58. Repealed.

59. Repealed.

60. Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.—In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

61. Repealed.

62. Repealed.

63. Amount of fine.—Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

64. Sentence of imprisonment for non-payment of fine.—In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine,

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

65. Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.—The term for which the Court directs the offender to be imprisoned in default of payment of a fine, shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

66. Description of imprisonment for non-payment of fine.—The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

67. Imprisonment for non-payment of fine, when offence punishable with fine only.—If the offence be punishable with fine only, the imprisonment which the Court imposes in default of payment of the fine shall be simple, and the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

68. Imprisonment to terminate on payment of fine.—The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

69. Termination of imprisonment on payment of proportional part of fine.—If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration.

A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of two months of the imprisonment, A will be discharged as soon as the two months are immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

70. Fine leviable within six years, or during imprisonment—Death not to discharge property from liability.—The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period ; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

71. Limit of punishment to offence made up of several offences.—Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or published, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

Illustrations.

(*a*) A gives Z fifty strokes with a strokes. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(*b*) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z. A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

72. Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.—In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

73. Solitary confinement.—Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

a time not exceeding one month if the term of imprisonment shall not exceed six months :

a time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year :

a time not exceeding three months if the term of imprisonment shall exceed one year.

74. Limit of solitary confinement.—In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and when the imprisonment awarded, shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

75. Enhanced punishment for certain offences under Ch. XII or Ch. XVII after previous conviction.—Whoever, having been convicted, –

(*a*) by a Court in India, of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards,

shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term shall be subject for every such subsequent offence to imprisonment for life, or to imprisonment of either description for a term which may extend to ten years.

CHAPTER IV

GENERAL EXCEPTIONS

76. Act done by a person bound, or by mistake of fact believing himself bound, by law.—Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be bound by law to do it.

Illustrations.

(*a*) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(*b*) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

77. Act of Judge when acting judicially.—Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

78. Act done pursuant to the judgment or order of Court.—Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

79. Act done by a person justified, or by mistake of fact believing himself justified, by law.—Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes Z, in order to bring Z before the power authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

80. Accident in doing a lawful act.—Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Illustration.

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

81. Act likely to cause harm, but done without criminal intent, and to prevent other harm.—Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(*a*) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down on a boat B with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.

(*b*) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

82. Act of a child under seven years of age.—Nothing is an offence which is done by a child under seven years of age.

83. Act of a child above seven and under twelve of immature understanding.—Nothng is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

84. Act of a person of unsound mind.—Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

85. Act of a person incapable of judgment by reason of intoxication caused against his will.—Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

86. Offence requiring a particular intent or knowledge committed by one who is intoxicated.—In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

87. Act not intended and not known to be likely to cause death or grievous hurt, done by consent.—Nothing which is not intended to cause death or grevious hurt, and which is not known by the doer to be likely to cause death, or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm: or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of this harm.

Illustration.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z. A commits no offence.

88. Act not Intended to cause death done by consent in good faith for person's benefit.—Nothing, which is not intended to cause death, is an offence by reason of any harm, which it may cause, or be intended by the doer to cause, or

be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

89. Act done in good faith for benefit of child or insane person, by or by consent of guardian.—Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person : Provided—

Provisos :

First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death ;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity ;

Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity ;

Fourthly.— That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

90. Consent known to be given under fear or misconception.—A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person.—If the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child.—Unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

91. Exclusion of acts which are offences independently of harm caused.—The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration.

Act done in good faith for benefit of a person without consent.—Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm"; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

92. Provisos.—Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: Provided—

First.—That this exception shall not extend to the intentional causing of death or the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations.

(*a*) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(*b*) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(*c*) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is no time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(*d*) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the housetop, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall. A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

93. Communication made in good faith.—No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration.

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

94. Act to which a person is compelled by threats.—Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it

reasonably cause the apprehension that instant death to that person will otherwise be the consequence: Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

95. Act causing slight harm.—Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Of the Right of Private Defence

96. Things done in private defence.—Nothing is an offence which is done in the exercise of the right of private defence.

97. Right of private defence of the body and of property.—Every person has a right, subject to the restrictions contained in section 99, to defend—

First.—His own body and the body of any other person, against any offence affecting the human body;

Secondly.—The property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

98. Right of private defence against the act of a person of unsound mind, etc.—When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations.

(*a*) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(*b*) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

99. Acts against which there is no right of private defence.—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant, acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised.—The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

100. When the right of private defence of the body extends to causing death.—The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely :—

First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequent of such assault ;

Secondly.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault ;

Thirdly.—An assault with the intention of committing rape;

Fourthly.—An assault with the intention of gratifying unnatural lust;

Fifthly.—An assault with the intention of kidnapping or abducting;

Sixthly.—An assault with the intention of wrongfully confining a person under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

101. When such right extends to causing any harm other than death.—If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

102. Commencement and continuance of the right of private defence of the body.—The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed ; and it continues as long as such apprehension of danger to the body continues.

103. When the right of private defence of property extends to causing death.—The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrongdoer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely :—

First.—Robbery;

Secondly.—House-breaking by night;

Thirdly.—Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property ;

Fourthly.—Theft, mischeif or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

104. When such right extends to causing any harm other than death.—If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary, causing to the wrong-doer of any harm other than death.

105. Commencement and continuance of the right of private defence of property.—The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

106. Right of private defence against deadly assault when there is risk of harm to innocent person.—If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration.

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

CHAPTER V

OF ABETMENT

107. Abetment of thing.—A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or.

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorized by a warrant from a Court of justice to apprehend Z B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

108. Abettor.—A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations.

(*a*) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(*b*) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(*a*) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(*b*) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the Act in the absence of A and thereby causes Z's death. Here though B was not capable.

by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(*c*) A instigates B to set fire to a dwelling house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling house, and is liable to the punishment provided for that offence.

(*d*) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence. A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration.

A concerts with B a plan for poisoning Z. It is agreed that A should administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section, and is liable to the punishment for murder.

108A. Abetment in India of offences outside it.—A person abets an offence within the meaning of this Code who, in India, abets the commission of any act without and beyond India which would constitute an offence if committed in India.

Illustration.

A, in India, instigates D, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.

109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.—Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations.

(*a*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(*b*) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(*c*) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

110. Punishment of abetment if person abetted does act with different intention from that of abettor.—Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

111. Liability of abettor when one act abetted and different act done. Proviso.—When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Illustrations.

(*a*) A instigates a child to put poison into the food of Z and gives him poison for that purpose. The child in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(*b*) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

(*c*) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murders Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

112. Abettor when liable to cumulative punishment for act abetted and for act done.—If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Illustration.

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt. B is liable to punishment for both these offences and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

113. Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.—When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the

same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

114. Abettor present when offence is committed.—Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

115. Abetment of offence punishable with death or imprisonment for life—if offence not committed.—Whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if act causing harm be done in consequence—and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or imprisonment for life. Therefore A is liable to imprisonment for a term which may extend to seven years, and also to a fine ; and, if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine

116. Abetment of offence punishable with imprisonment—if offence be not committed.—Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both;

if abettor or person abetted be a public servant whose duty it is to prevent offence—and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(b) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(*c*) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(*d*) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

117. Abetting commission of offence by the public, or by more than ten persons.—Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

118. Concealing design to commit offence punishable with death or imprisonment for life.—Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or imprisonment for life,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design,

if offence be committed—if offence be not committed—shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years, and in either case shall also be liable to fine.

Illustration.

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

119. Public servant concealing design to commit offence which it is his duty to prevent.—Whoever, being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

if offence be committed—shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both,

if offence be punishable, with death, etc.—or, if the offence be punishable with death or imprisonment for life, with imprisonment of either description for a term which may extend to ten years,

if offence be not committed—or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

Illustration.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this section.

120. Concealing design to commit offence punishable with imprisonment.—Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

if offence be committed—if offence be not committed—shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

CHAPTER VA

CRIMINAL CONSPIRACY

120A. Definition of criminal conspiracy.—When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

120B. Punishment of criminal conspiracy.—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

CHAPTER VI

OF OFFENCES AGAINST THE STATE

121. Waging or attempting to wage war, or abetting waging of war, against the Government of India.—Whoever wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Illustration.

A joins an insurrection against the Government of India. A has committed the offence defined in this section.

121A. Conspiracy to commit offences punishable by section 121.—Whoever within or without India conspires to commit any of the offences punishable by section 121, or conspires to overawe, by means of criminal force or the show of criminal force, the Central Government or any State Government, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

122. Collecting arms, etc., with intention of waging war against the Government of India.—Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Government of India, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

123. Concealing with intent to facilitate design to wage war.—Whoever, by any act, or by any illegal omission, conceals the existence of a design to wage war against the Government of India, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

124. Assaulting President, Governor or Rajpramukh, etc., with intent to compel or restrain the exercise of any lawful power.—Whoever, with the intention of inducing or compelling the President of India, or the Governor or Rajpramukh of any State to exercise or refrain from exercising in any manner any of, the lawful powers of such President, or Governor, or Rajpramukh,

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe such President or Governor or Rajpramukh,

shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

124A. Sedition.—Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

125. Waging war against any Asiatic Power in alliance with the Government.—Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the Government or attempts to wage such war, or abets the waging of such war, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

126. Committing depredation on territories of Power at peace with the Government.—Whoever commits depredation, or makes preparations to commit depredation, on the territories of any Power in alliance or at peace with the Government, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.

127. Receiving property taken by war or depredation mentioned in sections 125 and 126.—Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

128. Public servant voluntarily allowing prisoner of State or war to escape.—Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

129. Public servant negligently suffering such prisoner to escape.—Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

130. Aiding escape of, rescuing or harbouring such prisoner.—Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII

OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

131. Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty.—Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, or attempts to seduce any such officer, soldier, sailor or airman from his allegiance or his duty, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—In this section the words "officer", "soldier", "sailor" and "airman" include any person subject to the Army Act, the Army Act, 1950, the Naval Discipline Act the Indian Navy (Discipline) Act, 1934, the Air Force Act or the Air Force Act, 1950 as the case may be.

132. Abetment of mutiny, if mutiny is committed in consequence thereof.—Whoever abets the committing of mutiny by an officer, solider, sailor or airmen, in the Army, Navy or Air Force of the Government of India, shall if mutiny be committed in consequence of that abetment, be punished with death or with imprisonment for ilfe, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

133. Abetment of assault by soldier, sailor or airman on his superior officer when in execution of his office.—Whoever abets an assault by an officer, solider, sailor, or airman, in the Army, Navy or Air Force of the Government of India, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

134. Abetment of such assault if the assault is committed.—Whoever abets an assault by an officer, soldier, sailor, or airman, in the Army, Navy or Air Force of the Government of India, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

135. Abetment of desertion of soldier, sailor or airman.—Whoever abets the desertion of any officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

136. Harbouring deserter.—Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, sailor, or airman, in the Army, Navy or Air Force of the Government of India, has deserted, harbours such officer, soldier, sailor or airman, shall be punished with imprisonment of either description for a term which may extent to two years, or with fine or with both.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

137. Deserter concealed on board merchant vessel through negligence of master.—The master or person in charge of a merchant vessel, on board of which any deserted from the Army, Navy or Air Force of the Government of India is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

138. *Abetment of act of insubordination by soldier, sailor or airman.*—Whoever abets what he knows to be an act of insubordination by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

138A. (Repealed).

139. Persons subject to certain Acts.—No person subject to the Army Act, the Army Act, 1950, the Naval Discipiline Act, the Indian Navy (Discipline) Act, 1934, the Air Force Act or the Air Force Act, 1950 is subject to punishment under this Code for any of the offences defined in this chapter.

140. Wearing garb or carrying token used by soldier, sailor or airman.—Whoever, not being a soldier, sailor or airman in the Military, Naval or Air service of the Government of India, wears any garb or carries any token resembling any garb or token used by such a soldier, sailor or airman, with the intention that it may be believed that he is such a soldier, sailor or airman, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

141. Unlawful assembly.—An assembly of five or more persons is designated an "unlawful assembly" if the common object of the persons composing that assembly, is—

First.—To overawe by criminal force, or show of criminal force, the Central or any State Government or a Parliament or the legislature of any State or any public servant in the exercise of the lawful power of such public servant; or

Second.—To resist the execution of any law, or of any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence; or

Fourth.—By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

142. Being member of unlawful assembly.—Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

143. Punishment.—Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

144. Joining unlawful assembly armed with deadly weapon.—Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

145. Joining or continuing in unlawful assembly knowing it has been commanded to disperse.—Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

146. Rioting.—Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

147. Punishment for rioting.—Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

148. Rioting, armed with deadly weapon.—Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

150. Hiring, or conniving at hiring, of persons to join unlawful assembly.—Whoever hires or engages, or employs, or promotes, or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

151. Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.—Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

152. Assaulting or obstructing public servant when suppressing riot, etc.—Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

153. Wantonly giving provocation with intent to cause riot—if rioting be committed—if not committed.—Whoever malignantly, or want only, by doing anything which is illegal gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both ; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

153A. Promoting enmity between different groups on grounds of religion, race, language, etc., and doing acts prejudicial to maintenance of harmony.—Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes, or attempts to promote, on grounds of religion, race, language, caste or community or any other ground whatsoever, feelings of enmity or hatred between different religious, racial or language groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial or language groups or castes or communities and which disturbs or is likely to disturb the public transquillity,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

154. Owner or occupier of land on which an unlawful assembly is held.—Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees,

if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police station.

and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

155. Liability of person for whose benefit riot is committed.—Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

156. Liability of agent of owner or occupier for whose benefit riot is committed.—Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom.

the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

157. Harbouring persons hired for an unlawful assembly.—Whoever harbours, receives, or assembles, in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

158. Being hired to take part in an unlawful assembly or riot.—Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

or to go armed—and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished

with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

159. Affray.—When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray".

160. Punishment for committing affray.—Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

CHAPTER IX

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

161. Public servant taking gratification other than legal remuneration in respect of an official act.—Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central or any State Government or Parliament or the legislature of any State, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanations.—"Expecting to be a public servant".—If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification".—The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration".—The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government, which he serves, to accept.

"A motive or reward for doing".—A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.

(*a*) A, a munsif, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(*b*) A, holding the office of Consul in a Foreign State accepts a lakh of rupees from the Minister of that State. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that State with the Government of India. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that State. A has committed the offence defined in this section.

(*c*) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

162. Taking gratification, in order, by corrupt or illegal means, to influence public servant.—Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central or any State Government or Parliament or the legislature of any State, or with any public servant, as such shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

163. Taking gratification, for exercise of personal influence with public servant.—Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central or any State Government or Parliament or the Legislature of any State, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust—are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

164. Punishment for abetment by public servant of offences defined in section 162 or 163.—Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A is a public servant, B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

165. Public servant obtaining valuable thing, without consideration.—Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate,

from person concerned in proceeding or business transacted by such public servant—from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

or from any person whom he knows to be interested in or related to the person so concerned,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustrations.

(*a*) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(*b*) A, a Judge, buys of Z, who has a cause pending in A's Court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(*c*) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

165A. Punishment for abetment of offences defined in section 161 or section 165.—Whoever, abets any offence punishable under section 161 or section 165, whether or not that offence is committed in consequence of the abetment, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

166. Public servant disobeying law, with intent to cause injury to any preson.—Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

167. Public servant framing an incorrect document with intent to cause injury.—Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

168. Public servant unlawfully engaging in trade.—Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

169. Public servant unlawfully buying or bidding for property.—Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both ; and the property, if purchased, shall be confiscated.

170. Personating a public servant.—Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine, or with both.

171. Wearing garb or carrying token used by public servant with fraudulent intent.—Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description, for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

CHAPTER IXA

OF OFFENCES RELATING TO ELECTIONS

171A. "Candidate", "Electoral right" defined.—For the purposes of this Chapter—

(a) "candidate" means a person who has been nominated as a candidate at any election and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate thereat; provided that he is subsequently nominated as a candidate at such election ;

(b) "electoral right" means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

171B. Bribery.—(1) Whoever—

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right ; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery :

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

171C. Undue influence at election.—*(1)* Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election ;

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered and object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

171D. Personation at election.—Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same

election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

171E. Punishment for bribery.—Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both :

Provided that bribery by treating shall be punished with fine only.

Explanation.—'Treating' means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

171F. Punishment for undue influence or personation at an election.—Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

171G. False statement in connection with an election.—Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

171H. Illegal payments in connection with an election.—Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees :

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

171I. Failure to keep election accounts.—Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.

CHAPTER X

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

172. Absconding to avoid service of summons or other proceedings.—Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons or notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

173. Preventing service of summons or other proceeding, or preventing publication thereof.—Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order,

or intentionally prevents the lawful affixing to any place of any such summons, notice or order,

or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

174. Non-attendance in obedience to an order from public servant.—Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

(*a*) A, being legally bound to appear before the High Court at Calcutta in obedience to a *sub pœna* issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(*b*) A, being legally bound to appear before a District Judge, as a witness, in obedience to a summons issued by that District Judge, intentionally omits to appear. A has committed the offence defined in this section.

175. Mission to produce document to public servant by person legally bound to produce it.—Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or to deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration.

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

176. Omission to give notice or information to public servant by person legally bound to give it.—Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the notice or information required to be given is required by an order passed under sub-section (1) of section 565 of the Code of Criminal Procedure, 1898, with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

177. Furnishing false information.—Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the object which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a*) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(*b*) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under clause 5, section VII, Regulation III, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police station, wilfully misinforms the police officer that

a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

Explanation.—In section 176 and in this section the word "offence" includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and the word "offender" includes any person who is alleged to have been guilty of any such act.

178. Refusing oath or affirmation when duly required by public servant to make it.—Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

179. Refusing to answer public servant authorised to question.—Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant, in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

180. Refusing to sign statement.—Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

181. False statement on oath or affirmation to public servant or person authorized to administer an oath or affirmation.—Whoever, being legally bound by an oath or affirmation to state the truth on any subject to any public servant or other person authorized by law to administer such oath or affirmation, makes, to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

182. False information with intent to cause public servant to use his lawful power to the injury of another person.—Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

(*a*) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(*b*) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(*c*) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

183. Resistance to the taking of property by the lawful authority of a public servant.—Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

184. Obstructing sale of property offered for sale by authority of public servant.—Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

185. Illegal purchase or bid for property offered for sale by authority of public servant.—Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

186. Obstructing public servant in discharge of public functions.—Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

187. Omission to assist public servant when bound by law to give assistance.—Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both :

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

188. Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction.

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both :

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

189. Threat of injury to public servant.—Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

190. Threat of injury to induce person to refrain from applying for protection to public servant.—Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered, as such, to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XI

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

191. Giving false evidence.—Whoever being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(*a*) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(*b*) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(*c*) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z, A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(*d*) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(*e*) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document, which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

192. Fabricating false evidence.—Whoever causes any circumstance to exist or makes any false entry in any work or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence".

Illustrations.

(*a*) A puts jewels into a box belonging to Z; with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(*b*) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a court of Justice. A has fabricated false evidence.

(*c*) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence.

193. Punishment or for false evidence.—Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-martial is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes an oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

194. Giving or fabricating false evidence with intent to procure conviction of capital offence. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by the laws for the time being in force in India, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

if innocent person be thereby convicted and executed—and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.—Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by the law for the time being in force in India is not capital, but punishable with imprisonment for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A therefore, is liable to imprisonment for life or imprisonment, with or without fine.

196. Using evidence known to be false.—Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

197. Issuing or signing false certificate.—Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

198. Using as true a certificate known to be false.—Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

199. False statement made in declaration which is by law receivable as evidence.—Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

200. Using as true such declaration knowing it to be false.—Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 and 200.

201. Causing disappearance of evidence of offence, or giving false information to screen offender.—Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

if a capital offence—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punshed with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration.

A knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

202. Intentional omission to give information of offence by person bound to inform.—Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

203. Giving false information respecting an offence committed.—Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—In sections 201 and 202 and in this section the word 'offence' includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

204. Destruction of document to prevent its production as evidence.—Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

205. False personation for purpose of act or proceeding in suit or prosecution.—Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

206. Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.—Whoever fraudulently removes, conceals, transfers or delivers to any person, any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

207. Fraudulent claim to property to prevent its seizure as forfeited or in execution.—Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be

made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

208. Fraudulently suffering decree for sum not due.—Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration.

A institutes a suit against Z. Z, knowing that A is likely to obtained a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

209. Dishonestly making false claim in Court.—Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

210. Fraudulently obtaining decree for sum not due.—Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

211. False charge of offence made with intent to injure.—Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

212. Harbouring offender.—Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment ;

if a capital offence—shall, if the offence is punishable with death ; be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine ;

if punishable with imprisonment for life, or with imprisonment—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

"Offence" in this section includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the offender.

Illustration.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to imprisonment for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

213. Taking gift, etc., to screen an offender from punishment.—Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment;

if a capital offence—shall, if the offence is punishable with death, be punished with, imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

214. Offering gift or restoration of property in consideration of screening offender.—Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or restores or causes the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment;

if a capital offence—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence

for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception.—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.

[*Illustrations*] *Repealed by Act X of* 1882.

215. Taking gift to help to recover stolen property, etc.—Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any moveable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

216. Harbouring offender who has escaped from custody or whose apprehension has been ordered.—Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody ;

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say ;

if a capital offence—if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

if punishable with imprisonment for life or with imprisonment—if the offence is punishable with imprisonment for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine ;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

"Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of India which, if he had been guilty of it in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India, and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.

Exception.—This provision does not extend to any case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

216A. Penalty for harbouring robbers or dacoits.—Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without India.

Exception.—This provision does not extend to the case in which the harbour is by the husband or wife of the offender.

216B. *Repealed.*

217. Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.—Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.—Whoever, being a public seravnt, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

219. Public servant in judicial proceeding corruptly making report, etc., contrary to law.—Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

220. Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.—Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, correctly or maliciously commits any person for trial or confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

221. Intentional omission to apprehend on the part of public servant bound to apprehend.—Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say :—

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended was charge with, or liable to be apprehended for, an offence punishable with death ; or

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with or liable to be apprehended for, an offence punishable with imprisonment for life or imprisonment for a term which may extend to ten years ; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

222. Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.—Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence, or lawfully committed to custody, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say :—

with imprisonment for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death ; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice or by virtue of a commutation of such sentence, to imprisonment for life or imprisonment for a term of ten years or upwards ; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement or who ought to have been apprehended is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years, or if the person was lawfully committed to custody.

223. Escape from confinement or custody negligently suffered by public servant.—Whoever being a public servant, legally bound as such public servant to keep in confinement any person charged with or convicted of any offence or lawfully committed to custody, negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

224. Resistance or obstruction by a person to his lawful apprehension.—Whoever intentionally, offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

225. Resistance or obstruction to lawful apprehension of another person.—Whoever, intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue

any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with imprisonment for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death ; shall be punished with imprisonment of either description for a term which may extent to seven years, and shall also be liable to fine ;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to imprisonment for life, or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

225A. Omission to apprehend, of sufference of escape on part of public servant, in cases not otherwise provided for.—Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

(a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both ; and

(b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

225B. Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.—Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistence or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes, or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both.

266. *Repealed.*

227. Violation of condition of remission of punishment.—Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

228. Intentional insult or interruption to public servant sitting in judicial proceeding.—Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

229. Personation of a juror or assessor.—Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER XII

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

230. "Coin" defined.—Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.

Indian coin.—Indian coin is metal stamped and issued by the authority of the Government of India in order to be used as money; and metal which has been so stamped and issued shall continue to be Indian coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.

Illustrations.

(*a*) Cowries are not coin.

(*b*) Lumps of unstamped copper, though used as money, are not coin.

(*c*) Medals are not coin, inasmuch as they are not intended to be used as money.

(*d*) The coin denominated as the Company's rupee is Indian coin.

(*e*) The "Farukhabad" rupee which was formerly used as money under the authority of the Government of India, is Indian coin although it is no longer so used.

231. Counterfeiting coin.—Whoever counterfeits, or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A person commits this offence who intending to practice deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

232. Counterfeiting Indian Coin.—Whoever counterfeits, or knowingly performs any part of the process of counterfeiting Indian coin, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

233. Making or selling instrument for counterfeiting coin.—Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

234. Making or selling instrument for counterfeiting Indian coin.—Whoever makes or mends, or performs any part of the process of making or mending or buys, sells or disposes of any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting Indian coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

235. Possession of instrument or material for the purpose of using the same for counterfeiting coin.—Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if Indian coin—and if the coin to be counterfeited is Indian coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

236. Abetting in India the counterfeiting out of India of coin.—Whoever, being within India, abets the counterfeiting of coin out of India shall be punished in the same manner as if he abetted the counterfeiting of such coin within India.

237. Import or export of counterfeit coin.—Whoever imports into India, or exports therefrom any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

238. Import or export of counterfeits of the Indian Coin.—Whoever imports into India, or exports therefrom any counterfeit coin which he knows or has reason to believe to be a counterfeit of Indian coin, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

239. Delivery of coin, possessed with knowledge that it is counterfeit.—Whoever, having any counterfeit coin, which at the time when he became possessed of it he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

240. Delivery of Indian coin possessed with knowledge that it is counterfeit.—Whoever, having any counterfeit coin, which is a counterfeit of India coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of Indian coin, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

241. Delivery of coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.—Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration.

A, a coiner, delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

242. Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.—Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof, that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

243. Possession of Indian coin by person who knew it to be counterfeit when he became possessed thereof.—Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of Indian coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

244. Person employed in mint causing coin to be of different weight or composition from that fixed by law.—Whoever, being employed in any mint lawfully established in India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

245. Unlawfully taking coining instrument from mint.—Whoever, without lawful authority, takes out of any mint, lawfully established in India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

246. Fraudulently or dishonestly diminishing weight or altering composition of coin.—Whoever, fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin and puts anything else into the cavity alters the composition of that coin.

247. Fraudulently or dishonestly diminishing weight or altering composition of Indian coin.—Whoever fraudulently or dishonestly performs on any of Indian coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

248. Altering appearance of coin with intent that it shall pass as coin of different description.—Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

249. Altering appearance of Indian coin with intent that it shall pass as coin of different description.—Whoever performs on any of Indian coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

250. Delivery of coin, possessed with knowledge that it is altered.—Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

251. Delivery of Indian coin possessed with knowledge that it is altered.—Whoever having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

252. Possession of coin by person who knew it to be altered when he became possessed thereof.—Whoever fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

253. Possession of Indian coin by person who knew it to be altered when he became possessed thereof.—Whoever fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof, that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

254. Delivery of coin as genuine which, when first possessed the deliverer did not know to be altered.—Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in sections 246, 247, 248 or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

255. Counterfeiting Government stamp.—Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

256. Having possession of instruments or material for counterfeiting Government stamp.—Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government, for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

257. Making or selling instrument for counterfeiting Government stamp.—Whoever makes or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting

any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

258. Sale of counterfeit Government stamp.—Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

259. Having possession of counterfeit Government stamp.—Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

260. Using as genuine a Government stamp known to be counterfeit.—Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

261. Effacing writing from substance bearing Government stamp or removing from document a stamp used for it, with intent to cause loss to Government.—Whoever, fraudulently or with intent to cause loss to the Government, removes or effaces from any substance, bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

262. Using Government stamp known to have been before used.—Whoever fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

263. Erasure of mark denoting that stamp has been used.—Whoever fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark, put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession or sells or disposes of any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

263A. Prohibition of fictitious stamps.—(*1*) Whoever—

(a) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or

(b) has in his possession, without lawful excuse, any fictitious stamp, or

(c) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(*2*) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp may be seized and, if seized shall be forfeited.

(*3*) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting rate of postage or any facsimile or imitation representation whether on paper or otherwise, of any stamp issued by Government for that purpose.

(*4*) In this section and also in sections 255 to 263, both inclusive, the word "Government" when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive government in any part of India, and also in any part of Her Majesty's dominions or in any foreign country.

CHAPTER XIII

OF OFFENCES RELATING TO WEIGHTS AND MEASURES

264. Fraudulent use of false instrument for weighing.—Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

265. Fraudulent use of false weight or measure.—Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

266. Being in possession of false weight or measure.—Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

267. Making or selling false weight or measure.—Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIV

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS

268. Public nuisance.—A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

269. Negligent act likely to spread infection of disease dangerous to life.—Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

270. Malignant act likely to spread infection of disease dangerous to life.—Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

271. Disobedience to quarantine rule.—Whoever knowingly disobeys any rule made and promulgated by the Government for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

272. Adulteration of food or drink intended for sale.—Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

273. Sale of noxious food or drink.—Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

274. Adulteration of drugs.—Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or use for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

275. Sale of adulterated drugs.—Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

276. Sale of drug as a different drug or preparation.—Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

277. Fouling water of public spring or reservoir.—Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or wth fine which may extend to five hundred rupees, or with both.

278. Making atmosphere noxious to health.—Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

279. Rash driving or riding on a public way.—Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

280. Rash Navigation of vessel.—Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

281. Exhibition of false light, mark or buoy.—Whoever exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

282. Conveying person by water for hire in unsafe or overloaded vessel.—Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

283. Danger or obstruction in public way or line of navigation.—Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

284. Negligent conduct with respect to poisonous substance.—Whoever does, with any poisonous substance, any act in a manner so rash or negligant as to endanger human life, or to be likely to cause hurt or injury to any person,

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, which may extend to one thousand rupees, or with both.

285. Negligent conduct with respect to fire or combustible matter.—Whoever does, with fire or any compbustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

286. Negligent conduct with respect to explosive substance.—Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

287. Negligent conduct with respect to machinery.—Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

288. Negligent conduct with respect to pulling down or repairing buildings.—Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

289. Negligent conduct with respect to animal.—Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

290. Punishment for public nuisance in cases not otherwise provided for.—Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

291. Continuance of nuisance after injunction to discontinue.—Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

292. Sale, etc., of obscene books, etc.—Whoever –

(*a*) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(*b*) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(*c*) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(*d*) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(*e*) offers or attempts to do any act which is an offence under this section,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Exception.—This section does not extend to any book, pamphlet, writing, drawing or printing kept or used *bona fide* for religious purposes or any representation sculptured, engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

293. Sale, etc., of obscene objects to young person.—Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

294. Obscene acts and songs.—Whoever, to the annoyance of others,

(a) does any obscene act in any public place, or

(b) signs, recites or utters any obscene songs, ballad or words, in or near any public place.

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

294A. Keeping lottery office.—Whoever keeps any office or place for the purpose of drawing any lottery not being a State lottery or a lottery authorised by the State Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery shall be punished with fine which may extend to one thousand rupees.

CHAPTER XV

OF OFFENCES RELATING TO RELIGION

295. Injuring or defiling place of worship, with intent to insult the religion of any class.—Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

295A. Deliberate and malicious acts intended to outrage religious feelings, of any class by insulting its religion or religious beliefs.—Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India by words, either spoken or written, or by signs or by visible representations or otherwise insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

296. Disturbing religious assembly.—Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

297. Trespassing on burial places, etc.—Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sepulchre, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

298. Uttering words, etc. with deliberate intent to wound religious feeling.—Whoever, with deliberate intention of wounding the religious feeling of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XVI

OF OFFENCES AFFECTING THE HUMAN BODY

Of Offences affecting Life

299. Culpable homicide.—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations.

(*a*) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(*b*) A knows Z to be behind a bush. B does not know it. A, intending to cause or knowing it to be likely to cause Z's death induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(*c*) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B or cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

Thirdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

Fourthly.—If the person commiting the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(*a*) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(*b*) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death.

(*c*) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(*d*) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—When culpable homicide is not murder.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos :—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations.

(*a*) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(*b*) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(*c*) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(*d*) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(*e*) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(*f*) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Explanation 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration.

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

301. Culpable homicide by causing death of person other than person whose death was intended.—If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

302. Punishment for murder.—Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

303. Punishment for murder by life-convict.—Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death.

304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge

that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

304A. Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

305. Abetment of suicide of child or insane person.—If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts—When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

Illustrations.

(*a*) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(*b*) A with the intention of causing the death of a child of tender years exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(*c*) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.

(*d*) A, intending to murder Z, by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

308. Attempt to commit culpable homicide.—Whoever does any act with such intention or knowledge, and under such circumstances, that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration.

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

309. Attempt to commit suicide.—Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

310. Thug.—Whoever, at any time after the passing of this Act shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.

311. Punishment.—Whoever is a thug, shall be punished with imprisonment for life, and shall also be liable to fine.

Of Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births

312. Causing miscarriage.—Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A woman who causes herself to miscarry, is within the meaning of this section.

313. Causing miscarriage without Woman's consent.—Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

314. Death caused by act done with intent to cause miscarriage.—Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

If act done without woman's consent—and if the act is done without the consent of the woman, shall be punished either with imprisonment for life, or with the punishment abovementioned.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

315. Act done with intent to prevent child being born alive or to cause it to die after birth.—Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

316. Causing death of quick unborn child by act amounting to culpable homicide.—Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act

cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman would amount to culpable homicide. The woman is injured but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

317. Exposure and abandonment of child under twelve years by parent or person having care of it.—Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

318. Concealment of birth by secret disposal of dead body.—Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child dies before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Of Hurt

319. Hurt.—Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

320. Grievous hurt.—The following kinds of hurt only are designated as "grievous":—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

321. Voluntarily causing hurt.—Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".

322. Voluntarily causing grievous hurt.—Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt".

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt, and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

323. Punishment for voluntarily causing hurt.—Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

324. Voluntarily causing hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument, which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

325. Punishment for voluntarily causing grievous hurt.—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

326. Voluntarily causing grievous hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

327. Voluntarily causing hurt to extort property, or to constrain to an illegal act.—Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

328. Causing hurt by means of poison, etc., with intent to commit an offence.—Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

329. Voluntarily causing grievous hurt to extort property or to constrain to an illegal act.—Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

330. Voluntarily causing hurt to extort confession or to compel restoration of property.—Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer or any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations.

(*a*) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(*b*) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(*c*) A, a revenue-officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(*d*) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

331. Voluntarily causing grievous hurt to extort confession or to compel restoration of property.—Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

332. Voluntarily causing hurt to deter public servant from his duty.—Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant shall be, punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

333. Voluntarily causing grievous hurt to deter public servant from his duty.—Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

334. Voluntarily causing hurt on provocation.—Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

335. Voluntarily causing grievous hurt on provocation.—Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation.—The last two sections are subject to the same provisos as exception 1, section 300.

336. Act endangering life or personal safety of others.—Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

337. Causing hurt by act endangering life or personal safety of others.—Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

338. Causing grievous hurt by act endangering life or personal safety of others.—Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Of Wrongful Restraint and Wrongful Confinement

339. Wrongful restraint.—Whoever voluntarily obstruct any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

340. Wrongful confinement.—Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Illustrations.

(*a*) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(*b*) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

341. Punishment for wrongful restraint.—Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

342. Punishment for wrongful confinement.—Whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

343. Wrongful confinement for three or more days.—Whoever wrongfully confines any person for three days or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

344. Wrongful confinement for ten or more days.—Whoever wrongfully confines any person for ten days or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

345. Wrongful confinement of person for whose liberation writ has been issued.—Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this chapter.

346. Wrongful confinement in secret.—Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

347. Wrongful confinement to extort property, or constrain to illegal act.—Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

348. Wrongful confinement to extort confession, or compel restoration of property.—Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Of Criminal Force and Assault

349. Force.—A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described :—

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

350. Criminal force.—Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations.

(*a*) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other action on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(*b*) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure frighten or annoy Z, A has used criminal force to Z.

(*c*) Z is riding in a palanquin. A intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(*d*) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(*e*) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(*f*) A intentionally pulls up a woman's veil. Here A intentionally uses force to her, and if he does so without her consent intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(*g*) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z; and if he has done this without Z's consent intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

(*h*) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

351. Assault. Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(*a*) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(*b*) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(*c*) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

352. Punishment for assault or criminal force otherwise than on grave provocation.—Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an execuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

353. Assault or criminal force to deter public servant from discharge of his duty.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

355. Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.—Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

356. Assault or criminal force in attempt to commit theft of property carried by a person.—Whoever assaults or uses criminal force to any person in attempting to commit theft on any property which that person is then wearing or carrying shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

357. Assault or criminal force in attempt wrongfully to confine a person.—Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

358. Assault or criminal force on grave provocation.—Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees or with both.

Explanation.—The last section is subject to the same explanation as section 352.

Of Kidnapping, Abduction, Slavery and Force Labour

359. Kidnapping.—Kidnapping is of two kinds: kidnapping from India, and kidnapping from lawful guardianship.

360. Kidnapping from India.—Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from India.

361. Kidnapping from lawful guardianship.—Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.—The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

362. Abduction.—Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

363. Punishment for Kidnapping.—Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

364. Kidnapping or abducting in order to murder.—Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(*a*) A kidnaps Z from India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(*b*) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

365. Kidnapping or abducting with intent secretly and wrongfully to confine person.—Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine ;

and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

366A. Procuration of minor girl.—Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

366B. Importation of girl from foreign country.—Whoever imports into India from any country outside India or from the State of Jammu and Kashmir any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

367. Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.—Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or

knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

368. Wrongfully concealing or keeping in confinement kidnapped or abducted person.—Whoever knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

369. Kidnapping or abducting child under ten years with intent to steel from its person.—Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

370. Buying or disposing of any person as a slave.—Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

371. Habitual dealing in slaves.—Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with imprisonment for life, or with imprsonment of either description for a term not exceeding ten yours, and shall also be liable to fine.

372. Selling minor for purposes of prostitution, etc.—Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years, with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation I.—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II.—For the purposes of this section "illicit intercourse" means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a *quasi*-marital relation.

373. Buying minor for purposes of prostitution, etc.—Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation I.—Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation II.—"Illicit intercourse" has the same meaning as in section 372.

374. Unlawful compulsory labour.—Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Of Rape

375. Rape.—A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions :—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

376. Punishment for rape.—Whoever commits rape shall be punished with imprisonment for life or with a imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Of Unnatural Offences

377. Unnatural offences.—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

CHAPTER XVII

OF OFFENCES AGAINST PROPERTY

Of Theft

378. Theft.—Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be expressed or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations.

(*a*) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(*b*) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(*c*) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(*d*) A being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(*e*) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(*f*) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(*g*) A finds a ring lying on the high-road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal mis-appropriation of property.

(*h*) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection. A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(*i*) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(*f*) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(*k*) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.

(*l*) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(*m*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(*n*) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(*o*) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(*p*) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

379. Punishment of theft.—Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

380. Theft in dwelling house, etc.—Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

381. Theft by clerk or servant of property in possession of master.—Whoever being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

382. Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.—Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(*a*) A commits theft on property in Z's possession; and, while committing this theft, he has a loaded pistol under the garment having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(*b*) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

Of Extortion

383. Extortion.—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Illustrations.

(*a*) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(*b*) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain money to A. Z signs and delivers the note. A has committed extortion.

(*c*) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(*d*) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

384. Punishment for extortion.—Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

385. Putting person in fear of injury in order to commit extortion.—Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

386. Extortion by putting a person in fear of death or grievous hurt.—Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

387. Putting person in fear of death or of grievous hurt, in order to commit extortion.—Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

388. Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.—Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with imprisonment for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with imprisonment for life.

389. Putting person in fear of accusation of offence, in order to commit extortion.—Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of

having committed, or attempted to commit, an offence punishable with death or with imprisonment for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with imprisonment for life.

Of Robbery and Dacoity

390. Robbery.—In all robbery there is either theft or extortion.

When theft is robbery.—Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.—Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations.

(*a*) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(*b*) A meets Z on the high-road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(*c*) A meets Z and Z's child on the high-road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(*d*) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

391. Dacoity.—When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons, present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding is said to commit "dacoity".

392. Punishment for robbery.—Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

393. Attempt to commit robbery.—Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

394. Voluntarily causing hurt in committing robbery.—If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing, or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

395. Punishment for dacoity.—Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

396. Dacoity with murder.—If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing decoity every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

397. Robbery or dacoity, with attempt to cause death or grievous hurt.—If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

398. Attempt to commit robbery or, dacoity when armed with deadly weapon.—If, at the time of attempting to commit robbery or dacoity the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

399. Making preparation to commit dacoity.—Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

400. Punishment for belonging to gang of dacoits.—Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

401. Punishment for belonging to gang of thieves.—Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine

402. Assembling for purpose of committing dacoity.—Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Of Criminal Misappropriation of Property

403. Dishonest misappropriation of property.—Whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a*) A takes property belonging to Z out of Z's possession in good faith, believing, at the time when he takes it that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(*b*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(*c*) A and B, being joint owners of a horse, A takes the horse out of B's possession intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

Illustrations.

(*a*) A finds a rupee on the high-road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(*b*) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(*c*) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(*d*) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(*e*) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(*f*) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

404. Dishonest misappropriation of property possessed by deceased person at the time of his death.—Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine; and if the offender at the time of such person's deceased was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

Of Criminal Breach of Trust

405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Illustrations.

(*a*) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(*b*) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(*c*) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with direction to A, to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(*d*) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A not having acted dishonestly, has not committed criminal breach of trust.

(*e*) A, a Revenue-officer is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(*f*) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

407. Criminal breach of trust by carrier, etc.—Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

408. Criminal breach of trust by clerk or servant.—Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

409. Criminal breach of trust by public servant, or by banker, merchant or agent.—Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Of the Receiving of Stolen Property

410. Stolen property.—Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as "stolen property," whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

411. Dishonestly receiving stolen property.—Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

412. Dishonestly receiving property stolen in the commission of a dacoity.—Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

413. Habitually dealing in stolen property.—Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine

414. Assisting in concealment of stolen property.—Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Of Cheating

415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit

if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations.

(*a*) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(*b*) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(*c*) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(*d*) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(*e*) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(*f*) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(*g*) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(*h*) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(*i*) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

416. Cheating by personation.—A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

(*a*) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(*b*) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

417. Punishment for cheating.—Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.—Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the

transaction to which the cheating relates, he was bound either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

419. Punishment for cheating by personation.—Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Of Fraudulent Deeds and Dispositions of Property

421. Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.—Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

422. Dishonestly or fraudulently preventing debt being available for creditors.—Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

423. Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.—Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

424. Dishonest or fraudulent removal or concealment of property.—Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Of Mischief

425. Mischief.—Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any persnn by injurying any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting porperty belonging to the person who commits the act, or to that person and others jointly.

Illustrations.

(*a*) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(*b*) A introduces water into an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(*c*) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(*d*) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of hereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(*e*) A having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(*f*) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.

(*g*) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(*h*) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

426. Punishment for mischief.—Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

427. Mischief causing damage to the amount of fifty rupees.—Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

428. Mischief by killing or Maiming animal of the value of ten rupees.—Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

429. Mischief by killing or maiming cattle, etc., of any value or any animal of the value.—Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

430. Mischief by injury to works of irrigation or by wrongfully diverting water.—Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

431. Mischief by injury to public road, bridge, river or channel.—Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

432. Mischief by causing inundation or obstruction to public drainage attended with damage.—Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

433. Mischief by destroying, moving or rendering less useful a light-house or seamark.—Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

434. Mischief by destroying or moving, etc., a land-mark fixed by public authority.—Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

435. Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.—Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards or (where the property is agricultural produce) ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

436. Mischief by fire or explosive substance with intent to destroy house, etc.—Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

437. Mischief with intent to destroy or make unsafe a decked vessel or one of tewnty tons burden.—Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

438. Punishment for the mischief described in section 437 committed by fire or explosive substance.—Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

439. Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc.—Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

440. Mischief committed after preparation made for causing death or hurt.—Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

OF CRIMINAL TRESPASS

441. Criminal trespass.—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass."

442. House-trespass.—Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for workship, or as a place for the custody of property, is said to commit "house-trespass".

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

443. Lurking house-trespass.—Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".

444. Lurking house-trespass by night.—Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night".

445. House-breaking.—A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say :—

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations.

(*a*) A commits house-trepass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(*b*) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(*c*) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(*d*) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(*e*) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(*f*) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(*g*) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(*h*) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

446. House-breaking by night.—Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night."

447. Punishment for criminal trespass.—Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

448. Punishment for house-trespass.—Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

449. House-trespass in order to commit offence punishable with death.—Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with imprisonment for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

450. House-trespass in order to commit offence punishable with imprisonment for life.—Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment for life shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

451.—House trespass in order to commit offence punishable with imprisonment.—Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

452. House-trespass after preparation for hurt assault or wrongful restraint.—Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

453. Punishment for lurking house-trespass or house-breaking.—Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

454. Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.—Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

455. Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.—Whoever commits lurking house trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

456. Punishment for lurking house-trespass or house-breaking by night.—Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

457. Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.—Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

458. Lurking house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint.—Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt

to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

459. Grievous hurt caused whilst committing lurking house-trespass or house-breaking.—Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with imprisonment for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

460. All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.—If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

461. Dishonestly breaking open receptacle containing property.—Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

462. Punishment for same offence when committed by person entrusted with custody.—Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XVIII

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS

463. Forgery.—Whoever makes any false document or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

464. Making a false document.—A person is said to make a false document—

First.—Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

Secondly.—Who, without lawful authority, dishonestly or fradulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration.

Illustrations.

(*a*) A has a letter of credit upon B for rupees 10,000, written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(*b*) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B and thereby of obtaining from B the purchase-money. A has committed forgery.

(*c*) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(*d*) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorises B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(*e*) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(*f*) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(*g*) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order" and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(*h*) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(*i*) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(*j*) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(*k*) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations.

(*a*) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(*b*) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(*c*) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable, here A has committed forgery.

(*d*) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate, to Z at a nominal rent and for a long period and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(*e*) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

465. Punishement for forgery.—Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

466. Forgery of record of Court or of public register, etc.—Whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public

servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

467. Forgery of valuable security, will, etc.—Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

468. Forgery for purpose of cheating.—Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

469. Forgery for purpose of harming reputation.—Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

470. Forged document.—A false document made wholly or in part by forgery is designated "a forged document".

471. Using as genuine a forged document.—Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

472. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467.—Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punishable with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

473. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise.—Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than section 467, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

474. Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it as genuine.—Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one

of the description mentioned in section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with imprisonment for life, or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.

475. Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material.—Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

476. Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.—Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose or giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

477. Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security.—Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

477A. Falsification of accounts.—Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.

OF TRADE, PROPERTY AND OTHER MARKS

478. Trade mark.—For the purposes of this Code, the expression "trade mark "includes a trade mark registered under the Trade Marks Act, 1940, and any mark used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right to use the mark.

479. Property mark.—A mark used for denoting that moveable property belongs to a particular person is called a property mark.

480. Using a false trade mark.—Whoever marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, have a connection in the course of trade with a person with whom they have not any such connection is said to use a false trade mark.

481. Using a false property mark.—Whoever marks any moveable property or goods or any case, package or other receptacle containing moveable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

482. Punishment for using a false trade mark or property mark.—Whoever uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

483. Counterfeiting a trade mark or property mark used by another.—Whoever counterfeits any trade mark or property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

484. Counterfeiting a mark used by a public servant.—Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

485. Making or possession of any instrument for counterfeiting a trade mark or property mark.—Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, or has in his possession a trade mark or property mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

486. Selling goods marked with a counterfeit trade mark or property mark.—Whoever sells, or exposes, or has in possession for sale or any purpose of trade

or manufacture, any goods or things with a counterfeit trade mark or property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves--

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently.

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

487. Making a false mark upon any receptacle containing goods.—Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

488. Punishment for making use of any such false mark.—Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

489. Tampering with property mark with intent to cause injury.—Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

OF CURRENCY-NOTES AND BANK-NOTES

489A. Counterfeiting currency-notes or bank-notes.—Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—For the purposes of this section and of sections 489B, 489C, 489D and 489E the expression "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for, money.

489B. Using as genuine, forged or counterfeit currency-notes or bank-notes.—Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489C. Possession of forged or counterfeit currency-notes or bank-notes.—Whoever has in his possession any forged or counterfeit currency-note or bank-note knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

489D. Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.—Whoever makes, or performs any part of the process of making, or buys or sells or disposes of or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489E. Making or using documents resembling currency-notes or bank-notes.—(1) Whoever makes, or causes to be made, or uses for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency-note or bank-note shall be punished with fine which may extend to one hundred rupees.

(2) If any person, whose name appears on a document the making of which is an offence under sub-section (1), refuses, without lawful excuse, to disclose to a police-officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to two hundred rupees.

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section (1) or on any other document used or distributed in connection with that document it may, until the contrary is proved, be presumed that that person caused the document to be made.

CHAPTER XIX

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

490. (*Repealed*).

491. Breach of contract to attend on and supply wants of helpless person.— Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both

492. (*Repealed*).

CHAPTER XX

OF OFFENCES RELATING TO MARRIAGE

493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.—Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

494. Marrying again during lifetime of husband or wife.—Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.—Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

496. Marriage ceremony fraudulently gone through without lawful marriage.—Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

497. Adultery.—Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

498. Enticing or taking away or detaining with criminal intent a married woman.—Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER XXI.

OF DEFAMATION

499. Defamation.—Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(*a*) A says—"Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it falls within one of the exceptions.

(*b*) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

(*c*) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

Imputation of truth which public good requires to be made or punished.—

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Public conduct of public servants.—

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Conduct of any person touching any public question.—

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Publication of reports of proceedings of Courts.—

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Merits of case decided in Court or conduct of witnesses and others concerned.—

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations.

(*a*) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(*b*) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity", A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Merits of public performance.—

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations.

(*a*) A person who publishes a book, submits that book to the judgment of the public.

(*b*) A person who makes a speech in public, submits that speech to the judgment of the public.

(*c*) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(*d*) A says of a book published by Z—"Z's book is foolish: Z must be a weak man. Z's book is indecent: Z must be a man of impure mind". A is within this exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(*e*) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a liberatine." A is not within this exception inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Censure passed in good faith by person having lawful authority over another.—

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration.

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders a parent censuring in good faith a child in the presence of other children; a schoolmaster,

whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Accusation preferred in good faith to authorised person.—

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration.

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Imputation made in good faith by person for protection of his or other's interest.—

Ninth Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Illustrations.

(*a*) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(*b*) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Caution intended for good of person to whom conveyed or for public good.—

Tenth Exception.—It is not defamation to convey a caution in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

500. Punishment for defamation.—Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

501. Printing or engraving matter known to be defamatory.—Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

502. Sale of printed or engraved substance containing defamatory matter.—Whoever, sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

CHAPTER XXII

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person in interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

504. Intentional insult with intent to provoke breach of the peace.—Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

505. Statements conducing to public mischief.—Whoever makes, publishes or circulates any statement, rumour, or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airmen in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community.

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid.

506. Punishment for Criminal intimidation.—Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

if threat be to cause death or grievous hurt, etc—and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment or either description for a term which may extend to seven years, or with fine, or with both.

507. Criminal intimidation by an anonymous communication.—Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

508. Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure.—Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do,

by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations.

(*a*) A sits dhurna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(*b*) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

509. Word, gesture or act intended to insult the modesty of a woman.—Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

510. Misconduct in public by a drunken person.—Whoever, in a state of intoxication appears in any public place, or in any place which it is trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

CHAPTER XXIII

OF ATTEMPTS TO COMMIT OFFENCES

511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.—Whoever attempts to commit an offence punishable by this Code with imprisonment for life of imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(*a*) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(*b*) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

Act No. I of 1872

The Indian Evidence Act, 1872

WHEREAS it is expedient to consolidate, define and amend the Law of Evidence; It is hereby enacted as follows :—

PART I

Relevancy of Facts

CHAPTER I

PRELIMINARY

1. Short title.—This Act may be called the Indian Evidence Act, 1872.

Extent.—It extends to the whole of India except the State of Jammu and Kashmir and applies to all judicial proceedings in or before any Court, including Courts-martial other than Courts-martial convened under the Army Act, the Naval Discipline Act or the Indian Navy (Discipline) Act, 1934, or the Air Force Act but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator.

Commencement of Act.—And it shall come into force on the first day of September, 1872.

2. Repealed.

3. Interpretation clause.—In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—

"Court".—"Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence.

"Fact".—"Fact" means and includes—

(1) any thing, state of things, or relation of things capable of being perceived by the senses ;

(2) any mental condition of which any person is conscious.

Illustrations.

(*a*) That there are certain objects arranged in a certain order in a certain place, is a fact.

(*b*) That a man heard or saw something, is a fact.

(*c*) That a man said certain words, is a fact.

(*d*) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(*e*) That a man has a certain reputation, is a fact.

Relevant.—One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue".—The expression "facts in issue" means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explantion.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations.

A is accused of the murder of B.

At his trial the following facts may be in issue:—

that A caused B's death;

that A intended to cause B's death;

that A had received grave and sudden provocation from B;

that A, at the time of doing the act which caused B's death, was by reason of unsoundness of mind, incapable of knowing its nature.

"Document".—"Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations.

A writing is a document:

Words printed, lithographed or photographed are documents:

A map or plan is a document:

An inscription on a metal plate or stone is a document:

A caricature is a document.

"Evidence".—"Evidence" means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry:

such statements are called oral evidence;

(2) all documents produced for the inspection of the Court; such documents are called documentary evidence.

"Proved".—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Disproved".—A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Not proved".—A fact is said not to be proved when it is neither proved nor disproved.

"India".—"India" means the territory of India excluding the State of Jammu and Kashmir.

4. "May presume".—Whenever it is provided by this Act that the Court may presume a fact, if may either regard such fact as proved, unless and until it is disproved, or may call for proof of it:

"Shall presume".—Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved:

"Conclusive proof".—When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

CHAPTER II

OF THE RELEVANCY OF FACTS

5. Evidence may be given of facts in issue and relevant facts.—Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation.—This section shall not enable by person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations.

(*a*) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue:—

A's beating B with the club;

A's causing B's death by such beating;

A's intention to cause B's death.

(*b*) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bound or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

6. Relevancy of facts forming part of same transaction.—Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations.

(*a*) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standards at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(*b*) A is accused of waging war against the Government of India by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(*c*) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(*d*) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7. Facts which are the occasion, cause or effect of facts in issue.—Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(*a*) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.

(*b*) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(*c*) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts

8. Motive, preparation and previous or subsequent conduct.—Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(*a*) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(*b*) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(*c*) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(*d*) The question is, whether a certain document is the will of A.

The facts, that not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared of which he did not approve, are relevant.

(*e*) A is accused of a crime.

The facts that, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(*f*) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence—"the police are coming to look for the man who robbed B," and that immediately afterwards A ran away, are relevant.

(*g*) The question is, whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advise you not to trust A, for he owes B 10,000 rupees," and that A went away without making any answer, are relevant facts.

(*h*) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(*i*) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(*j*) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (*1*), or as corroborative evidence under section 157.

(*k*) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint, is not relevant as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (*1*), or as corroborative evidence under section 157.

9. Facts necessary to explain or introduce relevant facts.—Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(*a*) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(*b*) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(*c*) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant under section 8, as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(*d*) A sues B for inducing C to break a contract of service made by him with A, C, on leaving A's service, says to A—"I am leaving you because B has made me a better offer." This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(*e*) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it—"A says you are to hide this". B's statement is relevant as explanatory of a fact which is part of the transaction.

(*f*) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

10. Things said or done by conspirator in reference to common design.—Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustrations.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Government of India.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

11. When facts not otherwise relevant become relevant.—Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations.

(*a*) The question is whether A committed a crime at Calcutta on a certain day.

The fact that, on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(*b*) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C or D is relevant.

12. In suits for damages, facts tending to enable Court to determine amount are relevant.—In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded, is relevant.

13. Facts relevant when right or custom is in question.—Where the question is as to the existence of any right or custom, the following facts are relevant :—

(a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence;

(b) particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.

Illustration.

The question is whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

14. Facts showing existence of state of mind, or of body or bodily feeling.—Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Explanation 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

Explanation 2.—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.

Illustrations.

(*a*) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(*b*) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant.

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.

(*c*) A sues B for damage done by a dog of B's, which B knew to be ferocious.

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(*d*) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.

(*e*) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(*f*) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(*g*) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that, A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(*h*) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(*i*) A is charged with shooting at B with intent to kill him. In order to show A's intent the fact of A's having previously shot at B may be proved.

(*j*) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(*k*) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(*l*) The question is whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(*m*) The question is, what was the state of A's health at the time an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(*n*) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(*o*) A is tried for the murder of B by intentionally shooting him dead.

The fact that A on other occasions shot at B is relevant as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(*p*) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

15. Facts bearing on question whether act was accidental or intentional.— When there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations.

(*a*) A is accused of burning down his house in order to obtain money for which it in insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(*b*) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(*c*) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

16. Existence of course of business when relevant.—When there is a question whether a particular act was done, the existence of any course of business, according to which is naturally would have been done, is a relevant fact.

Illustrations.

(*a*) The question is, whether a particular letter was despatched.

The fact that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place are relevant.

(*b*) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

Admissions

17. Admission defined.—An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

18. Admission by party to proceeding or his agent.—Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, as admissions.

Admission by suitor in representative character.—Statements made by parties to suits suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by—

(1) **Admission by party interested in subject-matter.**—persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

(2) **Admission by person from whom interest derived.**—persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

19. Admissions by persons whose position must be proved as against party to suit.—Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would

be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustrations.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owned B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

20. Admissions by persons expressly referred to by party to suit.—Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustrations.

The question is whether a horse sold by A to B is sound.

A says to B—"Go and ask C; C knows all about it". C's statement is an admission.

21. Proof of admissions against persons making them, and by or on their behalf.—Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:—

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(*a*) The question between A and B, is whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(*b*) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(*c*) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (*2*).

(*d*) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(*e*) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

22. When oral admissions as to contents of documents are relevant.—Oral admissions as to the contents of a document are not relevant unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

23. Admissions in civil cases when relevant.—In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

24. Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.—A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

25. Confession to police-officer not to be proved.—No confession made to a police-officer shall be proved as against a person accused of any offence.

26. Confession by accused while in custody of police not to be proved against him.—No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation.—In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882.

27. How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

28. Confession made after removal of impression caused by inducement, threat or promise, relevant.—If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

29. Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.—If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.—When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation.—"Offence", as used in this section, includes the abetment of, or attempt to commit, the offence.

Illustrations.

(*a*) A and B are jointly tried for the murder of C. It is proved that A said—"B and I murdered C." The Court may consider the effect of this confession as against B.

(*b*) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said—"A and I murdered C."

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

31. Admissions are not conclusive proof, but may estop.—Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under the provisions hereinafter contained.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES

32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.—Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases :—

(*1*) **When it relates to cause of death**—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(*2*) **Or is made in course of business**—When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course

of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

(*3*) **Or against interest of maker.**—When the statement is against the pecuniay or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

(*4*) **Or gives opinion as to public right or custom, or matters of general interest.**—When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

(*5*) **Or relates to existence of relationship.**—When the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(*6*) **Or is made in will or deed relating to family affairs.**—When the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(*7*) **Or in document relating to transaction mentioned in section 13, clause (a).**—When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a).

(*8*) **Or is made by several persons and expresses feelings relevant to matter in question.**—When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(*a*) The question is, whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration are relevant facts.

(*b*) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact.

(*c*) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(*d*) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(*e*) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(*f*) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(*g*) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.

(*h*) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(*i*) The question is, what was the price of grain on a certain day in a particular market.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(*j*) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(*k*) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(*l*) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(*m*) The question is, whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(*n*) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.—Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable :

Provided—

that the proceeding was between the same parties or their representatives in interest ;

that the adverse party in the first proceeding had the right and opportunity to cross-examine ;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Statements made under Special Circumstances

34. Entries in books of account when relevant.—Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

35. Relevancy of entry in public record made in performance of duty.—An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

36. Relevancy of statements in maps, charts and plans.—Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of the Central Government or any State Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

37. Relevancy of statement as to fact of public nature contained in certain Acts or notifications.—When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament of the United Kingdom or in any Central Act, Provincial Act or a State Act or in a Government notification or notification by the Crown Representative appearing in the Official Gazette or in any printed paper purporting to be the London Gazette or the Government Gazette of any Dominion, colony or possession of His Majesty is a relevant fact.

38. Relevancy of statements as to any law contained in law-books.—When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

How much of a Statement is to be proved

39. What evidence to be given when statement forms part of a conversation, document, book or series of letters or papers.—When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

Judgments of Courts of Justice when Relevant

40. Previous judgments relevant to bar a second suit or trial.—The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

41. Relevancy of certain judgments in probate, etc., jurisdiction.—A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation ;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person ;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease ;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.—Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

43. Judgments, etc., other than those mentioned in sections 40 to 42, when relevant.—Judgments, orders or decrees, other than those mentioned in sections 40, 41, and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act.

Illustrations.

(*a*) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(*b*) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(*c*) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(*d*) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

(*e*) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(*f*) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

44. Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.—Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under sections 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Opinions of Third persons when Relevant

45. Opinions of experts.—When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts.

Such persons are called experts.

Illustrations.

(*a*) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(*b*) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(*c*) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

46. Facts bearing upon opinions of experts.—Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(*a*) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(*b*) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

47. Opinion as to handwriting when relevant.—When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustrations.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C or D ever saw A write.

48. Opinion as to existence of right or custom, when relevant.—When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.—The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

49. Opinion as to usages, tenets, etc., when relevant.—When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

50. Opinion on relationship when relevant.—When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under sections 494, 495, 497 or 498 of the Indian Penal Code.

Illustrations.

(*a*) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(*b*) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

51. Grounds of opinion when relevant.—Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

Character when relevant

52. In civil cases character to prove conduct imputed irrelevant.—In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

53. In criminal cases previous good character relevant.—In criminal proceedings, the fact that the person accused is of a good character is relevant.

54. Previous bad character not relevant, except in reply.—In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.

55. Character as affecting damages.—In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Explanation.—In sections 52, 53, 54 and 55, the word "character" includes both reputation and disposition; but, except as provided in section 54, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

PART II

On proof

CHAPTER III.

FACTS WHICH NEED NOT BE PROVED

56. Fact judicially noticeable need not be proved.—No fact of which the Court will take judicial notice need be proved.

57. Facts of which Court must take judicial notice.—The Court shall take judicial notice of the following facts :—

(*1*) all laws in force in the territory of India ;

(*2*) all public Acts passed or hereafter to be passed by Parliament of the United Kingdom, and all local and personal Acts directed by Parliament of the United Kingdom to be judicially noticed ;

(*3*) Articles of War for the Indian Army, Navy or Air Force;

(*4*) the course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India of Parliament and of the legislatures established under any laws for the time being in force in a Province or in the States ;

(*5*) the accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland ;

(*6*) all seals of which English Courts take judicial notice: the seals of all the Courts in India, and of all Courts out of India, established by the authority of the Central Government or the Crown Representative: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by the Constitution or an Act of Parliament of the United Kingdom or an Act or Regulation having the force of law in India ;

(*7*) the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any State if the fact of their appointment to such office is notified in any Official Gazette ;

(*8*) the existence, title and national flag of every State or Sovereign recognized by the Government of India ;

(*9*) the divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette ;

(*10*) the territories under the dominion of the Government of India ;

(*11*) the commencement, continuance and termination of hostilities between the Government of India and any other State or body of persons ;

(*12*) the names of the members and officers of the Court and of their deputies and subordinate officers and assistants and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it ;

(*13*) the rule of the road on land or at sea.

In all these cases and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

58. Facts admitted need not be proved.—No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings :

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.

OF ORAL EVIDENCE

59. Proof of facts by oral evidence.—All facts, except the contents of documents, may be proved by oral evidence.

60. Oral evidence must be direct.—Oral evidence must, in all cases whatever, be direct; that is to say—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit require the production of such material thing for its inspection.

CHAPTER V.

OF DOCUMENTARY EVIDENCE

61. Proof of contents of documents.—The contents of documents may be proved either by primary or by secondary evidence.

62. Primary evidence.—Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.— Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other but no one of them is primary evidence of the contents of the original.

63. Secondary evidence.—Secondary evidence means and includes—

(1) certified copies given under the provisions hereinafter contained;[1]

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and compared with such copies;

(3) copies made from or compared with the original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(*a*) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(*b*) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(*c*) A copy transcribed from a copy, but afterwards compared with the original is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(*d*) Neither an oral account of a copy, compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

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[1]*See* s. 76, infra.

64. Proof of documents by primary evidence.—Documents must be proved by primary evidence except in the cases hereinafter mentioned.

65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition or contents of a document in the following cases :—

(a) when the original is shown or appears to be in the possession or power—

of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court,

or

of any person legally bound to produce it,

and when, after the notice mentioned in section 66, such person does not produce it ;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest ;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time ;

(d) when the original is of such a nature as not to be easily moveable ;

(e) when the original is a public document within the meaning of section 74 ;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India, to be given in evidence ;[1]

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66. Rules as to notice to produce.—Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader, such notice to produce it as is prescribed by law ; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case :

[1]*Cf.* the Bankers' Book Evidence Act, 1891 (XVIII of 1891), s. 4.

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it :—

(1) when the document to be proved is itself a notice ;

(2) when, from the nature of the case, the adverse party must know that he will be required to produce it ;

(3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force ;

(4) when the adverse party or his agent has the original in Court ;

(5) when the adverse party or his agent has admitted the loss of the document ;

(6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

67. Proof or signature and handwriting of person alleged to have signed or written document produced.—If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence :

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied.

69. Proof where no attesting witness found.—If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting and that the signature of the person executing the document is in the handwriting of that person.

70. Admission of execution by party to attested documents.—The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

71. Proof when attesting witness denies the execution.—If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

72. Proof of document not required by law to be attested.—An attested document not required by law to be attested may be proved as if it was unattested.

73. Comparison of signature, writing or seal with others admitted or proved.—In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have

been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also, with any necessary modifications, to finger-impressions.

Public Documents

74. Public documents.—The following documents are public documents :—

(1) documents forming the acts or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth or of a foreign country ;

(2) public records kept in any State of private documents.

75. Private documents.—All other documents are private.

76. Certified copies of public documents.—Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

77 Proof of documents by production of certified copies.—Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

78. Proof of other official documents.—The following public documents may be proved as follows :—

(1) Acts, orders or notifications of the Central Government in any of its departments or of the Crown Representative or of any Local Government or any department of any Local Government,—

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government ; or, as the case may be, of the Crown Representative,

(2) the proceedings of the Legislatures,—

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of the Government concerned :

(3) proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,—

by copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer :

(4) the Acts of the Executive or the proceedings of the Legislature of a foreign country,—

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign or by recognition thereof in some Central Act :

(5) the proceedings of a municipal body in a State,—

by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body :

(6) public documents of any other class in a foreign country,—

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public or of an Indian Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Presumptions as to Documents

79. Presumptions as to genuineness of certified copies.—The Court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer of the Central Government or of a State Government, or by any officer in the State of Jammu and Kashmir who is duly authorized thereto by the Central Government :

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

80. Presumption as to documents produced as record of evidence.—Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine ; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

81. Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.—The Court shall presume the genuineness of every document purporting to be the London Gazette or any Official Gazette, or the Government Gazette of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of private Act of Parliament of the

United Kingdom printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

82. Presumption as to document admissible in England without proof of seal or signature.—When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

83. Presumption as to maps or plans made by authority of Government.—The Court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

84. Presumption as to collections of laws and reports of decisions.—The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country.

85. Presumption as to powers of attorney.—The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a notary public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government was so executed and authenticated.

86. Presumption as to certified copies of foreign judicial records.—The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of India or of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of the Central Government in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

An officer who, with respect to any territory or place not forming part of India or Her Majesty's dominions, is a Political Agent therefor, as defined in section 3, clause (43), of the General Clauses Act, 1897, shall for the purposes of this section, be deemed to be a representative of the Central Government in and for the country comprising that territory or place.

87. Presumption as to books, maps and charts.—The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.

88. Presumption as to telegraphic messages.—The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

89. Presumption as to due execution, etc., of documents not produced.—The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

90. Presumption as to documents thirty years old.—Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(*a*) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his titles to it. The custody is proper.

(*b*) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(*c*) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.

CHAPTER VI.

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE

91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.—When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills admitted to probate in India may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(*a*) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(*b*) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(*c*) If a bill of exchange is drawn in a set of three, one only need be proved.

(*d*) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(*e*) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

92. Exclusion of evidence of oral agreement.—When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms :

Proviso (1).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto ; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (2).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3).—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(*a*) A policy of insurance is effected on goods "in ships from Calcutta to London". The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(*b*) A agrees absolutely in writing to pay B Rs. 1,000 on the first March, 1873. The fact that, at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(*c*) An estate called "the Rampore tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(*d*) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(*e*) A institutes a suit against B for the specific performance of a contract and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(*f*) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(*g*) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse for Rs. 500". B may prove the verbal warranty.

(*h*) A hires lodgings of B, and gives B a card on which is written—"Rooms, Rs. 200 a month." A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(*i*) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount A may prove this.

(*j*) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

93. Exclusion of evidence to explain or amend ambiguous document.—When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(*a*) A agrees, in writing, to sell a horse to B for Rs. 1,000 or Rs. 1,500. Evidence cannot be given to show which price was to be given.

(*b*) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

94. Exclusion of evidence against application of document to existing facts.—When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A sells to B, by deed, "my estate at Rampur containing 100 bighas." A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

95. Evidence as to document unmeaning in reference to existing facts.—When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustrations.

A sells to B, by deed, "my house in Calcutta".

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

96. Evidence as to application of language which can apply to one only of several persons.—When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations.

(*a*) A agrees to sell to B, for Rs. 1,000, "my white horse". A has two white horses. Evidence may be given of facts which show which of them was meant.

(*b*) A agrees to accompany B to Haidarabad. Evidence may be given of facts showing whether Haidarabad in the Dekkhan or Haidarabad in Sind was meant.

97. Evidence as to application of language to one of two sets of facts to neither of which the whole correctly applies.—When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustration.

A agrees to sell to B "my land at X in the occupation of Y". A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence as to meaning of illegible characters, etc.—Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense.

Illustration.

A, a sculptor, agrees to sell to B, "all my mods". A has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. Who may give evidence of agreement varying terms of document.— Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

100. Saving of provisions of Indian succession Act relating to wills.— Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865) as to the construction of wills.

PART III.

Production and effect of evidence.

CHAPTER VII.

OF THE BURDEN OF PROOF.

101. Burden of proof.—Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(*a*) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(*b*) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

102. On whom burden of proof lies.—The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(*a*) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(*b*) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

103. Burden of Proof as to particular fact.—The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustrations.

(*a*) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

104. Burden of proving fact to be proved to make evidence admissible.—The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations.

(*a*) A wishes to prove a dying declaration by B. A must prove B's death.

(*b*) A wishes to prove, by secondary evidence, the contents of a lost document. A must prove that the document has been lost.

105. Burden of proving that case of accused comes within exceptions.—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations.

(*a*) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(*b*) A, accused of murder, alleges that, by grave and sudden provocations, he was deprived of the power of self-control.

The burden of proof is on A.

(*c*) Section 325 of the Indian Penal Code provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

106. Burden of proving fact especiallly within knowledge.—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(*a*) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(*b*) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

107. Burden of proving death of person known to have been alive within thirty years.—When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

108. Burden of proving that person is alive who has not been heard of for seven years.—Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

109. Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.—When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

110. Burden of proof as to ownership.—When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

111. Proof of good faith in transactions where one party is in relation of active confidence.—Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(*a*) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(*b*) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

112. Birth during marriage conclusive proof of legitimacy.—The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

113. Proof of cession of territory.—A notification in the Official Gazette that any portion of British territory has before the commencement of Part III of the Government of India Act 1935 been ceded to any native State, Prince or Ruler,[1] shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

114. Court may presume existence of certain facts.—The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

(*a*) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(*b*) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(*c*) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(*d*) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

(*e*) that judicial and official acts have been regularly performed;

(*f*) that the common course of business has been followed in particular cases;

(*g*) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(*h*) that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(*i*) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:—

as to illustration (*a*)—a shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business:

as to illustration (*b*)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself:

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[1]*See*, for example, Gazette of India, 1873, Pt. I, p. 2.

as to illustration (*b*)—a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable:

as to illustration (*c*)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence:

as to illustration (*d*)—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course:

as to illustration (*e*)—a judicial act, the regularity of which is in question, was performed under exceptional circumstances:

as to illustration (*f*)—the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances:

as to illustration (*g*)—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family:

as to illustration (*h*)—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked:

as to illustration (*i*)—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.

ESTOPPEL.

115. Estoppel.—When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

116. Estoppel of tenant; and of license of person in possession.—No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon any immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

117. Estoppel of acceptor of bill of exchange, bailee or licensee.—No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (*1*).—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (*2*).—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.

OF WITNESSES

118. Who may testify.—All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

119. Dumb witnesses.—A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs, but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

120. Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial.—In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

121. Judges and Magistrates.—No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate: but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(*a*) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(*b*) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(*c*) A is accused before the Court of Session of attempting to murder a police officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

122. Communications during marriage.—No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married: nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

123. Evidence as to affairs of State.—No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

124. Official communications.—No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

125. Information as to commission of offences.—No Magistrate or Police-officer shall be compelled to say whence he got any information as to the commission of any offence, and no revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Explanation.—"Revenue-officer" in this section means any officer employed in or about the business of any branch of the public revenue.

126. Professional communications.—No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any illegal purpose;

(2) any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader, attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(*a*) A, a client, says to B, an attorney—"I have committed forgery and I wish you to defend me".

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(*b*) A, a client, says to B, an attorney—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue".

The communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(*c*) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

127. Section 126 to apply to interpreters, etc.—The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils.

128. Privilege not waived by volunteering evidence.—If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and if any party to a suit or proceedings calls any such barrister, pleader, attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

129. Confidential communications with legal advisers.—No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

130. Production of title-deeds of witness, not a party.—No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document in virtue of which he holds any property as pledge or mortgagee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

131. Production of documents which another person, having possession could refuse to produce.—No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

132. Witness not excused from answering on ground that answer will criminate.—A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Proviso.—Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

133. Accomplice.—An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

134. Number of witnesses.—No particular number of witnesses shall in any case be required for the proof of any fact.

CHAPTER X.

OF THE EXAMINATION OF WITNESSES.

135. Order of production and examination of witnesses.—The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

136. Judge to decide as to admissibility of evidence.—When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(*a*) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(*b*) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(*c*) A is accused receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of possession to be proved before the property is identified.

(*d*) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C and D is proved, or may require proof of B, C and D before permitting proof of A.

137. Examination-in-chief.—The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.—The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.—The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

138. Order of examinations.—Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination.—The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

139. Cross-examination of person called to produce a document.—A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness.

140. Witnesses to character.—Witnesses to character may be cross-examined and re-examined.

141. Leading questions.—Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

142. When they must not be asked.—Leading questions must not, if objected to by the adverse party be asked in an examination-in-chief, or in a re-examination except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

143. When they may be asked.—Leading questions may be asked in cross-examination.

144. Evidence as to matters in writing.—Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B.

C deposes that he heard A say to D:—"B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

145. Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

146. Questions lawful in cross-examination.—When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

147. When witness to be compelled to answer.—If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

148. Court to decide when question shall be asked and when witness compelled to answer.—If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations :—

(1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies :

(2) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies :

(3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence :

(4) the Court may, if it sees fit, draw, from the wtiness's refusal to answer, the inference that the answer if given would be unfavourable.

149. Question not to be asked without reasonable grounds.—No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(*a*) A barrister is instructed by an attorney or vakil that an important witness is a dacoit. This is a reasonable ground for asking the witness whether he is a dacoit.

(*b*) A pleader is informed by person in Court that an important witness is a dacoit; the informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dacoit.

(*c*) A witness, of whom nothing whatever is known, is asked at random whether he is a dacoit. There are here no reasonable grounds for the question.

(*d*) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dacoit.

150. Procedure of Court in case of question being asked without reasonable grounds.—If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

151. Indecent and scandalous questions.—The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

152. Questions intended to insult or annoy.—The Court shall forbid any question which appears to it to be intended to insult or annoy, or which though proper in itself, appears to the Court needlessly offensive in form.

153. Exclusion of evidence to contradict answers to questions testing veracity.—When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1. If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(*a*) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fradulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(*b*) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(*c*) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(*d*) A is asked whether his family has not had a blood-feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

154. Question by party to his own witness.—The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

155. Impeaching credit of witness.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him :—

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit ;

(2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence ;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(*a*) A sues B for the price of goods sold and delivered to B. C says that A delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(*b*) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

156. Questions tending to corroborate evidence of relevant fact admissible.—When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

157. Former statements of witness may be proved to corroborate later testimony as to same fact.—In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

158. What matters may be proved in connection with proved statement relevant under section 32 or 33.—Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

159. Refreshing memory.—A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

When witness may use copy of document to refresh memory.—Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document:

Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

160. Testimony to facts stated in document mentioned in section 159.—A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161. Right of adverse party as to writing used to refresh memory.—Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it: such party may, if he pleases, cross-examine the witness thereupon.

162. Production of documents.—A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

Translation of documents.—If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

163. Giving, as evidence, of document called for and produced on notice.—When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it required him to do so.

164. Using, as evidence, of document production of which was refused on notice.—When a party refuses to produce a document which he had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Illustrations.

A sues B on an agreement and gives B notice to produce it. At the trial A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

165. Judge's power to put questions or order production.—The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing: and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

166. Power of jury or assessors to put questions.—In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

CHAPTER XI

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. No new trial for improper admission or rejection of evidence.—The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

4. Definition.—(1) In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context :—

(b) **"Bailable offence." "Non-bailable offence".**—"bailable offence" means an offence shown as bailable in the second schedule or which is made bailable by any other law for the time being in force ; and "non-bailable offence" means any other offence :

(f) **"Cognizable offence." "Cognizable case.".**—"cognizable offence" means an offence for, and "cognizable case" means a case in, which a police-officer, within or without the presidency-towns, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant :

(h) **"Complaint".**—"complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but it does not include the report of a police-officer :

(n) **"Non-cognizable offence." "Non-cognizable case.".**—"non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a police-officer, within or without a presidency-town, may not arrest without warrant :

A.—Classes of Criminal Courts.

6. Classes of Criminal Courts.—Besides the High Courts and the Courts constituted under any law other than this Code[1] for the time being in force, there shall be five classes of Criminal Courts in India, namely :—

I.—Courts of Session :

II.—Presidency Magistrates :

III.—Magistrates of the first class :

IV.—Magistrates of the second class :

V.—Magistrates of the third class.

[1]*e.g.*, Courts-martial.

42. Public when to assist Magistrate and police.—Every person is bound to assist a Magistrate or police-officer reasonably demanding his aid, whether within or without the presidency-towns,—

(*a*) in the taking or preventing the escape of any other person whom such Magistrate or police-officer is authorized to arrest;

(*b*) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

43. Aid to person, other than police-officer, executing warrant.—When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

44. Public to give information of certain offences.—(*1*) Every person, whether within or without the presidency-towns, aware of the commission of, or of the intention of any other person to commit any offence punishable under any of the following sections of the Indian Penal Code (namely, 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention.

(*2*) For the purposes of this section the term "offence" includes any act committed at any place out of India which would constitute an offence if committed in India.

46. Arrest how made.—(*1*) In making an arrest the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(*2*) **Resisting endeavour to arrest.**—If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

(*3*) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

47. Search of place entered by person sought to be arrested.—If any person acting under a warrant of arrest, or any police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

48. Procedure where ingress not obtainable.—If ingress to such place cannot be obtained under section 47 it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or

window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance :

Breaking open zanana.—Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

49. Power to break open doors and windows for purposes of liberation.—Any police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

50. No unnecessary restraint.—The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.[1]

51. Search of arrested persons.—Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him.[2]

53. Power to seize offensive weapons.—The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

59. Arrest by private persons and procedure on such arrest.—(*1*) Any private person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender, and without unnecessary delay, shall make over any person so arrested to a police-officer, or, in the absence of a police-officer, take such person or cause him to be taken in custody to the nearest police-station.

(*2*) If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.

(*3*) If there is reason to believe that he has commited a non-cognizable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe

[1]For penalty for unwarrantable personal violence by a police-officer to a person in his custody, *see* s. 29 of the Police Act, 1861 (V of 1861), General Acts, Vol. I.

[2]As to disposal of such property, *see* s. 523.

to be false, he shall be dealt with under the provisions of section 57. If there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

66. Power, on escape, to pursue and retake.—If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in India.

67. Provisions of sections 47, 48 and 49 to apply to arrests under section 66.—The provisions of sections 47, 48 and 49 shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant and is not a police-officer having authority to arrest.

68. Form of summons.—(*1*) Every summons issued by a Court under this Code shall be in writing in duplicate, signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule, direct.

(*2*) **Summons by whom served.**—Such summons shall be served by a police-officer, or subject to such rules as the State Government may prescribe in this behalf, by an officer of the Court issuing it or other public servant.

(*3*) This section applies also to the police in the towns of Calcutta and Bombay.

69. Summons how served.—(*1*) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

(*2*) **Signature receipt of summons.**—Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(*3*)

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72. Service on servant of Government or of Railway Company.—(*1*) Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court under his signature with the endorsement required by that section.

(*2*) Such signature shall be evidence of due service.

* * * *

94. Summons to produce document or other thing.—(*1*) Whenever any Court, or in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police-station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to

the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(*2*) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(*3*) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, post-card, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities.

127. Unlawful assembly to disperse on command of Magistrate or police-officer.—(*1*) Any Magistrate or officer in charge of a police-station may command any unlawful assembly,[1] or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(*2*) This section applies also to the police in the town of Calcutta.

128. Use of civil force to disperse.—If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police-station, whether within or without the presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person not being an officer, soldier, sailor or airman in the Indian Army, Navy or Air Force or a person subject to the Territorial Army Act, 1948, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

129. Use of military force.—If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by the armed forces.

130. Duty of officer commanding troops required by Magistrate to disperse assembly.—(*1*) When a Magistrate determines to disperse any such assembly by the armed forces he may require any officer thereof in command of any group of persons belonging to the armed forces to disperse such assembly with the help of armed forces under his command and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

(*2*) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

131. Powers of commissioned military officers to disperse assembly.—When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of the

[1]*See* I. P. C., s. 141, for definition of an unlawful assembly.

armed forces may disperse such assembly with the help of the armed forces under his command and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

132. Protection against prosecution for act done under this Chapter.—No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the local Government; and—

(*a*) no Magistrate or police-officer acting under this Chapter in good faith,

(*b*) no officer acting under section 131 in good faith,

(*c*) no person doing any act in good faith, in compliance with a requisition under section 128 or section 130, and

(*d*) no inferior officer, or soldier, sailor or airman in the armed forces doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence:

Provided that no such prosecution shall be instituted in any Criminal Court against any officer or soldier, sailor or airman in the armed forces except with the sanction of the Central Government.

132-A. Definitions.—In this chapter:

(*a*) the expression "armed forces" means the military, naval and air forces, operating as land forces and includes any other armed forces of the Union so operating;

(*b*) "officer", in relation to the armed forces, means a person commissioned, gazetted or in pay as an officer of the armed forces and includes a junior commissioned officer, a warrant officer, a petty officer and a non-commissioned officer.

* * * *

195. Prosecution for contempt of lawful authority of public servants.—(*1*) No court shall take cognizance—

(*a*) of any offence punishable under sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;

(*b*) **Prosecution for certain offences against public justice.**—of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or

(*c*) * * * *

(*2*) * * * *

(*3*) * * * *

(*4*) The provisions of sub-section (*1*), with reference to the offences named therein, apply also to criminal conspiracies to commit such offences, and to the abetment of such offences, and attempts to commit them.

(*5*) Where a complaint has been made under sub-section (*1*), clause (*a*), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.

196. Prosecution for offences against the State.—No Court shall take cognizance of any offence punishable under Chapter VI or IXA of the Indian Penal Code (except section 127 and section 171F, as far as it relates to the offence of personation), or punishable under section 108A, or section 153A, or section 294A, or section 295A, or section 505 of the same Code, unless upon complaint made by order of, or under authority from the State Government or some officer empowered by the State Government in this behalf.

236. Where it is doubtful what offence has been committed.—If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once ; or he may be charged in the alternative with having committed some one of the said offences.

Illustrations.

(*a*) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(*b*) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

237. When a person is charged with one offence, he can be convicted of another.—[1](*1*) If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.

238. When offence proved included in offence charged.—[1](*1*) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

[1]Ss. 237 and 238 are applicable to trials by Court-martial on charges under s. 41 of the I. A. A. *See* I. A. A., s. 86 (*4*).

(*2*) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(*2*A) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(*3*) Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations.

(*a*) A is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(*b*) A is charged, under section 325 of the Indian Penal Code, with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

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476. Procedure in cases mentioned in section 195.—(*1*) When any Civil, Revenue or Criminal Court[1] is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an enquiry should be made into any offence referred to in section 195,[2] sub-section (*1*), clause (*b*) or clause (*c*), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary enquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate :

Provided that, where the Court making the complaint is a High Court, the complaint may be signed by such officer of the Court as the Court may appoint.

For the purposes of this sub-section, a Presidency Magistrate shall be deemed to be a Magistrate of the first class.

(*2*) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under section 200.

(*3*) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided.

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[1]A Court-martial is a Criminal Court. *See* s. 6.
[2]For the relevant portion of s. 195, *see* preceding page.

PART V.

NOTIFICATIONS AND WARRANTS ISSUED UNDER THE ARMY ACT, 1950.

NOTIFICATIONS.

No. I. Commencement of the Army Act, 1950.

(Ministry of Defence Notification No. S. R. O. 120 dated 22nd July 1950)

S. R. O. 120.—In exercise of the powers conferred by sub-section (2) of section 1 of the Army Act, 1950 (XLVI of 1950), the Central Government is pleased to appoint the 22nd July 1950 as the date on which the said Act shall come into force.

No. II. Relative ranks of civil officials.

(Ministry of Defence Notification No. S. R. O. 121 dated 22nd July 1950)

S. R. O. 121.—In exercise of the powers conferred by sub-section (1) of section 6 of the Army Act, 1950 (XLVI of 1950), and in supersession of the notification of the Government of India in the late Defence Department, No. 685, dated the 27th May 1939, the Central Government is pleased—

(a) to direct that the classes of persons mentioned in the first column of the Schedule hereto annexed, when subject to the said Act under clause (i) of sub-section (1) of section 2 thereof, shall be so subject as the class of persons mentioned in the corresponding entry in the second column of the said Schedule; and

(b) to authorise the officer commanding any force to give a like direction with respect to any person accompanying such force, other than a Government servant, when subject to the said Act under clause (i) of sub-section (1) of section 2 thereof, and to cancel such direction.

SCHEDULE

All Civil gazetted officers of Government, and other Government servants whose current total monthly emoluments (excluding compensatory allowances) are more than Rs. 500.	Officers.
All Government servants, not being Gazetted Officers, whose current total monthly emoluments (excluding compensatory allowances) are not more than Rs. 500 and not less than Rs. 140.	Junior Commissioned Officers.
All Government servants whose current total monthly emoluments (excluding compensatory allowances) are less than Rs. 140 but not less than Rs. 70.	Warrant Officers.
All Government servants whose current total monthly emoluments (excluding compensatory allowances) are less than Rs. 70 but not less than Rs. 35.	Non-commissioned Officers.

No. III. Application of the Act to certain forces.

[Ministry of Defence Notification No. S. R. O. 122 dated 22nd July 1950 as amended by S. R. O. 282 dated 17th August 1960]

S. R. O. 122.—In exercise of the powers conferred by sub-section (1) of section 4 of the Army Act, 1950 (XLVI of 1950), and in supersession of the notification of the Government of India in the late War Department, No. 1584, dated the 29th June 1946, the Central Government is pleased to apply all the provisions

of the said Act to Civil General Transport Companies and Independent Transport Platoons (Civ. GT), being a force raised and maintained in India under the authority of the Central Government.

(Ministry of Defence Notification No. 1255 dated 7th November 1953 amended by S. R. O. 126/61.)

No. 1255.—The following shall be the equivalent ranks in the Civil General Transport Companies and Independent Transport Platoons (Civ. G.T.) and the Regular Army for purposes of the Army Act, 1950, as applied to the said Companies and Platoons by Ministry of Defence Notification No. S. R. O. 122, dated the 22nd July 1950, namely :—

Civil General Transport Companies and Independnt Transport platoon (Civ. G. T.)	Regular Army
Platoon Supervisors Clerks (Upper Division)	Junior Commissioned Officers
Clerks (Lower Division)	Non-Commissioned Officers
Leading Drivers	
Mechanics	
Assistant Mechanics	
Drivers	Sepoy.
Tarpaulin makers	
Head camp guards	
Camp guards	
Cooks	
Sweepers	
Water carriers	
Cleaners	

No. IV. Officers prescribed under section 8 of the Act.

(Ministry of Defence Notification No. S. R. O. 135-A, dated 22nd July 1950)

S. R. O. 135-A.—In exercise of the powers conferred by Section 8 of the Army Act, 1950 (XLVI of 1950), and in supersession of the Notification of the Government of India, in the late Army Department, No. 2163, dated the 29th October 1920, in the Ministry of Defence, Nos. 707, dated the 1st May 1948, 2106, dated the 4th December 1948, 129, dated the 22nd January 1949, 1119, dated the 2nd July 1949, 2133, dated the 17th December 1949, S. R. O. 6, dated the 6th May 1950, S. R. O. 30, dated the 13th May 1950, S. R. O. 76, dated the 17th June 1950, and S.R.O. 98, dated the 15th July 1950, the Central Government is pleased to prescribe each of the officers mentioned in the first column of the sub-joined table as the officer who is to exercise, as regards persons

subject to the said Act serving under his orders, the powers under the said Act and the rules and regulations made thereunder, specified in the corresponding entry in the second column of the said table :—

THE TABLE

Officers	Powers
The General Officer Commanding-in-Chief a Command.	The powers of an Officer Commanding an Army Corps.
The General Officer Commanding an Area or the Officer Commanding an Independent Sub-Area.	The powers of an Officer Commanding a Division.
The Officer Commanding a Sub-Area	
The Officer Commanding an Independent Brigade Group	
The Officer Commanding a Brigade Area	
The Commander Artillery.	
The Commander Army Group Artillery.	
The Commander Corps Artillery.	The powers of an Officer Commanding a Brigade.
The Commandant, School of Artillery	
The Commandant, Armoured Corps Centre and School, Ahmednagar.	
The Commandant, Infantry School, Mhow, not being below the rank of Brigadier, provided also that he is Station Commander, Mhow.	
The Commandant, National Defence Academy, Khadakvasla.	
The Commandant, EME Centre.	
The Commander, Pathankot Base. The Milltry Advisor/Attache to an Indian Embassy, Legation or a High Commission abroad, not being below the rank of Brigadier.	

No. V. Commencement of Army and Air Force (Disposal of Private Property) Act, 1950 (XL of 1950).

(Ministry of Defence Notification No. S. R. O. 123 dated 22nd July 1950)

S. R. O. 123.—In exercise of the powers conferred by sub-section (3) of section 1 of the Army and Air Force (Disposal of Private Property) Act, 1950 (XL of 1950), the Central Government is pleased to appoint the 22nd July 1950 as the date on which the said Act shall come into force.

WARRANTS

A-1

Warrant for convening General Courts-Martial under the Army Act.

To

THE OFFICER, NOT BEING UNDER THE RANK OF A FIELD OFFICER, COMMANDING THE

In pursuance of the provisions of the Army Act, 1950 (XLVI of 1950), I do hereby empower you, or the officer on whom your command may devolve during your absence, not under the rank of Field Officer, from time to time, as occasion may require, to convene General Courts-Martial for the trial, in accordance with the said Act and the Rules made thereunder, of any person under your command who is subject to Military Law and is charged with any offence mentioned in the said Act, and is liable to be tried by a General Court-Martial.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given under my hand at this day of 19

General.

Adjutant General. *Chief of the Army Staff*

54—294 Army/61

A-2

Warrant for confirmings and sentences of General Courts-Martial under the Army Act.

To,

The Chief of the Army Staff

In pursuance of the provisions of the Army Act 1950 (XLVI of 1950), the Central Government is pleased to hereby empower you, or the officer on whom your command may devolve during your absence, not under the rank of Field Officer, to receive the proceedings of General Courts-Martial held for the trial, in accordance with the said Act and the Rules made thereunder, of any person subject to Military Law, and confirm the findings and sentences thereof, and to exercise, as respects these Courts and the persons tried by them, the powers created by the said Act in the confirming officer, in such manner as may be best for the good of the Regular Army :

Provided always that if by the sentence of any General Court-Martial, a person subject to Military Law has been sentenced to suffer death, you shall in such case, as also in the case of any other General Court-Martial in which you shall think fit so to do, withhold confirmation and transmit the proceedings to the Central Government.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given at this day of 19 .

By order of the Central Government.

Secretary, Ministry of Defence.

A-3

Warrant for confirming findings and sentences of General Courts-Martial under the Army Act.

To,

THE OFFICER, NOT BEING UNDER THE RANK OF A FIELD OFFICER, COMMANDING THE

In pursuance of the provisions of the Army Act 1950 (XLVI 1950), the Central Government is pleased to hereby empower you, or the officer on whom your command may devolve during your absence, not under the rank of Field Officer, to receive the proceedings of General Courts-Martial held for the trial, in accordance with the said Act and the Rules made thereunder, of any person under your command who is subject to Military Law, and confirm the findings and sentences thereof, and to exercise, as respects these Courts and the persons tried by them, the powers created by the said Act in the confirming officer, in such manner as may be best for the good of the Regular Army :

Provided always that if by the sentence of any General Court-Martial a person subject to Military Law has been sentenced to suffer death, you shall in such case, and also in the case of any other General Court-Martial in which you shall think fit so to do, withhold confirmation and transmit the proceedings to Superior Authority.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given at this day of 19

By order of the Central Government.

Secretary, Ministry of Defence.

B-1

Warrant for convening and confirming District Courts-Martial under the Army Act.

To,

THE OFFICER, NOT BEING UNDER THE RANK OF A FIELD OFFICER, COMMANDING THE

Whereas I have power to convene General Courts-Martial under the Army Act, 1950 (XLVI of 1950), and whereas under that Act, any officer having power to convene General Courts-Martial may, empower any officer to convene a District Court-Martial for the trial under that Act of any person subject to Military Law under the command of such last mentioned officer and to confirm the findings and sentences thereof.

By virtue of the power vested in me under the said Act, I do hereby empower you, or the officer on whom your command may devolve during your absence, not under the rank of Field Officer, from time to time, as occasion may require, to convene District Courts-Martial for the trial, in accordance with the said Act and the Rules made thereunder, of any person under your command, who is subject to Military Law and is charged with any offence mentioned in the said Act, and is liable to be tried by a District Court-Martial.

And I do hereby further empower you, or the officer on whom your command may devolve during your absence not under the rank of Field Officer, to receive the proceedings of such Courts-Martial and confirm the findings and sentences thereof, and to exercise, as respects these Courts and the persons tried by them, the powers created by the said Act in the confirming officer, in such manner as may be best for the good of the Regular Army.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given under my hand at this day of 19

Signature of officer having power

to convene General Courts-Martial.

Signature of Staff Officer.

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